

EXPLANATORY MEMORANDUM

PAY-ROLL TAX (INDIGENOUS WAGES) REBATE BILL 2012

This Bill seeks to implement the Government's 2012/13 Budget commitment to provide a full rebate of pay-roll tax for small to medium businesses for wages paid to new indigenous employees over the first two years of employment.

This ongoing rebate is estimated to save employers a total of around \$3,800 for each new indigenous employee and will help to improve employment opportunities for people who remain among the most severely disadvantaged groups in the labour market.

As announced in the Budget, the Bill proposes that the rebate will be paid to employers with Australia-wide pay-rolls of up to \$15 million for Western Australian wages paid in the first two years of employment to new indigenous employees for whom they also receive a Commonwealth Indigenous Wages Subsidy.

Related employers will be eligible for one rebate for the group, with individual employers being entitled to the proportion of the group's rebate that relates to Western Australian wages they have paid to eligible new indigenous employees during the period.

To be eligible for the rebate, an employer will need to be registered to pay pay-roll tax in Western Australia during each assessment year for which the rebate is claimed. This ensures that only those taxpayers that have complied with the *Pay-roll Tax Assessment Act 2002* requirements to register and remit pay-roll tax will be provided with the rebate.

The Bill recognises that for some employers, the requirement to register may not arise until after 30 June in an assessment year. In other instances, employers may have applied for registration prior to 30 June, but the processing of the registration might not occur until after the 30 June in a particular assessment year. To ensure these employers are not disadvantaged, the Bill deems these employers to have registered during the relevant month providing they have complied with the registration requirements of the Pay-roll Tax Assessment Act.

The Bill also accommodates the changing circumstances of an employer during the course of a year (such as joining a group part-way through the year), to ensure the rebate paid is consistent with the employer's pay-roll tax liability for the year.

The pay-roll tax rebate will apply from 1 July 2012 on wages in respect of indigenous employees engaged on or after that date. It will be calculated and paid by the Commissioner of State Revenue without application having to be made by the employer, provided the employer has lodged all necessary information as part of the annual pay-roll tax reconciliation process.

The first rebate payments will be made to eligible employers in the first half of 2013/14 after their 2012/13 annual reconciliation process is complete. Subsequent years' payments would similarly be made after the annual reconciliation process is completed.

The rebate will be based on an eligible employer's primary pay-roll tax liability for Western Australian indigenous wages, and will not extend to any amounts of penalty tax or interest that an employer has incurred in an assessment year.

Should an employer's pay-roll tax liability be amended after a rebate has been paid, the Bill provides that an amended calculation of their rebate will be made that would result in either the employer being paid an additional amount of rebate or a repayment of rebate being sought from the employer.

The proposed time period for these adjustments is consistent with the five year reassessment period applicable to the pay-roll tax liability under the *Taxation Administration Act 2003*.

The rebate has an estimated cost of \$1 million over the four years to 2015/16.

Part 1 – Preliminary

Clause 1: Short title

This clause provides that the short title of this Act is the *Pay-roll Tax (Indigenous Wages) Rebate Act 2012*.

Clause 2: Commencement

This clause provides the commencement dates for the Act.

Paragraph (a) provides that Part 1, other than sections 3, 4 and 5, comes into operation on the day that this Bill receives the Royal Assent.

Paragraph (b) provides that the rest of the Act comes into operation on the day after this Bill receives the Royal Assent.

Clause 3: Terms used

Subclause (1) provides that, unless specified otherwise, terms that are used in this Act and either the *Pay-roll Tax Assessment Act 2002* or the *Taxation Administration Act 2003* have the same meaning in this Act as they do in the other mentioned Acts.

Subclause (2) provides the definition of various terms used in this Act.

The term "indigenous wages subsidy" is defined and is relevant to ascertaining whether an employee is an eligible employee under clause 8. An indigenous wages subsidy is currently provided by the Commonwealth to certain employers who employ indigenous persons under the Indigenous Employment Program. Paragraph (b) of the definition allows other wages subsidies provided by the Commonwealth to be prescribed as an indigenous wages subsidy for the purpose of this definition. No other subsidy is intended to be

prescribed at this time, however, should a decision be made to do so, the structure of the definition will allow rebates to be paid if the Commonwealth makes changes to these subsidies in the future.

The term “WA indigenous wages” is defined to mean WA taxable wages paid or payable in relation to an eligible employee of an eligible employer. The meaning of an eligible employee and eligible employer are contained in clauses 8 and 7 respectively. The rebate is calculated on the WA indigenous wages of an eligible employer.

Subclause (3) states that a reference in this Act to a period in an assessment year includes a reference to the whole of the year unless there is a contrary intention.

This definition is required because an employer may be eligible for this rebate for the whole assessment year, or several periods in an assessment year.

Clause 4: Pro rata amounts

This clause provides the meaning of the term “pro rata” for the purposes of this Bill.

The term pro rata is used to calculate whether a wage figure for a period of less than twelve months is below the threshold of \$15 million of Australia-wide wages, at which an employer ceases to be eligible for the rebate.

This calculation is necessary because the calculation of the rebate is linked to an employer’s pay-roll tax liability under the Pay-roll Tax Assessment Act. This liability is calculated on the basis of a \$750,000 tax free threshold for both non-group employers and groups, which is apportioned if the employer or group is liable for pay-roll tax for only part of an assessment year. It is therefore necessary to also apportion the rebate to accommodate employers who are only registered for part of an assessment year.

For example, if an employer was registered for 182 days in a year, the threshold would be calculated as follows:

$$\frac{182}{365} \times \$15,000,000 = \$7,479,452$$

That is, if Australia-wide wages less rebatable WA indigenous wages were less than \$7,479,452, an employer would satisfy the threshold requirement and be eligible for a rebate under this Act.

Clause 5: Relationship with *Taxation Administration Act 2003* and *Pay-roll Tax Assessment Act 2002*

This clause sets out how this Bill interacts with the *Taxation Administration Act 2003* and the *Pay-roll Tax Assessment Act 2002*.

Subclause (1) operates to allow certain sections of the Taxation Administration Act to apply in relation to the Pay-roll Tax (Indigenous Wages) Rebate Act as if the Pay-roll Tax (Indigenous Wages) Rebate Act were listed as a “taxation Act” in the Taxation Administration Act. The entire Taxation Administration Act is not operational in respect of the rebate, primarily on the basis that the rebate is a legislative entitlement that arises once certain matters of fact are ascertained, including whether an employer’s pay-roll tax liability is within certain specified limits.

Subclause (1)(a) allows the objection and review powers in Part 4 of the Taxation Administration Act to apply to the rebate, in a manner restricted by subclause (2), by making certain modifications that allow the Taxation Administration Act to make sense in the context of a rebate, rather than a tax.

Subclause (1)(b) applies the provisions dealing with the time for payment, the allocation of payment and arrangements for instalments or extensions of time to pay in Part 5 Division 1 of the Taxation Administration Act to apply in respect of the rebate legislation. It also applies the general recovery powers in Part 6 Division 1 of the Taxation Administration Act to apply to an overpaid rebate amount. In both cases, the necessary modifications are made to allow the references to “tax” and “taxpayer” to be read in the context of a rebate.

Subclause (2) limits the objection rights under the Taxation Administration Act by specifically preventing an objection from being made against a determination on a rebate if the objection relies on a review of an assessment of pay-roll tax that has been made under the Pay-roll Tax Assessment Act. This limitation has been included because a right of objection already exists in relation to a pay-roll tax liability, and applying the Taxation Administration Act objection provisions to the rebate would effectively require the taxpayer to object to both their liability and the rebate calculation. A rebate objection is not required, because any adjustment to a pay-roll tax liability results in clause 9(6) of the Bill applying, such that an automatic adjustment is required to be made to the rebate calculation. However, a right of objection is provided for under this clause in relation to matters where the eligible employer does not already have the ability to challenge the matter, because it does not require a reassessment of their pay-roll tax liability. Examples of these could involve a decision not to allow an extension of time or instalment arrangement to repay an overpaid rebate amount (which is a decision directly reviewable by the State Administrative

Tribunal), or a decision of the Commissioner under clause 14 of this Bill about the pre-payment of an employees wages.

Subclause (3) provides that section 43 of the Pay-roll Tax Assessment Act applies to this Bill as if it were a pay-roll tax Act. Section 43 of the Pay-roll Tax Assessment Act deals with the obligations of agents and trustees with regards to pay-roll tax.

Part 2 – Rebate of pay-roll tax on WA indigenous wages

Clause 6: Rebate of pay-roll tax on WA indigenous wages

This clause provides for the entitlement to a rebate and the requirement for the Commissioner to pay a rebate to an eligible employer. The meaning of the term eligible employer is set out in clause 7.

Subclause (1) provides that an eligible employer is entitled to a rebate of pay-roll tax on WA indigenous wages for the 2012/13 and subsequent assessment years. The rebate is required to be calculated in accordance with the provisions set out in clause 9.

Subclause (2) provides that, subject to clause 12(2), the Commissioner is to pay a rebate to eligible employers.

The restriction set out in clause 12(2) of the Bill allows the Commissioner to offset a rebate against any unpaid pay-roll tax liability or other amount of rebate owed by the eligible employer to the Commissioner.

Clause 7: Eligible employer

This clause sets out which employers are eligible to receive a rebate of pay-roll tax on WA indigenous wages paid or payable to eligible employees as defined in clause 8.

Subclause (1) provides that to be an eligible employer for an assessment year, an employer must:

- (a) be registered during the whole or part of the year under the *Pay-roll Tax Assessment Act 2002*; and
- (b) employ an eligible employee during the whole or part of the year; and
- (c) meet the threshold requirements set out in subclause (2); and

- (d) have lodged, by 31 December of the assessment year, all the returns the Pay-roll Tax Assessment Act requires to be lodged for the assessment year. If the employer is a member of a group, then the requirement for the lodgment of returns extends to the designated group employer (DGE) of the group, irrespective of whether the DGE is an eligible employer.

Subclause (2) sets out the threshold requirements referred to in subclause (1)(c).

For the majority of employers, it is readily apparent whether they will satisfy the threshold test as their status as a non-group or group employer does not change during the course of the year. However, there will be a relatively small number of employers who will either be grouped for part, but not all, of the year or registered for the first time during the year.

The term “pro rata” is used in subclause (2). The meaning of this term is set out in clause 4 of the Bill. The term is used to calculate the threshold for an employer or group that was not registered for the whole of the assessment year for which the rebate is being calculated.

To meet the threshold requirements set out in subclause (1)(c), an employer must fit into at least one of the following four categories:

- (a) if the employer was a non-group employer for the whole of a year, the employer must have paid or be liable to pay Australia-wide wages, less rebatable WA indigenous wages, of less than \$15 million during the year;
- (b) if the employer was a non-group employer for only part of the year, the employer must have paid or be liable to pay Australia-wide wages, less rebatable WA indigenous wages, of less than \$15 million pro rata during the relevant period or periods of the year;
- (c) if the employer was a member of a group for the whole of a year, that group must have paid or be liable to pay Australia-wide wages, less rebatable WA indigenous wages, of less than \$15 million during the year;
- (d) if the employer was a member of a particular group for only part of the year, that group must have paid or be liable to pay Australia-wide wages, less rebatable WA indigenous wages, of less than \$15 million pro rata during the period in the year in which the group existed.

Subclause (3) is a deeming clause that is necessary to overcome the circularity that otherwise exists between the definition of WA indigenous wages in clause 3 and the meaning of eligible employer in this clause. In the absence of this provision, it would not be possible to calculate whether the employer meets the \$15 million threshold.

Subclause (4) provides that in subclauses (2) and (3), “rebatable WA indigenous wages” means wages described in clause 6, that is, wages in respect of which a rebate will be paid.

Subclause (5) deems employers to be registered during an assessment year if they are required to apply to be registered under section 24(1) or (2) of the Pay-roll Tax Assessment Act and have made an application for registration in accordance with section 24 of the Pay-roll Tax Assessment Act.

This deeming provision will ensure an employer satisfies the requirement in subclause (1)(a) if they have made an application for registration in May of an assessment year, but the Commissioner has not processed it until after 30 June of that year.

This will also allow an employer whose liability to pay-roll tax first arises in June of an assessment year to still be eligible for a rebate if they apply by the following 7th of July to the Commissioner to be registered under the Pay-roll Tax Assessment Act, despite the requirement in subclause (1)(a) that requires them to be registered during the assessment year in respect of which they are seeking a rebate.

Clause 8: Eligible employee

An eligible employer is only eligible to claim a rebate of pay-roll tax if it is in respect of wages paid to an eligible employee. This provision defines an “eligible employee”.

Subclause (1) provides that an eligible employee is a “new employee” in respect of whom the employer receives an indigenous wages subsidy (as defined in clause 3). That employee is then an eligible employee for the 24 month period from when the employee first commenced employment with the employer.

For example, if an employee satisfied the definition of a new employee for an employer and the employer received an indigenous wages subsidy for that employee, a rebate would be available for WA indigenous wages paid to that employee for any periods of employment with that employer during the 24 month period from the date the employee first commenced employment with the employer, provided the employer satisfied the other eligibility criteria.

Subclause (2) requires that for an employee to be a “new employee”, they cannot have been previously employed by the employer or any other employer in a group of which the employer is a member and must have commenced employment on or after 1 July 2012. The restriction applies to members of groups to prevent employers transferring the employment of existing indigenous employees to other group members after 1 July 2012 so that they become new employees and therefore entitled to the rebate.

Clause 9: Calculation of rebate

This clause provides the method of calculating the amount of rebate that is payable to an employer in respect of a period in an assessment year where all the eligibility criteria set out in clause 7 are satisfied.

For each non-group employer and group there is a threshold of up to \$750,000 for wages on which pay-roll tax is not payable. For employers or groups that are registered for only part of an assessment year, the Pay-roll Tax Assessment Act reduces the threshold in proportion to the length of the period in an assessment year that the employer or group is registered. This tax-free threshold affects the calculation of the rebate.

Subclause (1) provides that an eligible non-group employer that retains that status for the whole of the year is entitled to a rebate equal to their pay-roll tax liability on WA indigenous wages paid or payable in that year.

For example, for an eligible employer that had Australia-wide wages of \$10,000,000 (all of which were WA taxable wages) which included \$500,000 of WA indigenous wages, the rebate would be \$25,437.50 calculated as follows:

$$\frac{\$500,000}{\$10,000,000} \times \$508,750 = \$25,437.50$$

The amount of \$508,750 is the pay-roll tax payable on WA taxable wages of \$10,000,000.

Subclause (2) provides for the calculation of a rebate for a non-group employer that is registered for only part of the year.

For example, an employer who is registered for 182 days has a threshold limit (to ascertain whether they qualify for the rebate) for Australia-wide wages less rebatable WA indigenous wages of \$7,479,452 (refer example clause 4).

During the 182 days that this employer is registered, \$6,000,000 in WA taxable wages are paid, of which \$1,000,000 are WA indigenous wages. The rebate payable is \$51,571.91 calculated as follows:

$$\frac{\$1,000,000}{\$6,000,000} \times \$309,431.48 = \$51,571.91$$

The figure of \$309,431.48 is the pay-roll tax payable on WA taxable wages of \$6,000,000 after adjusting the tax free threshold to allow for the fact that the group did not exist for the whole of the assessment year.

Subclause (3) provides that for an eligible employer that is a member of a group for the whole of an assessment year, the rebate for the group is equal to the amount of pay-roll tax that the group was liable to pay for WA indigenous wages for the year. Subclause (5) provides how the rebate for the group is then allocated to eligible employers that are members of the group.

For example, a group that has Australia-wide wages of \$8,000,000 (all of which are WA taxable wages) of which \$700,000 are WA indigenous wages would be entitled to a rebate of \$34,890.62 calculated as follows:

$$\frac{\$700,000}{\$8,000,000} \times \$398,750 = \$34,890.62$$

The figure of \$398,750 is the pay-roll tax payable on WA taxable wages of \$8,000,000.

Subclause (4) provides that where an eligible employer is a member of a group for only part of the assessment year the rebate for the group is equal to the pay-roll tax the group was liable to pay for WA indigenous wages for the period. Subclause (5) provides how the rebate for the group is then allocated to the eligible employers that are members of the group.

For example, an employer who is registered for 182 days has a threshold limit (to ascertain whether they qualify for the rebate) for Australia-wide wages less rebatable WA indigenous wages of \$7,479,452 (refer example clause 4).

During the 182 days that the group existed, \$4,000,000 in WA taxable wages are paid, of which \$1,000,000 are WA indigenous wages. The rebate payable is \$49,857.87 calculated as follows:

$$\frac{\$1,000,000}{\$4,000,000} \times \$199,431.48 = \$49,857.87$$

The figure of \$199,431.48 is the pay-roll tax payable on WA taxable wages of \$4,000,000 after adjusting the tax free threshold to allow for the fact that the group did not exist for the whole of the assessment year.

Subclause (5) sets out how an amount of rebate is to be allocated to the members of a group that are eligible employers.

The method of allocation is based on the amount of WA indigenous wages paid by each member of a group. For example, if a group has two members that paid one third and two thirds respectively of the WA indigenous wages paid, they would be entitled to one and two thirds respectively of the rebate calculated for the group.

Subclause (6) provides that the amount of rebate to be calculated is to be based on the most recent assessment of the employer's or group's pay-roll tax liability for the assessment year.

This will ensure that if there is a reassessment of an employer's or group's pay-roll tax liability at some point in the future, the Commissioner will be authorised to make the necessary adjustment to an eligible employer's rebate without the need for an application.

Section 17 of the Taxation Administration Act allows a reassessment to be made in relation to the five financial years that precede the financial year in which the reassessment is made.

Part 3 – Overpayment and underpayment of rebate

Clause 10: Overpayment of rebate

This clause provides how overpayments of a rebate will be dealt with.

Subclause (1) provides that where the Commissioner is satisfied that an amount of rebate has been overpaid, either to a person who was not eligible to receive a rebate, or to an eligible employer who received an amount of rebate in excess of their entitlement, that amount must be repaid to the Commissioner.

This subclause also provides that should an employer be entitled to a refund of pay-roll tax, or a rebate under either the *Pay-roll Tax Rebate Act 2010* or the *Pay-roll Tax Rebate Act 2012*, the Commissioner can credit that amount of refund against the rebate the employer is liable to repay.

Subclause (2) provides that an overpaid rebate (after adjustment for any credits) is to be repaid to the Commissioner either within 30

days of a notice of overpayment being issued or in accordance with a tax payment arrangement. The tax payment arrangement provisions of the Taxation Administration Act are applicable because clause 5(1)(b) of this Bill allows those provisions to apply to a requirement to repay a rebate.

The Commissioner is required by clause 15 to issue a notice of overpayment when he is satisfied that there has been an overpayment of a rebate.

Subclause (3) clarifies that an amount of rebate credited by the Commissioner against certain debts of the person instead of paying the rebate to a person can be regarded as overpayments of rebate for the purposes of subclause (1). This ensures that amounts credited instead of paid are capable of being recovered in the event that a payment is made incorrectly or an overpayment is made.

Clause 11: Underpayment of rebate

This clause provides that if an employer becomes entitled to an additional amount of rebate, the Commissioner must either pay or, under clause 12(2), credit that additional amount of rebate to the employer.

An employer's entitlement to a rebate could increase if their pay-roll tax liability under the Pay-roll Tax Assessment Act changes as a result of a reassessment. Section 17 of the Taxation Administration Act allows a reassessment to be made in relation to the five financial years that precede the financial year in which the reassessment is made.

Clause 12(2) allows the Commissioner to credit an additional amount of rebate against an existing pay-roll tax debt of the employer or overpaid rebate under either the *Pay-roll Tax Rebate Act 2010* or the *Pay-roll Tax Rebate Act 2012*.

Clause 12: Amounts of tax and rebate may be offset against each other

This clause provides that the Commissioner can offset either an amount of rebate or pay-roll tax owing to an employer against an amount of rebate or pay-roll tax owing to the Commissioner.

Subclause (1) provides that for the purposes of this clause, a pay-roll tax liability includes another amount associated with a primary pay-roll tax liability, such as an amount of interest, penalty tax or costs.

Subclause (2) allows the Commissioner to credit an amount of rebate or additional rebate, contemplated by clause 11, against a pay-roll tax liability of the employer entitled to the rebate. This provision also allows the Commissioner to credit an amount of rebate or additional rebate against a liability either under the *Pay-roll Tax Rebate Act 2010* or the *Pay-roll Tax Rebate Act 2012*.

Subclause (3) allows the Commissioner to credit a refund of pay-roll tax due or an amount of rebate under either the *Pay-roll Tax Rebate Act 2010* or the *Pay-roll Tax Rebate Act 2012* to an employer against an amount of rebate due to be repaid by the employer to the Commissioner.

Part 4 – Miscellaneous

Clause 13: Prescription of indigenous wages subsidy

This clause clarifies that a wages subsidy for the purposes of the definition of an “indigenous wages subsidy” can be prescribed and apply for the year in which the prescription is made. For example, a wages subsidy could be prescribed in June 2013 and apply for the whole of the 2012/13 assessment year.

Clause 14: Wages prepaid before 1 July in an assessment year

This clause allows the Commissioner to disregard wages that he considers are prepaid with the objective of increasing an amount of rebate that an employer will receive. This power is aimed at preventing employers from artificially inflating the amount of rebate they may be entitled to by bringing forward the payment of wages that would not usually be payable during the assessment year.

Clause 15: Notices about rebate

This clause sets out the requirements relating to notices required to be given to persons about rebates.

Subclause (1) provides that when a rebate is either first paid or the amount of rebate is amended, the Commissioner must give the person a notice.

Subclause (2) sets out the information that a notice referred to in subclause (1) must contain.

Clause 16: Regulations

This clause provides a general regulation making power for this Bill.

Without limiting the general power, the regulations can include matters relating to:

- (a) the calculation of a rebate;
- (b) records that are to be kept in relation to the entitlement to a rebate; and
- (c) notifications that are given to eligible employers or other persons regarding rebates.