

EXPLANATORY MEMORANDUM

PAY-ROLL TAX RELIEF (COVID-19 RESPONSE) BILL 2020

The Pay-roll Tax Relief (COVID-19 Response) Bill 2020 exempts:

- wages paid between 1 March 2020 and 30 June 2020 for employers or groups with Australian taxable wages less than \$7.5 million in 2019-20; and
- wage subsidies paid by employers to employees under the Australian Government's jobkeeper payment scheme.

These measures are part of the McGowan Government's response to the economic impacts of the COVID-19 pandemic. They are contained in a standalone Bill because they provide specific relief related to the pandemic rather than applying to payroll tax in general.

The COVID-19 situation is evolving rapidly. Regulation-making powers have been included in the Bill to allow other wages and payments to be exempted from payroll tax if further relief is required. The proposed powers can only be used as part of COVID-19 relief measures.

As these measures are only required to respond to the current pandemic, a sunset clause is included to repeal the Act 12 months after Royal Assent.

Exempt wages for small businesses

On 31 March 2020, the McGowan Government announced that payroll tax would be waived for March to June 2020 for employers or groups with Australian taxable wages under \$7.5 million in 2019-20.

The waiver will be delivered by exempting wages paid by eligible employers or groups between 1 March 2020 and 30 June 2020. The scheme has been designed this way to leverage the Office of State Revenue's existing tax collection systems, making payroll tax relief available immediately for eligible businesses.

Wages will be exempt if one of the following applies:

- the employer or group's Australian taxable wages during 2019-20 are less than \$5 million at 29 February 2020; or
- the employer or group's Australian taxable wages during 2019-20 are \$5 million or more at 29 February 2020 but less than \$7.5 million at 30 June 2020.

Employers or groups in the first category will be entitled to the exemption immediately.

Employers or groups in the second category will be entitled to the exemption at 30 June 2020. These employers may apply to the Office of State Revenue to defer lodging and paying their payroll tax returns until 21 July 2020, which relieves the immediate financial impact of paying payroll tax.

Employers or group members must be registered, or have applied to be registered, for payroll tax purposes by 21 July 2020 to be eligible for the exemption.

The exempt wages will be treated as taxable wages to determine whether an employer:

- meets the eligibility threshold for the exemption;
- exceeds the taxable threshold;
- is entitled to a tax-free deductible amount; or
- needs to register for payroll tax.

Jobkeeper payment

On 30 March 2020, the Australian Government announced it would provide subsidies to employers impacted by COVID-19 to help them continue paying their employees.

Under the jobkeeper payment scheme, affected employers will be able to claim a fortnightly payment of \$1,500 per eligible employee for the six-month period from 30 March 2020. These payments would usually be subject to payroll tax as taxable wages.

The Bill provides that wages that are subsidised by the jobkeeper payment are exempt wages for payroll tax purposes. These payments will not be taken into account when determining if an employer or group meets the taxable threshold, is entitled to a tax-free deductible amount, or needs to register for payroll tax.

Part 1 – Preliminary

Clause 1: Short title

This clause provides that the short title of this Act is the *Pay-roll Tax Relief (COVID-19 Response) Act 2020*.

Clause 2: Commencement

This clause provides the commencement dates for the Act.

- Sections 1 and 2 come into operation when the Act receives Royal Assent (assent day).
- Section 11, which contains regulation-making powers, comes into operation on the day after assent day.
- Section 12, which repeals the Act, comes into operation on the day after the 12-month period beginning on the day after assent day.
- The rest of the Act is deemed to have come into operation on 1 March 2020. This is required because the small business wages exemption applies to wages paid by eligible employers from 1 March 2020.

Clause 3: Relationship with other Acts

Payroll tax is assessed under the *Pay-roll Tax Assessment Act 2002* (PTA Act) using the rates set out in *Pay-roll Tax Act 2002*. Subclause (1) provides that this Act is to be read with these Acts as if they formed a single Act and is taken to be a payroll tax act as defined in the Glossary to the PTA Act.

This means payroll tax will continue to be assessed as usual taking into account the wages that are exempt under this Act.

The *Taxation Administration Act 2003* (TAA) contains administrative and enforcement provisions for the assessment of State taxes. This includes reassessment powers, taxpayer objection and review rights, and powers dealing with refunds and credits of tax.

Subclause (2) provides that the TAA applies to this Act as if it was a taxation Act, which ensures the Act is subject to the same administration and enforcement arrangements as the other taxation Acts.

Clause 4: Terms used

Subclause (1) provides that terms used in the Act have the same meaning as in the PTA Act and TAA unless there is a different meaning given in this Act.

Subclause (2) defines the following terms in this Act:

emergency period means

- (a) for jobkeeper subsidised exempt wages – the period 30 March 2020 to 27 September 2020
- (b) for small business exempt wages – the period 1 March 2020 to 30 June 2020.

These dates reflect the periods in which these relief measures will operate. The term *emergency period* is consistent with the language in other Acts dealing with COVID-19 response matters.

If wages are prescribed as exempt under section 6(c), the emergency period will be the period that is prescribed.

jobkeeper payment has the meaning given in the *Fair Work Act 2009* (Cth) section 786GC.

jobkeeper subsidised exempt wages means wages described in section 7.

prescribed means prescribed by regulations made under section 11.

small business exempt wages means wages described in section 8.

Clause 5: Act binds Crown

This is a standard clause providing that this Act binds the Crown in the right of Western Australia.

Part 2 – Wages exempt from pay-roll tax during emergency period

Clause 6: Exempt wages

This clause provides that *jobkeeper subsidised exempt wages* and *small business exempt wages* are exempt from payroll tax. It will also exempt any wages that need to be prescribed if other COVID-19 payroll tax relief measures are required.

Clause 7: Jobkeeper subsidised exempt wages

This clause exempt wages paid or payable to an employee that are subsidised by the jobkeeper payment. The exemption does not apply to any part of wages that are not subsidised by the payment.

Under the jobkeeper payment, the employer must continue to pay the superannuation guarantee if the employee receives their regular income. It is up to the employer if they want to pay superannuation on any additional wages paid because of the jobkeeper payment. Superannuation contributions will continue to be taxable wages under the PTA Act.

The following examples have been adapted from the Australian Government Fact Sheet 'JobKeeper Payment – Information for employers'.

Example 1

Anne is a permanent full-time employee who continues to be paid her salary of \$3,000 per fortnight before tax. The employer receives \$1,500 per fortnight from the jobkeeper payment to subsidise the cost of Anne's salary. The employer continues paying the superannuation guarantee on Anne's income.

For payroll tax purposes:

- the \$1,500 of wages for which a jobkeeper payment is received is jobkeeper subsidised exempt wages; and
- the remaining \$1,500 of wages and the superannuation contribution paid by the employer are taxable wages.

Example 2

Nick is a permanent part-time employee on a salary of \$1,000 per fortnight before tax. The employer continues to pay Nick his usual salary as well as a top-up payment of \$500 per fortnight before tax (a total of \$1,500 per fortnight before tax).

The employer receives \$1,500 per fortnight before tax from the jobkeeper payment to subsidise the cost of Nick's salary. The employer must continue to pay the superannuation guarantee on the \$1,000 per fortnight that Nick is usually paid and has the option of choosing to pay superannuation on the additional \$500.

For payroll tax purposes:

- the \$1,500 of wages for which a jobkeeper payment is received is jobkeeper subsidised exempt wages;
- the superannuation contribution paid by the employer on the \$1,000 salary is taxable wages; and
- if the employer chooses to pay superannuation on the additional \$500 per fortnight, this will be taxable wages.

Example 3

As a result of COVID-19, Zarah was required to stand down three permanent part-time employees without pay. Zarah is eligible to receive the jobkeeper payment for each employee and passes on the amount of \$1,500 per fortnight per employee. She has the option of choosing to pay the superannuation guarantee on these payments.

For payroll tax purposes:

- the \$1,500 payment per employee is jobkeeper subsidised exempt wages; and
- if Zarah chooses to pay the superannuation guarantee on these payments, these amounts will be taxable wages.

Clause 8: Small business exempt wages

This clause exempts wages paid or payable for the period 1 March 2020 to 30 June 2020 by employers or groups with Australian taxable wages less than \$7.5 million in 2019-20.

The point at which wages are small business exempt wages depends on the employer or group's Australian taxable wages at 29 February 2020.

- Employers or groups with Australian taxable wages of less than \$5 million will be eligible for exemption at 1 March 2020.
- Employers or groups with Australian taxable wages of \$5 million or more at 29 February 2020 will be eligible for exemption at 30 June 2020 if the Australian taxable wages are less than \$7.5 million for 2019-20.

The upper threshold amount of \$7.5 million is prorated to \$5 million for the purpose of determining if an employer or group's wages are exempt at 1 March 2020 or if they become retrospectively exempt at 30 June 2020.

Subclause (1) provides that small business exempt wages are wages paid or payable by a small business employer.

Subclause (2) sets out the conditions for a non-group employer or group member to be a small business employer.

- The non-group employer or all group members must be registered, or have made an application to be registered, on or before 21 July 2020.

This means the small business wage exemption can apply to employers already registered for payroll tax when the exemption period starts and new employers that register during this period. It also applies to an employer who is registered when the exemption period starts but cancels their registration before the end of the period.

The date of 21 July 2020 is when annual or final returns must be lodged for 2019-20.

- The non-group employer or group member must be an employer or group member described in subclause (3) and meet the threshold requirements in subclause (4).

Subclause (3) provides that a non-group employer or group member must be or have been:

- for the purposes of the eligibility threshold at 29 February 2020 – a non-group employer or group member during a period that includes 29 February 2020; or
- for the purposes of the eligibility threshold at 30 June 2020 – a non-group employer or group member during a period that includes 30 June 2020.

Subclause (4) sets out the eligibility thresholds for a non-group employer or group member described in subclause (3). An employer or group member meets the threshold requirement if they satisfy at least one of the following:

- the total amount of Australian taxable wages for the employer or all group members is less than \$5 million for the period 1 July 2019 to 29 February 2020; or
- the total amount of Australian taxable wages for the employer or all group members is less than \$7.5 million for the 2019-20 assessment year.

An employer or group member who is a small business employer at 29 February 2020 will be a small business employer for the rest of the 2019-20 assessment year.

An employer or group member who is not a small business employer at 29 February 2020 will become a small business employer at 30 June 2020 if the employer or group's Australian taxable wages are less than \$7.5 million for 2019-20. The wages paid for March to June will be retrospectively exempt.

Subclause (5) provides that small business exempt wages are WA taxable wages for the purposes of determining if the employer or group member meets the threshold requirements in subclause (4). This is necessary because the total amount of Australian taxable wages at 29 February 2020 or 30 June 2020 determines if an employer is entitled to an exemption for WA wages paid in March to June.

Example 4

An employer is registered as a local non-group employer at 1 March 2020. At 29 February 2020, the employer had paid wages of \$5 million for 2019-20. This means they are not a small business employer at 1 March.

Due to the COVID-19 pandemic, the employer is required to stand down most of their employees without pay. At 30 June 2020, the employer had paid total wages of \$6 million for 2019-20. This means the employer is a small business employer and the \$1 million of wages paid for March to June 2020 are small business exempt wages.

Example 5

Two employers are registered as group members at 1 March 2020. At 29 February 2020, one employer had paid WA wages of \$4 million and the other employer had paid interstate wages of \$3 million. As the Australian taxable wages at 29 February 2020 were \$5 million or more, the group is not a small business employer.

Due to the COVID-19 pandemic, the employers reduced the wages of most employees. At 30 June 2020, one employer had paid WA wages of \$5 million and the other employer had paid interstate wages of \$4 million. As the Australian taxable wages for 2019-20 are \$7.5 million or more, the group is not a small business employer and the \$1 million of WA wages paid for March to June 2020 are not exempt.

Clause 9: Treatment of exempt wages under the *Pay-roll Tax Assessment Act 2002*

Under the PTA Act, an employer or group's Australian taxable wages determine the liability to payroll tax, the tax rate, and the tax-free deductible amount (if any).

Australian taxable wages means *WA taxable wages* and *interstate taxable wages*.¹ *WA taxable wages* are wages, other than exempt wages, that are taxable in Western Australia.² Exempt wages are wages exempt under Part 5.³

¹ PTA Act Glossary. *Interstate taxable wages* are wages subject to payroll tax in another jurisdiction: PTA Act Glossary.

² PTA Act s 5(2).

³ See definition of *exempt* in PTA Act Glossary.

Although clause 6 makes small business wages exempt from payroll tax, these wages need to be taken into account when determining:

- if an employer exceeds the taxable threshold;
- the deductible amount to which an employer or group is entitled; and
- if an employer needs to register for payroll tax.

Subclause (1) lists the parts of the PTA Act in which small business exempt wages are taken to be WA taxable wages.

- For the purposes of Part 2, Divisions 2, 3 and 6, small business exempt wages are taken to be WA taxable wages to determine if WA taxable wages or Australian taxable wages are less than, equal to or greater than a relevant threshold amount, and to determine a deductible amount, in the 2019-20 assessment year.
- Small business exempt wages are also taken to be WA taxable wages for the purposes of applying for registration and lodging returns under Part 3 of the PTA Act.

Subclause (2) provides that small business exempt wages are not taken to be WA taxable wages for the purposes of imposing payroll tax or calculating the payroll tax liability on WA taxable wages or Australian taxable wages.

Example 6

An employer is registered as a local non-group employer at 1 March 2020. At 29 February 2020, the employer had paid wages of \$615,000 during 2019-20. As the employer is a small business employer at 1 March 2020, wages of \$310,000 paid during March to June are small business exempt wages.

At annual reconciliation, the employer's annual liability is compared with the amounts paid progressively throughout the year. The small business exempt wages of \$310,000 are WA taxable wages for the purpose of determining the employer's annual liability.

The employer's total WA taxable wages for 2019-20 were \$925,000 (\$615,000 plus \$310,000) with the wages paid for each half-year exceeding the relevant taxable threshold.⁴ The employer's annual liability is calculated for the assessment year by adding:

- the tax calculated on the difference between the WA taxable wages for 1 July 2019 to 31 December 2019 and the deductible amount to which the employer is entitled for that period; and
- the tax calculated on the difference between the WA taxable wages for 1 January 2020 to 29 February 2020 and the deductible amount to which the employer is entitled for that period.

⁴ For the 2019-20 assessment year, tax is calculated separately for each six-month period (half-year) and added together to determine the annual liability. Each half-year has its own threshold amount.

Example 7

An employer that runs a cleaning business is not registered for payroll tax at 1 March 2020 because their monthly wages have not exceeded the required threshold.

As a result of the COVID-19 pandemic, the employer employs more staff in April 2020 to meet the increased demand for cleaning services. The wages paid in April exceed the monthly threshold of \$79,167 and the employer applies for registration on 1 May 2020.

At 30 June 2020, the employer's WA taxable wages for 2019-20 are less than \$7.5 million. Although the employer qualifies as a small business employer and there is no payroll tax payable on the wages for April to June, the employer has still exceeded the threshold amount and must lodge returns for that period.

Subclause (2) provides that jobkeeper subsidised exempt wages, small business exempt wages, and any prescribed wages are taken to be exempt from payroll tax under Part 5 of the PTA Act. Subject to the specific rules for small business exempt wages, this means these wages are not WA taxable wages for payroll tax purposes.

Example 8

An employer is registered as a local non-group employer at 1 March 2020. At 29 February 2020, they had paid wages of \$6 million during 2019-20. This means they are not a small business employer at 1 March 2020.

In March, the employer is required to reduce the wages of some employees and stand down others without pay. The employer is eligible to receive jobkeeper payments for these employees during the period 30 March to 30 June 2020.

At 30 June 2020, the wages paid for 2019-20 comprise:

- \$6 million of wages paid for the period 1 July 2019 to 29 February 2020; and
- \$1 million of wages paid for the period 1 March 2020 to 30 June 2020. jobkeeper payments of \$600,000 were provided to subsidise these wages.

The employer is a small business employer at 30 June 2020 and the wages that were subsidised by jobkeeper payments are exempt wages. The employer's Australian taxable wages for 2019-20 are the \$6 million of wages paid for July to February. The \$1 million of wages paid for 1 March 2020 to 30 June 2020 are exempt (\$600,000 are jobkeeper subsidised exempt wages and the remaining \$400,000 are small business exempt wages).

Clause 10: Reassessment

Under the TAA, the Commissioner can only make a reassessment when authorised to do so by a taxation Act or if a previous assessment was incorrect for any reason.

Although the exempt wage provisions in this Bill will operate retrospectively from 1 March 2020, any payroll tax assessments made before the Bill receives assent were correct when they were made. That means the Commissioner has no existing power to make a reassessment to reflect wages that become exempt when the Act commences.

This clause requires the Commissioner to make any reassessment required to give effect to the exempt wage provisions. This will allow the reassessment powers in the TAA to apply, subject to the time limits on reassessments in section 17. In most cases, this means a reassessment must be made within five years after the original assessment.

Clause 11: Regulations

Subclauses (1) to (3) allow regulations to be made prescribing wages as exempt, or other payroll tax measures to be prescribed, for the purposes of providing relief from the economic impact of the COVID-19 pandemic. This will allow the Government to respond quickly if further payroll tax relief is required in response to the COVID-19 situation.

Subclause (4) provides that regulations can operate retrospectively from 1 March 2020 (when the exemption provisions are deemed to commence) if they do not disadvantage a person who is or may be liable to pay payroll tax. This is consistent with the regulation-making powers in the PTA Act and other taxation Acts such as the *Duties Act 2008* and *Land Tax Assessment Act 2002*.

Clause 12: Act repealed

This is a sunset clause providing for the Act to be repealed. As noted in clause 2, this section will come into operation on the day after the 12-month period after assent day. This clause is consistent with the sunset clauses in other legislation dealing with emergency measures related to the COVID-19 pandemic.