PAY-ROLL TAX ASSESSMENT AMENDMENT (EXEMPTION FOR TRAINEES) BILL 2018

Second Reading

Resumed from an earlier stage of the sitting.

HON ALISON XAMON (North Metropolitan) [2.43 pm]: I was talking earlier about the delivery of particular courses that are deemed to be important to industry. I would like all courses that are considered important enough to be subsidised to be available through TAFE. It is important members remember how TAFE, as the system through which we deliver training in this state, is important to the community. Currently TAFE is responsible for delivering courses across a broad span of industries and qualification levels. It does not have the luxury of picking and choosing only those courses that are cheap to run. We rely on TAFE to train people in technical engineering and construction, and plant equipment, machinery and tools. Providing training in those areas is already extremely costly.

Importantly, TAFE is also inevitably the backdrop of our system. When our policy settings allow disasters like the VET FEE-HELP mess or the collapse of registered training organisations, which are truly rorting the system, we always turn to TAFE to pick up the pieces. We need to remember that TAFE is also responsible for taking students from diverse backgrounds and, as much as the funding allows, providing the support that those students need to succeed. We are demanding a lot from our TAFE system, yet we are not providing TAFE with what it needs. Subsidised places at TAFE have been and should remain the backbone of our training system; yet, as I have said, we have steadily been starving TAFE of funds. We are asking those institutions to do more with less; we are asking them to compete for funding as though they were private providers. As I have already said, TAFE is expected to pick up those training programs from which there is no money to be made. We are failing to acknowledge how important a healthy TAFE system is not only for trainees, but also for the economy as a whole.

While I am talking about TAFE, I wanted to raise the recent developments in Victoria. As members would know, the Victorian government recently declared that from next year a number of its priority industry qualification courses will be fee free for students. I would love to see that happen in Western Australia, but I acknowledge that if we combine the previously mentioned national partnership agreement arrangement with WA's ongoing appallingly low share of GST revenue, we are not likely to be in a position to do that any time soon. I nevertheless maintain that this is what we should be aiming for.

I acknowledge that this bill is not going to bring my desired fee-free TAFE courses any closer. It is a stopgap measure to ensure that as many TAFE places as possible are kept open while the federal government continues to fail to understand what we actually need in this space—or perhaps it just does not care. The value of this bill is in the retention of the 9 600 training places this academic year and the 43 636 over the forward estimates. It does not make up the entire gap of the 23 000 that we will lose annually should the national partnership agreement be signed. I note that this agreement is supposed to fund the current year. This is at least going some way to deal with the damage that has effectively been wreaked on the training sector courtesy of the federal government.

I look forward with interest to the second part of this project that will focus on how to better support and target apprentices and trainees into the future outside of a payroll tax exemption. I note that members have expressed their distaste for a grant scheme, and I am not surprised by that. I recognise that grant schemes are often unwieldy and discriminate against smaller organisations. Given that the government has expressly targeted assisting small businesses that do not qualify for a payroll tax exemption, I hope that any such future scheme will be easy to understand and use. Like others in this place, I look forward to seeing the fruits of the consultation that is currently being undertaken.

As my colleague has already stated, the Greens will support this bill. I believe the federal government has left us in a position where, unfortunately, frankly we cannot afford not to do this.

HON SUE ELLERY (South Metropolitan — Minister for Education and Training) [2.48 pm] — in reply: I thank members for their contributions and note that although the Pay-roll Tax Assessment Amendment (Exemption for Trainees) Bill 2018 was read into the house by my colleague Hon Stephen Dawson, I am the minister responsible for it. I again thank members for their contributions to this important piece of legislation and remind them where we started. There are essentially two drivers for this policy position. One is around tightening existing payroll tax exemption provisions to stop the gaming of the system that had continued even beyond the measures put in place by the previous government in 2014–15, and then to direct the revenue that will no longer be lost into funding training places to address the shift of funding from the commonwealth government. It is not a tax grab; rather, it is a tax integrity measure. The immediate removal of the exemption was necessary to protect the integrity of the payroll tax base and to ensure that no further gaming took place. In that respect, it is worth noting that the cost of the exemption has grown over 600 per cent since 2005–06, from around $11 million, to

$80 million in 2016–17, far outstripping the growth in wages and employment over that same period. In 2016–17, of around 19 000 businesses registered for payroll tax, only around 1 750 businesses claimed the exemption for trainees. The exemption is the most generous of all jurisdictions and there is clear evidence that it was being gamed, to use the expression by some businesses.

I want to address in turn each of the issues raised by those members who have spoken. Hon Dr Steve Thomas raised a question in the first instance about the adequacy of the $100 000 wage threshold. At that level, the cap seeks to strike a balance between limiting the extent to which WA communities subsidise the training of chief executive officers and other senior and well-paid employees, while encouraging businesses to train newly appointed employees. I will come back and address the issue of newly appointed employees a bit later. The cap is well above annualised average weekly ordinary time earnings in WA of around $91 000 in November 2016, based on the most recent available data. The threshold is based on an employee's rate of pay for ordinary hours—a number of members referred to this—and does not include other forms of remuneration such as bonuses, allowances, commissions, overtime, employer superannuation contributions and the like. It is envisaged that the wage cap will have an insignificant impact for new employee trainees.

Hon Dr Steve Thomas and Hon Aaron Stonehouse raised the history of exemptions and put the proposition that there was no historical evidence to suggest that the exemption for traineeships was intended to be limited to new employees. However, that is just not the case. There is evidence and I will walk members through that. On 1 July 1984, an exemption for apprentice wages was introduced to support the training of apprentices in this state. The exemption was limited to the first year of employment as an apprentice and, as set out in the second reading speech introducing the amendments, one of the objectives of the exemption was to provide, and I quote —

> … businesses with added incentive to employ young people and to provide them with skills which will have lasting benefits for our society.

On 1 July 1994, this exemption was broadened to exempt apprentice wages for the term of the apprenticeship and the objective of the extension was to promote, support and encourage the expansion of apprenticeship training in this state. I refer to *Hansard* from the Legislative Assembly of Thursday, 21 October 1993. The second reading speech of the Pay-roll Tax Assessment Amendment Bill was read by the member for Nedlands, one Mr Richard Court, where he says —

> Nevertheless, at a time of very high youth unemployment, these initiatives will provide businesses with added incentive to employ young people and to provide them with skills which will have lasting benefits for our society.

I refer to the Pay-roll Tax Assessment Act 1971 and the second reading speech of 1983 in the Legislative Assembly—I do not have a date but I will find it.

Hon Colin Tincknell: Will you address my solutions to employees placing large portions of their workforce on the scheme?

Hon SUE ELLERY: Yes.

Hon Colin Tincknell: And employers extending the terms of training contracts and also tax exemption.

Hon SUE ELLERY: Sure. I am giving a second reading reply now. In the second reading reply, I will try to address all the issues raised by all members.

Hon Colin Tincknell: Thank you.

Hon Nick Goiran interjected.

Hon SUE ELLERY: Mr Acting President.

The ACTING PRESIDENT: Order, member!

Hon SUE ELLERY: I will try to provide responses to all the issues.

Hon Nick Goiran: She is going to try.

Hon SUE ELLERY: Honestly, Mr Acting President!

The ACTING PRESIDENT: Come on! Yes. Order!

Hon SUE ELLERY: I have asked people to cooperate because I would like to be able to deal with something else this afternoon.

Hon Nick Goiran: Deal with what?

The ACTING PRESIDENT: The Leader of the House has the call.

Hon SUE ELLERY: That is what I will try to do. One of the honourable members has asked to go into committee. If the member thinks that I have not provided him with the response he sought, there is the opportunity to ask me that question then.

Hon Colin Tincknell: Thank you.

Hon SUE ELLERY: Talking about new employees, the second reading speech states —

> … during the first year of employment of apprentices, including those apprentices on probation, be exempted for pay-roll tax purposes.

I think it is also worth referring to the taxation ruling from the Australian Tax Office on the Australian traineeship system. The information provided from the ATO about how income tax is treated using traineeships is as follows —

> The Australian Traineeship System … was introduced by the Commonwealth Government during the 1985–86 financial year to provide a new form of structured vocational training for young people seeking to enter the workforce.

That is new entrants to the workforce.

One of the other issues raised, I think, by both Hon Dr Steve Thomas and Hon Aaron Stonehouse went back to 1994. On 1 July 1994, the exemption was broadened to exempt trainee wages paid under an accredited training scheme or a traineeship scheme approved by the Minister for Employment and Training under the Industrial Training Act 1975. These schemes replaced the traineeships under the Australian Traineeship Scheme, which was discontinued in 1995. The second reading speech introducing that exemption noted that this measure is consistent with the government's objectives of reducing the burden of payroll tax and encouraging businesses to hire and train new staff.

On 10 June 2008, significant regulatory reform took place and the Industrial Training Act 1975 was repealed. The relevant regulatory provisions were added to the Vocational Education and Training Act 1996, such that an integrated framework applied to both apprenticeships and traineeships under the umbrella term "apprentice". Consequential amendments were made to the payroll tax legislation to combine the previous separate exemptions into a single exemption. The proposition was put also during the second reading debate that the government had not provided any evidence of how the system was being gamed in respect of the exemption.

In a minute, I will refer to a letter that the Treasurer sent to the respective parties. The Treasurer provided numerous examples of exploitation of the exemption during the debate in the other place, and separately, in the letter I am about to refer to. These include examples post—this is the important bit—the changes introduced by the former government in 2014 to cap the number of training contracts to 100 employees per business per quarter. The previous government made a genuine effort to try to restrict the gaming of the system that was occurring, but that did not stop it completely. I will give some examples. A large entertainment company attempted to register existing employees working in information technology, warehousing and corporate services into a certificate III and certificate IV in hospitality, even though they did not undertake any work in any way relevant to hospitality in their day-to-day role. Senior leaders of a large mining company were nominated for a diploma in leadership and management, although these existing employees already possessed an equivalent or higher qualification such as an MBA. A large mining company nominated existing employees for a certificate III in civil construction, even though the organisation did not provide any civil construction operations.

Hon Donna Faragher: Are you saying that those examples that you are putting forward now were rejected by the Department of Training and Workforce Development or not, because it obviously assessed whether or not they were appropriate? Maybe I might ask that during the committee stage.

Hon SUE ELLERY: I do not have the answer to that question in front of me. If the member asks me that question during the committee stage, I will give her an answer.

Hon Donna Faragher: Maybe the officers have just heard it.

Hon SUE ELLERY: They might pass me a note and I might be able to do it in the second reading reply.

In 2015–16, an employer claimed exempt wages of around 92 per cent of its total wages of $5.3 million and 93 per cent of $4.4 million in 2016–17. The payroll tax payable dropped from approximately $150 000 in 2014–15 to nil in 2015–16 and 2016–17. In 2016–17, an employer claimed an exemption for 89 per cent of its total wages of $26.7 million. The tax exempted was $1.3 million. In 2017–18 to date, an employer has claimed an exemption for 77 per cent of its total wages of $3.2 million. Its tax liability has reduced from $661 000 in 2016–17 to an estimated $120 000 for 2017–18. The Department of Finance's Office of State Revenue is also aware of examples in which employers have placed enough employees on traineeships to reduce their taxable wages to less

than the payroll tax exemption threshold of $850 000. Additionally, there are recent examples of employers cancelling and re-entering training. Indeed, the promotional material that the Chamber of Commerce and Industry of Western Australia provided to its members about traineeships was not about the benefit of traineeships; it was about the benefit of employers cutting their tax bill by investing in training. It was not saying that this is about investing in training for the betterment of businesses and, by the way, it can help businesses; it was saying that businesses should invest in training for the purpose of cutting their payroll tax liability.

Hon Rick Mazza: Surely a lot of that is offset by the cost of the training itself. For an $80 000 employee, an employer would receive a tax benefit of around $5 000, but the cost of training would offset that $5 000 if it is a $2 000 to $5 000 course.

Hon SUE ELLERY: The cost of training is subsidised in any event. The payroll tax exemption is not the only point at which a training course is subsidised by the state. There is a whole spectrum of points along the system at which employers get subsidised beyond the payroll tax exemption for the purpose of training.

One of the issues that was raised by Hon Aaron Stonehouse was that businesses are the best place to determine their training needs rather than the government. Of course that is absolutely the case. The government is not trying to change that at all. It is not stopping businesses from training people, but moving to address how the exemption is applied by putting in place steps to ensure that the training is genuine training for the purpose of improving a workforce rather than for the purpose of paying less payroll tax. The savings that come from that will be redirected to fund additional training places for the priority needs of all businesses, including those that do not pay payroll tax right now. The idea is that we will make sure that we fill the gap in training places to benefit all employers.

One of the other propositions put by Hon Aaron Stonehouse was that the government is prioritising training new employees over existing employees. To a certain extent, I would say that that is true. It is the government's objective to focus on providing training for new employees—that is, new jobs. That does not mean that we walk away from supporting training for existing employees, but there is an unashamed focus on trying to expand the number of new people coming into the labour market and the number of new jobs. It takes me back to the point I was trying to make before about the original policy intent, which was to encourage businesses to hire and train new staff. This will not stop employers from training existing workers, but it will stop them from gaming the system and it will build on the measures that were put in place by the previous government to stop them gaming the system. Those revenue savings will then be redirected to fund additional training places to meet the needs of new and existing employees.

One of the issues raised by Hon Donna Faragher was the effectiveness of the previous government's changes to cap the number of training contracts a business may register. There has been a downturn in the number of training contracts since the previous government introduced the cap, and that was a result of a combination of effects, including the economic conditions and some policy decisions. Although that was a good step towards putting some limitations on gaming the system, it did not go far enough and it certainly did not stop the gaming. There still remained considerable opportunities for the exemption for trainees to be exploited, despite the cap and despite having a registered training contract in place. The limit of 100 employees per quarter who may be registered in a training program was relatively arbitrary and not relative to the size of the business. There are some examples of businesses that claimed a large portion—some as high as 90 per cent—of their total wages as an exemption. Larger businesses were also able to circumvent the current settings by splitting the training of existing employees between group members or rotating employees through a training program to maximise the number of employees on training contracts at any one time. Businesses could have had over 400 employees in training at any one time, depending upon the length of the individual training contracts. The amendments made to the Vocational Education and Training (General) Regulations 2009 do not allow the Department of Training and Workforce Development to refuse to register a training contract based on expected payroll tax avoidance. I think that goes to the question that Hon Donna Faragher asked earlier. The Department of Training and Workforce Development did not have the head of power to reject a training contract for that reason alone. This has required further amendments to bring the policy back to its original intent to encourage businesses to hire and train new staff.

I have referred to the letter that was sent to the Leader of the Opposition, Hon Mike Nahan, and to members of other parties by the Treasurer dated 2 May 2018.

Hon Donna Faragher: Will you table that?

Hon SUE ELLERY: Yes, I will. In the letter that the Treasurer sent to Mr Nahan, he states —

> During the Second Reading debate … you and other members of the Opposition suggested that evidence demonstrating that the payroll tax exemption for trainees was being exploited had not been provided. It was also suggested there was no evidence to show that the measures put in place by the Liberal–National

> Government in 2014–15 to limit the number of employees participating in a training program had been ineffective in addressing the issue.
>
> Whilst I have not suggested that all businesses, or even a majority of businesses, are exploiting the exemption, since 2014–15 there have been a number of examples of potential misuse identified and there has been a sufficient number of businesses enrolling a large proportion of their workforce in training programs to cause concern. Moreover, the value of the exemption claimed over the period 2005–06 to 2016–17 increased by more than 600 per cent, far outstripping wages and employment growth over the same period.
>
> I highlighted a number of examples that were picked up by State Revenue of inappropriate use of the exemption during Question Time on 20 and 21 March 2018 and 12 April 2018, and emphasised the impacts of the issue and concerns of the Government during the debate. As I outlined during Question Time on 20 March, even after the 2014–15 changes:

The letter then spells out the examples that I have already referred to, so I will not read them again, but I will table the document. He goes on to say —

> Furthermore, the attached presentation was provided to Members during briefings to all parties, including the Liberal Party, prior to the debate of the Bill (Attachment 1). The presentation explains the extent of the issue and provides examples where this exemption has been misused.
>
> Whilst quantifying the 'misuse' can be difficult due to the varied nature of each business and its training needs, several clear examples of inappropriate claims for the purpose of tax minimisation include the following:

Again, another three examples are provided, which I have already referred to, so I will not read them out again, but as I said, I will table the letter. The letter continues —

> This type of behaviour is becoming more regular, as I mentioned in Parliament, with over 120 employers claiming the trainee exemption for over 30 per cent of their wages, at a combined cost to payroll tax revenue of around $22 million. This is occurring across a range of industries, business sizes and training courses.
>
> The Department of Finance's State Revenue is also aware of examples where employers place enough employees on traineeships to reduce its taxable wages to less than the payroll tax exemption threshold of $850,000. Additionally, there is recent evidence of abuse by employers cancelling and re-entering training agreements or extending the training agreements to maximise payroll tax savings. The payroll tax savings were being exploited by training organisations, including the Chamber of Commerce and Industry of Western Australia, as evidenced by the attached publication featuring a sponsored article by CCI Apprenticeship Solutions (Attachment 2).
>
> While the measures put in place by the former Government may have had some effect in reducing exploitation of the exemption, it is clear that opportunities for opportunities still exist. For example, the training *registration* limit of 100 employees per quarter, introduced in 2014, does not account for the size of the business. The 100 persons limit can exceed the entire workforce of many businesses and for large businesses, it can be circumvented through a rotation program.
>
> As noted in Parliament, while the amendment to the *Vocational Education and Training (General) Regulations 2009* reinforced the ability of the Department of Training and Workforce Development to refuse to register a training contract, this power is not sufficient for addressing recent examples of misuse of the exemption. As you can appreciate, the DTWD does not approve the registration of training contracts solely on the basis of facilitating a payroll tax break. To require the DTWD to screen applications purely on this basis would be administratively onerous and would likely be contradictory to the objectives of the VET Act.

If I may add, as Minister for Education and Training, I think it would be contradictory to the objectives of the VET act. The letter continues —

> Finally, Members noted that in Parliamentary debate no consultation has taken place on this issue. As you would appreciate, it is the usual practice of governments not to consult on matters affecting the integrity of their tax bases and this matter is no different.

Indeed, all governments do that when there is a tax integrity measure in place; it is announced on day one to apply from day two, so we do not get people trying to take advantage of a gap between the announcement and the actual

implementation date and, if members want it, I have examples of the previous government doing exactly the same thing. The letter continues —

> To consult prior to the announcement would have brought further attention to available means to reduce payroll tax and exacerbate the problem. This is consistent with the approach you took yourself as Minister for Finance in late 2013 with respect to Land Tax following a decision by the State Administrative Tribunal in relation to the full exemption of assessable land party used for, in that instance, a retirement village. I note that in your statement to Parliament on 27 November 2013 you announced retrospective tax integrity measures without prior consultation with industry, in-line with this practice.
>
> The appropriate consultation on the transition to an alternative assistance scheme will occur in Stage 2 of the reforms.

I intend to talk a bit more about stage 2 in a minute. The letter concludes —

> I hope the Liberal Party will reconsider its position on the Bill when it is debated in the Legislative Council.
>
> Yours sincerely
>
> Ben Wyatt MLA
> **MINISTER FOR FINANCE**

That letter was copied to Dean Nalder, MLA; Hon Liza Harvey, MLA; Hon Terry Redman, MLA; Hon Mia Davies, MLA; Hon Rick Mazza, MLC; Hon Colin Tincknell, MLC; Hon Robin Chapple, MLC; Hon Tim Clifford, MLC; Hon Diane Evers, MLC; and Hon Alison Xamon, MLC.

If I may, I will table this document now, otherwise I will forget.

[See paper 1348.]

Hon SUE ELLERY: I turn to a couple of the other issues that were raised during the course of the debate, including the situation with the commonwealth government. I had hoped that the federal budget this week would see a difference. It did see a difference; we went backwards, not forwards, in respect of the federal government's contribution to training in Western Australia.

The commonwealth government's budget papers show a reduction in funding for training, due to revised downward forecasts for the migration levy. By way of background, the commonwealth government proposed to pay for the Skilling Australians Fund, which it announced in last year's budget, by introducing a migration levy. It is forecast to get less money out of the levy.

Over the four-year forward estimates, the total national pool of funding is now $1.2 billion, compared with $1.5 billion over the previous forward estimates. WA's nominal share of the new agreement is estimated to be $126 million over the forward estimates, compared with around $160 million under the previous offer. The commonwealth government has proposed that a portion of this funding be provided as a guaranteed incentive payment based on a jurisdiction's per capita share of $50 million a year, if the jurisdiction signs up. For us, that would mean about $5 million per year. The remainder of the funding would be dependent upon the amount raised through the migration levy, and I note that that legislation has now passed through the Senate.

The commonwealth government has indicated that there is still a national pool of $250 million available this financial year, should a state sign up before 7 June 2018. The commonwealth government is getting pretty keen for us to sign, but no state government would sign up to the offer that is on the table, and no state government has.

Hon Peter Collier: Stare them down.

Hon SUE ELLERY: Yes, that is what we are doing.

The state would also be eligible for its share of a $50 million incentive payment; the commonwealth is trying to get us excited about that. The budget papers also reveal that the commonwealth government has not made any concessions in respect of the terms and conditions of the agreement, including the budget benchmarks and matching expenditure. The commonwealth government is trying to put the greatest liability and the greatest up-front spend on the states, which come in at the end. The states are being asked to wear the greatest liability in terms of training arrangements. That means that the national partnership agreement still presents significant risks to the state. Nevertheless, we live in hope, and detailed discussions are still happening. Although that is not part of the bill before us, it is relevant in a broader policy sense to have some discussion about it.

I turn to stage 2 of the payroll tax exemption amendments to fund a grants scheme. It is clear from stakeholders that the simplest way to provide a suitable incentive for apprenticeships is to retain a demand-driven payroll tax exemption. To confirm and clarify, the state government will continue with the payroll tax exemption for apprenticeships; this was raised by Hon Donna Faragher. The state government will continue to explore the best approach to grants or an incentive scheme for traineeships. Possible approaches may include the improved use of data matching between the Office of State Revenue and the Department of Training and Workforce Development, to simplify incentive payments into priority areas identified in consultation with industry. Group training organisations, training councils, the State Training Board, TAFE colleges, the Australian Council for Private Education and Training, the Chamber of Minerals and Energy and the Civil Contractors Federation have been consulted on the design principles for the grants scheme so far. Those consultations have occurred in the last couple of weeks. The rest of the relevant stakeholders are due to be consulted within the next couple of weeks. These include the Australian Industry Group, the Business Council of Australia, the Chamber of Commerce and Industry of Western Australia, the regional Chambers of Commerce and Industry of Western Australia and UnionsWA. The department is going to report back to me early in June on stakeholder views on design principles for the grant scheme, including giving me a range of options to take into account.

Limiting the payroll tax exemption will not prevent businesses from training their employees. We anticipate that any worthwhile training will still be undertaken by businesses, regardless of whether the wages of those employees undergoing training no longer qualify for a payroll tax exemption. Where we have seen a reduction in training numbers, it suggests that the training delivered was being motivated by the payroll exemption rather than the skills needed. That drop is evidence, I think, of concerns that the scheme was being gamed, as opposed to being used to assist genuine training in genuine skills needed by that business at that time or in the immediate future.

During debate, issues were raised around the second tranche of legislation. We will finish that consultation in the next couple of weeks. I will have options in front of me for the design of the scheme not long after—I hope in early May—and we hope to develop the scheme later this year. Further legislative change will be required. Do not hold me to this because I do not have a scheme design yet and I obviously do not have approval to draft, but I anticipate seeing legislation into Parliament in the first half of 2019.

Hon Peter Collier: Why does it need further legislation?

Hon SUE ELLERY: It is a grant scheme, so depending on the design it is anticipated that the department will need a further head of power to manage the grants.

Hon Donna Faragher asked who will be eligible. Through consultations that are happening now with the stakeholders, the scheme will be developed. We want to ensure that the scheme can assist employers to meet their requirements, that it is simple—a number of members raised this—to access, can be administered efficiently and is not overly bureaucratic. We have picked that up through the consultations that to date have been very positive. Hon Donna Faragher also asked about who had been consulted. I have named those who have been done so far, and those who will be consulted in about the next 10 days.

We will continue with the payroll exemption for apprenticeships and we will to continue to explore the best way of dealing with grants or incentive schemes for traineeships.

Hon Robin Scott raised the proposition that the effect of the abolition of the exemption would be a loss to Western Australian jobs in favour of skilled workers who either come from the eastern states or are already here on 457 visas or who will come on temporary skills shortage visas. I think that is a big jump to take, but it appears that the suggestion is that those businesses with total wages currently below the payroll tax threshold and needing to adapt to changing demands will seek to sack their existing workforce and start again. I do not think that will happen. It is clear that companies in the eastern states are not getting payroll tax exemption for existing workers undertaking a traineeship, so how did they get their skills and who funded them? To recruit all those workers into WA would be a far more costly exercise for businesses here.

Hon Rick Mazza raised the issue of the definition of new employees. He said it was, essentially, too short at three months; I guess that is the best way to paraphrase it. From the point of view of Hon Rick Mazza, the problem is that the definition of a new employee does not allow employers enough time to assess new employees on probation prior to entering into a traineeship. The proposed definition of a new employee is consistent with the definition in the current vocational education and training regulations in WA. It is also used by the commonwealth for its apprentice employer incentive schemes, and is applied consistently across all jurisdictions. Any changes to that in Western Australia would create significant administrative complexities, particularly for those employers who operate across jurisdictions. The focus on new employees also reflects the original intent of the payroll exemption, which was to encourage businesses to hire and train new staff. It might be valuable information for Hon Rick Mazza to note that under the vocational education and training regulations, the training contract also has

its own three-month probation period. That provides the opportunity for an employer to assess an employee's suitability to the vocation. Therefore, they could meet the definition of having been employed for fewer than three months, enter into a traineeship contractual arrangement and have a further three months under that training contract to assess the suitability of the employee. Employers will have three months after they have entered into the training arrangement to assess a full-time employee during the probation period. If the employer decides within three months that it is willing to commit, the employer will have at least a further month following the commencement date of the training contract to assess the employee's performance and terminate that contract if necessary. An employer may also apply for an extension to the probation period if it feels necessary.

Just for interest, a probation period can be extended by lodging an application to extend the probation period of a training contract form with the apprenticeship office. Any extension of the probation period is limited to the length of the original probation period. A training contract can be terminated by lodging a "Notice to terminate a training contract during probation period" form with the apprenticeship office, and the form does not require the signature of all parties. If it is helpful, I can table a copy of those forms or subsequently give them to members. Hon Rick Mazza also said that the effect of the policy set in the bill will be to remove any incentives from employers to employ apprentices and trainees, but that will not be the case. This is not the only incentive that exists.

The commonwealth government provides a range of financial incentives for employers who employ apprentices, and the definition includes both apprentices and trainees. The commonwealth Australian Apprenticeships Incentives Programme provides commencement, recommencement and completion incentives to employers who employ eligible apprentices, including school-based apprentices. The amounts are $1 500 for commencement, $750 for recommencement, and $2 500 for completion for new and existing workers in occupations on the national skills needs list. All incentives apply to full-time, part-time and school-based apprentices and trainees at certificate III or IV level; new workers in priority occupations—aged care, child care, disability care and enrolled nursing—that are not on that national skills needs list at certificate III, IV or diploma or advanced diploma level; and new workers in occupations that are not on that list or priority occupations and who complete the certificate III or certificate IV qualification. There is a $3 000 completion incentive for existing workers in priority occupations that are not on that NSN list who complete certificate III, certificate IV, diploma or advanced diploma qualifications. There is support for adult Australian apprentices who members would expect to be amongst those in the existing workforce. The incentive is $4 000 on completion of 12 months' training for existing workers aged 25 years or over to upgrade skills at certificate III or certificate IV level in an occupation on the national skills needs list.

A range of incentives are targeted to specific groups or geographic areas, including the rural and regional skills shortage incentive, which is $1 000 for a certificate III or IV for occupations on the national skills needs list in a rural and regional workplace. The nominated equity groups commencement incentive is $1 250 for certificate II. The group training organisations certificate II completion incentive of $1 000 is provided to group training organisations that support an apprentice deemed to be part of a nominated equity group. There are declared drought area incentives, mature aged workers' incentives, school-based apprenticeships commencement and retention incentives, and wage support and assistance for employers of apprentices with a disability. There is also financial support for apprentices and trainees themselves. There are trade support loans of up to $20 420 as an income contingent loan to apprentices undertaking a certificate III or IV leading to a priority trade occupation that currently appears on the NSN list, as well as a number of agriculture and horticulture qualifications at certificate II, III and IV levels. The living away from home allowance is available to full-time, part-time and school-based apprentices during the first three years of training if they have to move away from their parents or guardians' home.

I see that there is now an amendment, which would have been nice to have known about before, but it has just been put in front of me. I need to flag that we cannot agree to this. We will have to discuss this in the Committee of the Whole. As I said in the explanation that I have just provided, this would put us at odds with the commonwealth and every other jurisdiction and it would be administratively very difficult for those businesses that operate across jurisdictions, so we would not be able to agree to that.

I have also been given some examples of payroll tax savings. Hon Colin Tincknell raised with me whether the government had given consideration to the suggestions that he made. We have not in respect of changing the provisions of this bill, but maybe he will want to ask me some more specific questions, given that we are going into the Committee of the Whole; we can do that.

With those comments, I hope that I have addressed the issues that honourable members raised and, again, I commend the bill to the house.

Division

Question put and a division taken, the Acting President (Hon Laurie Graham) casting his vote with the ayes, with the following result —

Ayes (18)

Hon Jacqui Boydell	Hon Sue Ellery	Hon Kyle McGinn	Hon Alison Xamon
Hon Tim Clifford	Hon Diane Evers	Hon Samantha Rowe	Hon Pierre Yang
Hon Alanna Clohesy	Hon Laurie Graham	Hon Matthew Swinbourn	Hon Martin Pritchard *(Teller)*
Hon Stephen Dawson	Hon Colin Holt	Hon Dr Sally Talbot	
Hon Colin de Grussa	Hon Alannah MacTiernan	Hon Darren West	

Noes (13)

Hon Peter Collier	Hon Michael Mischin	Hon Charles Smith	Hon Ken Baston *(Teller)*
Hon Donna Faragher	Hon Simon O'Brien	Hon Aaron Stonehouse	
Hon Nick Goiran	Hon Robin Scott	Hon Dr Steve Thomas	
Hon Rick Mazza	Hon Tjorn Sibma	Hon Colin Tincknell	

Pairs

Hon Robin Chapple	Hon Jim Chown
Hon Adele Farina	Hon Martin Aldridge

Question thus passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Laurie Graham) in the chair; Hon Sue Ellery (Minister for Education and Training) in charge of the bill.

Clause 1: Short title —

The DEPUTY CHAIR: The minister has asked whether she can sit down to answer the questions.

Hon DONNA FARAGHER: I am happy with that, no problem.

I have a couple of questions. I appreciate the minister's response in her reply to the second reading about exemptions for apprenticeships. I want some further clarification if I could. The minister and the press statement indicated, and the Treasurer in the other place stated, that there would be no change or altering of the exemption to apprentices. The press statement, however, states that stage 1 will not alter the exemption for apprenticeships and later, which I referred to in my second reading contribution, it states —

> … the Government will work with industry in developing stage two of these changes, —

Which the minister has already outlined —

> to replace all remaining apprentices and trainee exemptions with a grant scheme.

I am sorry if I missed it in the minister's reply, but I accept that stage 1 does not include apprenticeships. My question, though, relates to whether it is anticipated that there will be a change in the second stage that will encompass apprentices. The media statement suggests that it will be replaced by the grants scheme.

Hon SUE ELLERY: I thank the member for the question. What I said in my reply to the second reading debate stands. I think the essence of the member's question is whether the grants scheme will apply to apprentices as well. The answer is no; the exemption will remain in place for apprentices. That is a change in position from the original media statement that we put out. It is a change.

Hon DONNA FARAGHER: Just so that I can be clear—I am asking this quite genuinely, because people have come to me concerned about this—is the minister saying that the position in the statement of 30 November has now changed, and can the minister say with confidence that the exemptions with respect to apprentices will not apply going forward, and will not do so any time in the future?

Hon SUE ELLERY: So that we get our language absolutely right, the lifting of the exemption will not apply to apprentices. That is a change in policy from when the media statement was first put out. The Chamber of Commerce and Industry of Western Australia and some other stakeholders were advised of that late last week.

Hon DONNA FARAGHER: I thank the minister for that. What made the government change the position?

Hon SUE ELLERY: The consultation had already started. It was clear from employers that that was a fairly critical issue for them, so the government listened.

Hon Donna Faragher: I will pass that on to them; thank you, minister.

Hon AARON STONEHOUSE: I apologise if the minister addressed this in her response to the second reading debate, but I was away on urgent parliamentary business during the first half of her speech. I refer to the limit placed on new employees who will be eligible for the tax exemption, which has been set at $100 000 per annum. Can the minister tell me what informed the decision to set the limit at $100 000 as opposed to $90 000, $110 000 or $150 000?

Hon SUE ELLERY: We looked at average wages. The average wage is $91 000. Erring on the side of generosity, I suppose, we picked the figure of $100 000. It could have been $91 000; it could have been $105 000.

Hon Rick Mazza: A round number.

Hon SUE ELLERY: It is a nice number, but it is higher than the average wage.

Hon RICK MAZZA: In my contribution to the second reading debate last night I asked whether the tax is applied on amounts over $100 000 for superannuation and other benefits. The minister had not covered that in the second reading.

Hon SUE ELLERY: Let us be clear. I think the honourable member is aware that we have excluded a whole range of on-costs in determining whether it is $100 000. Just so my advisers get it clear, that is not the member's question. Maybe rather than me interpreting it, I will ask the member to say it again.

Hon RICK MAZZA: If an employee is on $100 000, that is exempted—I get that. If they are on $100 000, they will have their superannuation guarantee levy and they will maybe have overtime and other add-ons, which are not calculated in the $100 000 for the purposes of the exemption. What I want to know is whether the amounts over $100 000 will still attract payroll tax.

Hon SUE ELLERY: No.

Hon DONNA FARAGHER: I again apologise as I have not seen the letter that was tabled by the minister

Hon Sue Ellery: They have got it.

Hon DONNA FARAGHER: I think we should be able to work through it anyway. I refer to my earlier interjection during the minister's summing up of the second reading debate. The minister put forward a number of examples. Had the examples that the minister provided undergone an assessment, and had they been approved for registration by the department?

Hon SUE ELLERY: Yes, we think so. The reason I put in the caveat of "we think so" is because of the dates. I think one of them goes back to 2014–15. We have not been able to track back that far to check that the training contract was entered into. However, the information was provided by the Office of State Revenue. It would get that only once the training contract had been approved, which is why I think we can confidently say that the majority of the examples I gave, with the possible exception of one, were approved training contracts. That is why I made the point in my reply to the second reading that the Department of Training and Workforce Development does not have the head of power or, frankly, the resources to check whether the proposed training contract is being entered into with a company that is kind of gaming the system. The Office of State Revenue has been able to identify those examples. It only gets that information once the training contract has been approved.

Hon DONNA FARAGHER: I appreciate the minister's response. Maybe this is not the time to be asking these questions—this might be something for a separate time—but I will use this opportunity. I now have a copy of the letter. One of the examples refers to a large entertainment company attempting to register existing employees working in information technology, warehousing and corporate services into a certificate III and IV in hospitality, even though they did not undertake any work in any way relevant to hospitality in their day-to-day role. I accept that that was not appropriate. I reflected on this in my contribution to the second reading debate. I understood that all training contracts must undergo a form of assessment by the department and that further assessment of those training contracts could be required under certain circumstances, one of which is that the intended occupation does not appear to be aligned with the qualification.

I am trying to get an understanding of this. The department may say it does not have the resources and it is not going to go through each and every one, but whether there are limits to its ability in terms of a head of power or whatever else, according to its very own fact sheets it says it undertakes these assessments and must undertake these assessments. The very first circumstance is that the intended occupation does not appear to be aligned with the qualification. I accept that the minister might not be able to tell us whether these are accepted or not. I think the Treasurer should have been able to tell us, but if he cannot that is fine. That example alone fits very much with what I have just outlined. I cannot see why we would have even gone beyond first base.

Hon SUE ELLERY: The provision that the member has referred to in the training act relates to the department's obligation to check that the course proposed matches the qualification. It goes to the integrity of the training, not the financial arrangements of the company. There is a fundamental difference. The Department of Training and Workforce Development's obligation under the act is to check that the proposed course—the curriculum and all those things—matches the qualification. For example, is the content sound and is it appropriate for a certificate III? Should it be a cert IV or a cert II? That is the obligation set out in the provision the member has just referred to in the training act. The proposition about the proposal from company X to seek to put a number of its employees through a course—a traineeship or apprenticeship—is not a function of the Department of Training and Workforce Development. We are trying to tighten that up so that it will be a matter that is assessed and enforced by the Office of State Revenue. The bit the member is referring to in the training provisions are, quite rightly, about making sure that the course being proposed matches the qualification. It does not go to the eligibility or otherwise for a payroll tax exemption or mean that the department is required to look at the finances of the company for the purposes of payroll tax. It is required to look at the company for the purpose of ensuring that it is a legitimate employer entering into a training contract. Those are two separate matters.

Hon DONNA FARAGHER: Just so that I can be clear, is the minister saying that if an employee who is working in IT gets put into a cert III course in hospitality, the department can only assess whether it is an appropriate cert III or cert IV, but not in respect to the employee and what they are paid to do? Is that it in a nutshell?

Hon SUE ELLERY: That is correct.

Hon COLIN TINCKNELL: Could we not limit businesses to claiming the exemption up to a defined percentage—let us say 30 per cent—of their total wage bill? This would save around $22 million in reduced costs compared with the current exemption policy to about 1.8 per cent of the total payroll tax revenue per annum. The minister mentioned that we want to come into line with other states. I hear that quite often in this place. Sometimes improvements could be made. As a state, why could this government not be leading the way? My questions are about limiting businesses to claiming exemptions up to a defined amount—for example, 30 per cent.

Hon SUE ELLERY: The member raised two components. I will deal with the latter one first—the proposition that just because other jurisdictions operate in this way, does that mean that WA necessarily has to act in the same way and could we not try to improve what other jurisdictions do. That would complicate the system for employers that work across various jurisdictions. The strong message coming from industry is that it does not want us to make it harder for companies that operate across different jurisdictions. In fact, they want national consistency. To do something separately would, firstly, create a problem for industry; and, secondly, using different definitions of various things including, for example, the definition of new employees, would create significant difficulties in administrating what is effectively, for traineeship and apprenticeship arrangements, a national scheme. A separate set of definitions would be very messy and difficult to operate.

The member proposed that we introduce some other form of cap of 30 per cent or some other percentage of payroll, for example. We would be concerned that that might lead to more employers trying to game the system. The previous government put a version of a cap in place. Although it led to some diminution in the number of employers gaming the system, it did not stop it completely. Companies were able to structure their businesses in such a way as to still get around that and to seek an exemption for training that was not what it should have been. They put members of their leadership team, some of whom had Master of Business Administration degrees, into a cert III leadership course. That is not about lifting the skills of a person with an MBA; it is about taking advantage of a payroll tax exemption. Now that more businesses are aware of the opportunity to reduce their payroll tax liabilities by training workers, it would be expected that options to limit the proportion of employees undertaking training would be ineffective. More businesses would be expected to use the exemption to reduce their payroll tax liability, which could lead to an increase in the cost of the exemption. It would be quite difficult to design legislation to put that in place while taking account of our obligation to operate under a national training scheme.

Hon COLIN TINCKNELL: For businesses that want to add to the extended time, could we not disallow employers from claiming an additional tax exemption for training contracts that are extended beyond their initial terms if businesses were not at fault? This has the potential to reduce the total amount of exempt wages by about 12 per cent, which would equate to about $8.7 million per annum.

Hon SUE ELLERY: As it stands, the bill does what the member proposes. It limits the term, achieving what the member has asked about.

Hon COLIN TINCKNELL: Will employers not be allowed to claim additional tax exemptions if they extend the time?

Hon SUE ELLERY: That is correct.

Hon Colin Tincknell: Is that a change from what you originally put out?

Hon SUE ELLERY: No.

Hon Colin Tincknell: Sorry, I did not realise that was in there.

Hon SUE ELLERY: I know. Just because I am sitting down does not mean that the member does not have to stand up.

Hon COLIN TINCKNELL: Could we limit businesses from claiming payroll tax exemptions that exceed the cost of training?

Hon SUE ELLERY: That would be an administrative nightmare because the agency would have to know what the training costs were. Training is provided by a range of providers—the public provider in TAFE and private RTOs and group training organisations. A long-term bipartisan position has been to respect the right of employers to choose their own provider; so, not forcing them to go with a public provider in TAFE or to choose a certain RTO. If the government were to do what the member is suggesting, the government would effectively be dictating to business. I can give an example. Right now a debate is going on about whether private health funds can say to their members, "We will pay you this if you use only these providers." That is effectively what the member is suggesting we do here. That is controversial in the private health fund sector; it would be equally controversial if the government were to say to employers, "You must choose these training providers."

Hon PETER COLLIER: I have a comment to make and then I will ask a general question based upon the minister's comment about the grant scheme—this is the gospel according to Peter! I believe that the training sector across the nation is knackered. That may be all good and well for either the minister or me, but the feds do the same thing with funding all the time. Until some uniformity exists across the nation, training will continue to be a problem. It will not matter who is on the Treasury bench, because unless the states have uniform standards and funding, there will be problems.

I welcome the minister's comments about the consultation she has done. I am delighted with that. However, as she just pointed out, the provision of training in Western Australia is multifaceted. There are TAFE colleges and well over 400 private providers, and funding for training comes through any one of those avenues or through the Building and Construction Industry Training Fund or wherever it might be, so there are a raft of different areas. I am a little concerned about the lack of detail on the grants scheme. I understand we are at a very early stage and that the minister has done a lot of consultation—I applaud her for that—but the minister suggested that legislation may be required and it may not. If not, that leads to a lot of subjectivity about where that funding will go. Although she has done a lot of consultation, can the minister enlighten the chamber on how she sees that the grant scheme will operate?

Hon SUE ELLERY: Based on one of the drivers, we deliberately decided to publicly announce a policy to stop gaming of the system to generate revenue to come into place, because the feds walked away from funding its contribution of general training in its last budget. In May last year, it took money out of Western Australia, and we had to find ways of replacing that money. That is why we went ahead and announced this first stage, which is that we lift the exemption. But we knew that would involve serious consultation and we needed to have buy-in from industry to work out a replacement. We were in a difficult position because the commonwealth just said, "See ya later. We're not giving you that money." We had to find an alternative source of funding and so we decided deliberately to do this in two parts—to lift the exemption and then to consult on what the grant scheme will look like. To answer the member's question in full: I anticipate that there will be other legislation—but I do not want to pre-empt it—to fund it. I think we will need further legislation.

Hon PETER COLLIER: I would like to clarify something. If the feds have done what they are good at—that is, starting something up and then bailing out; again they are pretty good at that stuff—this will not just purely fill that gap, will it?

Hon SUE ELLERY: I am not sure what the member means by that. There are two drivers: one is that we do not want to provide an exemption to people who are not genuinely training.

Hon Peter Collier: I understand that.

Hon SUE ELLERY: The two drivers are the integrity of the payroll system, but also to generate enough money to also pay for those 43 000 training places.

Hon PETER COLLIER: I understand that. I based my last question on the minister's comment about reduced federal government funding. She said that this was one avenue of filling that gap. That is fine. I remember trying to find money in the bottom drawer all the time when the feds bailed on things. I mentioned the chaplaincy program this morning. That has nothing to do with this matter, but that is the sort of stuff that state governments have to deal with, time in, time out. I am going to finish with this comment: I really hope that it is not too subjective and that it does not become political. If it were to get to that point, it would defeat the purpose of the bill. I will be up there with batons with the government—I am sure Hon Donna Faragher and Hon Dr Steve Thomas will do the same—if the government can genuinely show regard for increased training opportunities and that there is an open and transparent fashion upon which that funding will be delivered. If it does not, the government will face enormous cynicism and negativity in the community; in addition, no inroads will be made in this area. I am very conscious of the fact that the federal government—I mean the federal government generally and not the current

federal government—has an innate capacity, because it has its hands on the purse strings, to put on conditions. It will start up something and 18 months later the whole thing will finish. Just look at what happened with the child and parent centres. It opened five of them and then cancelled them. That happens in every single portfolio. If we are to do this—I can look at the numbers; I am not happy about it but that is the way it is—for goodness sake, there simply must be some integrity behind the grants scheme.

Hon SUE ELLERY: I know the member was only commenting on how policy discussions happen. I am sure that if Treasury had its way, it would prefer that this money not be specifically dedicated to a specific number of training places, but it is.

Clause put and passed.

Clauses 2 to 4 put and passed.

Clause 5: Section 41D inserted —

Hon RICK MAZZA: I want to make a few comments about my amendment on the notice paper. The minister said earlier that employers have been seeking consistency across the states and federally. I understand that that consistency is about training. We are here amending a tax act. Of course, payroll tax across Australia is different in every state. We are making amendments to change a cap on an eligible exemption, amongst other things. There is no consistency between the states on taxes on wages. I understand that employers may want consistency across the states on training components, especially when it comes to qualifications such as on certificate III or certificate IV or diplomas. However, I do not buy the argument that there has to be consistency as far as the Income Tax Assessment Act is concerned, because this is something completely different and specific to Western Australia. I therefore move the motion standing in my name —

Page 3, after line 7 — To insert —

> ***new employee*** means an employee of an employer who is 3 months from the end of any probation period, not being longer than a period of 6 months.

As I said in my contribution to the second reading debate, my major concern is that when a new employee is on a probation period, the employer may not be ready to put them into a training program. I understand what the minister said earlier about a lot of training agreements having a three-month limit. That is not what we are talking about; we are talking about the eligibility of a new employee who the employer might not want to start on training until their probation is complete. I think this is a very sensible amendment and will give employers flexibility when they put on new employees with probation periods.

Hon Dr STEVE THOMAS: While the minister has the experts with her, the opposition is interested to see how a proposal to insert a definition of new employee might interact with further clauses. On page 4, under proposed subsection (3)(b), it states —

> the employee is an eligible new employee under subsection (4);

Proposed subsection (4) intends to define employee. There seems to be some conflict. It would assist us if the experts could give a legislative opinion on how that might function.

Hon SUE ELLERY: While they are looking at that, I will respond to Hon Rick Mazza. It needs to be pointed out that every jurisdiction across Australia, including the commonwealth, uses this definition of new employee. Although he is right that this bill is amending Western Australia's payroll tax regime, it is amending the payroll tax regime for the purposes of an exemption that applies to a system of training that uses the same definition across the whole nation in every jurisdiction and the commonwealth. If that is undone, it would be very difficult to administer those training arrangements. The other point that needs to be made is the one that I made in my reply to the second reading debate. That is, effectively, employers get the six months Hon Rick Mazza is seeking, because they have three months to meet the definition of a new employee. Then they enter into a training contract, and there is a three-month probation period within that training contract. They can then make a judgement call at the end of, effectively, now six months whether that employee is suitable.

On the other matter, I will check the advice. We are not sure that we understand the purpose of the question from Hon Dr Steve Thomas. The relevant bit he points out is in proposed subsection (3)(b), "the employee is an eligible new employee under subsection (4)". Proposed subsection (4) sets out the respective definition. I think the member's question is: if we accept this amendment, would we have to change other provisions? The answer is that we probably would. If we were to go down this path, it would create chaos for employers trying to operate it and chaos for the agencies trying to implement it.

Hon AARON STONEHOUSE: The minister was talking about the probationary period built into a lot of the training.

Hon SUE ELLERY: It is built into all the training, not a lot of them.

Hon AARON STONEHOUSE: She was giving us the idea that someone could be on probation for three months, and they could then be put on the training contract and there would be another probationary period of three months. That would mean there would be, in fact, six months' probation. An employer would not get the payroll tax exemption if they commenced training at the end of the three-month probationary period, would they?

Hon SUE ELLERY: The training would need to commence within a defined period. I make this point because I am aware that we will go somewhere else in a minute. Changing the definition would also mean that it would have a direct impact on all the commonwealth's incentives to employers, which rely on the definition we are all using. If we adopt this amendment, it will mean those employers would not get the commonwealth incentives that rely on the definition we all use.

Committee interrupted, pursuant to standing orders.

[Continued on page 2541.]

Sitting suspended from 4.15 to 4.30 pm