



New South Wales

Payroll Tax Rebate Scheme (Jobs Action Plan) Bill 2011

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to assist in the creation of new jobs by establishing a payroll tax rebate scheme that gives employers an incentive to increase the number of their full time equivalent employees for a period of at least 2 years.

It is intended that the rebate scheme assist in the creation of 100,000 new jobs, with 60% of those jobs being in the metropolitan area and 40% of those jobs being in the non-metropolitan area.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 provides for the object of the proposed Act, as set out in the Overview.

Clause 4 defines certain words and expressions used in the proposed Act.

Part 2 Rebate scheme

Clause 5 establishes a rebate scheme for payroll tax paid or payable by employers who employ people in new jobs on or after 1 July 2011.

Clause 6 provides that an employer is entitled to a rebate under the rebate scheme (subject to the other provisions of the proposed Act) in respect of the employment of a person if the employment is eligible employment.

Clause 7 provides that employment is *eligible employment* if:

- (a) a person is employed (as a full time or part time employee) in a position that is a new job, and
- (b) the employment commences on or after 1 July 2011, and
- (c) the employment is maintained for the minimum employment period, and
- (d) the services of the employee are performed wholly or mainly in New South Wales, and
- (e) the employment satisfies any further eligibility criteria set out in the rebate criteria, and
- (f) the employment is not excluded from the rebate scheme.

Clause 8 defines what is meant by a *new job*. A position is a new job if the employment of a person in that position results in a sustained increase in the number of the employer's full time equivalent employees (that is, an increase that is sustained for 2 years).

Clause 9 provides for the calculation of the number of full time equivalent employees of an employer.

Clause 10 provides for the *minimum employment period* in respect of a new job. The minimum employment period is 2 years starting on the date eligible employment is claimed to commence. A person must be employed in the position for which the rebate is claimed for the whole of the minimum employment period (disregarding short vacancies).

Clause 11 authorises the Minister, by order published on the NSW legislation website, to determine further criteria for the payment of rebates under the proposed Act. This order constitutes the *rebate criteria*.

Clause 12 sets out the types of employment that are excluded from the rebate scheme.

Clause 13 provides for the closure of the rebate scheme on a date or dates appointed by the rebate criteria (or on 30 June 2013, if no date is appointed).

Part 3 Calculation of rebate

Clause 14 provides that the rebate can be claimed for the first and second year of employment only. The first year of employment is the period commencing on the date the eligible employment is claimed to commence and ending on the first

anniversary of that date. The second year of employment is the period commencing the day after that first anniversary and ending on the second anniversary of the date the eligible employment is claimed to commence.

Clause 15 provides that the rebate payable is \$2,000 a year for each full time employee and a proportional amount for a part time employee.

Clause 16 provides that the maximum rebate payable for a year of employment is the employer's net payroll tax liability for the financial year in which the claim for the rebate is made.

Clause 17 enables the Chief Commissioner of State Revenue (the *Chief Commissioner*) to determine the number of full time equivalent employees of an employer, and the amount of the rebate, by agreement with the claimant in certain cases.

Part 4 Payment of rebate

Division 1 Registration and claim for rebate

Clause 18 provides that an employer must be registered as a claimant to claim a rebate under the rebate scheme.

Clause 19 enables the Chief Commissioner to register an employer as a claimant in respect of the employment of any specified person.

Clause 20 sets out the procedure for applying to be registered as a claimant.

Clause 21 provides that a person cannot be registered as a claimant for a rebate in respect of the employment of a person if the application for registration is made after the scheme closure date for the area in which the person is employed.

Clause 22 sets out the procedure for making a claim for a rebate.

Division 2 Decision with respect to claim

Clause 23 provides that the Chief Commissioner is to decide whether a rebate is payable in respect of a claim and the amount of the rebate payable.

Clause 24 gives the Chief Commissioner power to refuse a claim if the Chief Commissioner is of the opinion that a claimed increase in the number of full time equivalent employees of an employer is contrived for the purpose of claiming a rebate under the rebate scheme.

Clause 25 sets out how the rebate is to be paid.

Clause 26 enables the Chief Commissioner to apply the amount of a rebate or part of a rebate towards a liability of an employer for payroll tax or any tax of the State, instead of paying the rebate.

Clause 27 enables the Chief Commissioner to correct a decision relating to a claim.

Clause 28 requires the Chief Commissioner to notify a claimant of a decision to grant or refuse a claim or vary or reverse an earlier decision on a claim.

Part 5 Repayment of rebate

Clause 29 authorises the Chief Commissioner to require a claimant to repay a rebate in certain circumstances. The provision also authorises the Chief Commissioner to charge interest on an overdue payment and to charge a penalty for a dishonest claim.

Clause 30 authorises the Chief Commissioner to require a person (other than the claimant) to whom a rebate is paid in error to repay the rebate. The provision also authorises the Chief Commissioner to charge interest on an overdue payment.

Clause 31 authorises the Chief Commissioner to recover from a relevant third party any amount that is payable by a rebate recipient but remains unpaid.

Clause 32 authorises the Chief Commissioner to enter into an arrangement for the payment of a liability under the proposed Act by instalments.

Clause 33 authorises the Chief Commissioner to write off liabilities under the proposed Act.

Clause 34 authorises the Chief Commissioner to remit, in whole or in part, an amount a person is required to pay under the proposed Act.

Part 6 Objections and reviews

Division 1 Objections

Clause 35 enables an objection to be made to decisions made by the Chief Commissioner under the proposed Act.

Clause 36 sets a time limit for the lodging of an objection.

Clause 37 requires the grounds for an objection to be stated in the objection.

Clause 38 provides that an objector has the onus of proving an objector's case.

Clause 39 provides that the Chief Commissioner may allow or disallow an objection and reverse, vary or confirm the original decision.

Clause 40 requires the Chief Commissioner to give an objector notice of the determination of an objection.

Division 2 Reviews

Clause 41 enables an objector who is dissatisfied with the Chief Commissioner's determination of an objection to apply to the Administrative Decisions Tribunal for a review of the Chief Commissioner's original decision.

Clause 42 provides that the Administrative Decisions Tribunal may confirm, vary or reverse the original decision and make further orders as to costs or otherwise.

Part 7 Administration

Division 1 Administration generally

Clause 43 provides that the Chief Commissioner is responsible to the Minister for the administration of the rebate scheme.

Clause 44 authorises the Chief Commissioner to delegate functions related to the administration of the rebate scheme.

Clause 45 authorises the Chief Commissioner to appoint persons as authorised officers. A person who is an authorised officer for the purposes of a taxation law (as referred to in section 68 of the *Taxation Administration Act 1996*) is taken to be an authorised officer for the purposes of the proposed Act.

Division 2 Powers of investigation

Clause 46 authorises the Chief Commissioner to carry out an *authorised investigation* for the purpose of the proposed Act, including in relation to whether an application or a claim has been properly made, whether a claimant who has received a rebate was eligible for the rebate and any other matter reasonably related to the administration of the proposed Act.

Clause 47 authorises the Chief Commissioner to exercise certain powers in connection with authorised investigations.

Clause 48 gives the Chief Commissioner access to public documents without the payment of fees.

Clause 49 authorises the Chief Commissioner to enter premises if the Chief Commissioner has reason to believe or suspect that there are documents at the premises that are relevant to the administration of the proposed Act. Entry cannot be made to residential premises without either consent or a search warrant.

Clause 50 provides that an officer who has entered premises under the proposed Part may require records to be produced, ask questions and require reasonable assistance and facilities to be provided.

Clause 51 authorises the Chief Commissioner or an authorised officer to take possession of a document and to take copies, extracts or notes of it.

Clause 52 deals with applications for search warrants.

Clause 53 makes it an offence to prevent the Chief Commissioner or an authorised officer from exercising a function under the proposed Part, to hinder or obstruct the Chief Commissioner or an authorised officer in the exercise of such a function, or to refuse or fail to comply with a requirement made by the Chief Commissioner or an authorised officer. The maximum penalty is 100 penalty units (currently, \$11,000).

Clause 54 provides a defence to a prosecution for an offence under the proposed Part if the court is satisfied that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement concerned or that the defendant complied with the requirement to the extent of his or her ability to do so.

Clause 55 makes it clear that the powers conferred on the Chief Commissioner and authorised officers by the proposed Act can be exercised in conjunction with powers conferred by the *Taxation Administration Act 1996*.

Part 8 Miscellaneous

Clause 56 makes it an offence to knowingly give false or misleading information to an authorised officer or in relation to an application or claim under the proposed Act. The maximum penalty is 100 penalty units (currently, \$11,000).

Clause 57 protects the confidentiality of certain information obtained in the course of work related to the administration of the proposed Act.

Clause 58 enables evidence relating to rebates or the imposition of penalties to be given by a certificate signed by the Chief Commissioner.

Clause 59 provides that offences under the proposed Act are to be dealt with summarily and proceedings for an offence may be commenced within 3 years of the date on which it is alleged an offence was committed.

Clause 60 provides for the appropriation of funds from the Consolidated Fund for the payment of rebates under the proposed Act.

Clause 61 protects persons involved in the administration of the proposed Act from personal liability.

Clause 62 confers power to make regulations under the proposed Act.

Clause 63 provides for the repeal of the proposed Act on 1 July 2018.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions.

Schedule 2 Consequential amendments to other Acts

Schedule 2 makes the following consequential amendments:

- (a) an amendment to the *Administrative Decisions Tribunal Act 1997* allocating the exercise of the Administrative Decisions Tribunal's functions under the proposed Act to its Revenue Division,
- (b) an amendment to the *Law Enforcement (Powers and Responsibilities) Act 2002* providing for the issue of search warrants under the proposed Act.