

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

Committee

Resumed from 10 May. The Deputy Chair of Committees (Hon Matthew Swinbourn) in the chair; Hon Sue Ellery (Minister for Education and Training) in charge of the bill.

Clause 5: Section 41D inserted —

Progress was reported on the following amendment moved by Hon Rick Mazza —

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.

Hon RICK MAZZA: I seek leave to withdraw the amendment before the chamber.

Amendment, by leave, withdrawn.

Hon RICK MAZZA: I move —

Page 5, line 4 — To delete “months; or” and insert —

months (excluding any period of probationary employment not exceeding 6 months); or

Following on from my comments last time we were in committee on this bill, my concern has been that the three months from the commencement of the employee would commence after the probationary period. Currently, the employee has to have entered into an employment contract within three months of starting, which does not provide for circumstances in which there may be a probationary period of three or six months. The amendment is to insert that provision. I took on board what the minister said about changing the definition last time and I have consulted to change this amendment to get to this point.

I am also concerned that if we do not have some provision for a probationary period—the legislation refers to part-time or casual employment in paragraphs (b) and (c)—there may be an incentive or some way for employers to say, “If I cannot put someone on full-time and have more than three months before I have to enter them into a training contract, I will put them on part-time, because if I put them on part-time or casual, I will have up to 12 months before I have to lock them in to a training contract and be able to receive the exemption.” I suppose most employers want the exemption, because while the employee is on probation and they have not entered into a training contract, the employer is not getting the exemption. Employers will want to put them in as soon as they can, but some may still wish to wait until the end of a probationary period, and that is why I have moved the amendment.

Hon SUE ELLERY: I thank the honourable member for the explanation of the new amendment. We had a conversation behind the Chair about what the member intended to do, so I thank him for giving me some notice and that explanation earlier today. I pointed out in that conversation that although I appreciate that the member has moved the position of the amendment in the bill, in a policy sense, the government will still oppose the amendment. The additional amendment proposes that a probationary period of up to six months be excluded from the calculation of time served in full-time employment for the purpose of defining an eligible new employee. Remember, I have already explained to the house that in a training contract there is a three-month period of probation. If someone has a six-month period of probation and they then enter into a training contract, they have three months’ probation within that, so the amendment would have the effect of increasing the probation period to nine months and retaining the eligibility of new-entrant traineeships to be exempt from payroll tax. That would still put us at odds with other jurisdictions. The bill has been drafted to align with the commonwealth definition of an eligible new employee used for its apprenticeships incentives program. That definition has been adopted by all states and territories. It is specified in Western Australia’s Vocational Education and Training (General) Regulations 2009. The definition is used to determine training funding priorities and subsidy levels. Other states and territories also use the standard commonwealth definition of a new employee to determine eligibility for payroll tax exemption in their jurisdictions. It has been made clear to us that employers want consistency across Australia and they want simplicity when interacting with the apprenticeship system. In fact, the proposed amendment will do the opposite; it will put a system in place in Western Australia that is different from that in every other jurisdiction and the commonwealth’s, so we will be out of sync with the rest of Australia. The definition would be inconsistent with the one used in our own set of regulations and there would effectively be a misalignment between commonwealth employer incentives, payroll tax exemptions in other states and our own training subsidies. There may potentially be unintended consequences for employers as well. Although I appreciate the effort that the honourable member has gone to to find a better place in the bill before us to address the issues, it is still fundamentally a difference in policy that the government is not able to accede to. For that reason, we will not support the amendment.

Hon AARON STONEHOUSE: I would like to indicate my support for this amendment. This amendment will achieve an increase in choice for employers, retaining a certain level of flexibility in employment options. When taking somebody on, we of course have probationary periods because it is not normally very easy to terminate someone's employment. They can be performance managed out, but it is no easy process and there is a certain amount of liability around that. Probationary periods are very important and when a business takes someone on, it needs to see how they perform, what their work ethic is like and make sure that they have the skills needed to suit the business. By having the time in the definition of a new employee limited to three months, this bill will make employers have to sign someone on for training within that probationary period. It puts a lot of time pressure on an employer to make a decision about whether they want to keep that person on. The amendment that Hon Rick Mazza has moved will give employers the option of commencing training at the end of that probationary period, retaining that flexibility for the employers so they can test an employee for three months to see how they perform their role. Once an employer has seen how a new employee performs, they can then make the decision to invest considerable money in training that person. It is not cheap to put someone on a training course; it can cost thousands of dollars. There is a probationary period for the training course, but money can be sunk into training before it is realised that a person is not suitable for the training. Retaining flexibility recognises that there is a certain amount of risk involved in taking on a new employee and then investing money in training. Let us not forget the context of all this, which is the significant increase in costs to employment that the government is imposing through this amendment bill. We saw an increase in payroll tax pass this chamber just last year. The removal of this exemption is going to increase a lot of people's payroll bills. Sure, that money will be reinvested in training elsewhere, but the reality is that company payroll tax will increase as a result of the removal of this exemption, so retaining some level of flexibility is important at a time when payroll costs are increasing.

I will talk to the uniformity of definitions of new employees. The minister has some issues around compliance. The minister may be able to respond to what I have said if I have it wrong, but the payroll tax exemption is lodged here in this jurisdiction, so I do not think we, as Western Australian legislators, need to be too concerned about definitions of new employees in other jurisdictions. Issues around compliance will only negatively impact businesses that operate interstate; businesses that operate only within this jurisdiction will not have any problems at all. They can continue to lodge their exemptions in this jurisdiction, as they always have. Through this bill we are already making changes to the eligibility for payroll tax exemptions, so I do not see making additional changes now to be a huge problem. We are saying that exemptions can only be lodged for new employees and they can no longer be lodged for existing employees. If we tweak the definition of what a new employee is right now, at this point as everyone is getting used to the new eligibility criteria for that exemption, employers can factor in that new employees in this jurisdiction will now be considered as such for up to six months, so I do not see that being a huge impost on business. At the end of the day, simplicity in tax law is important. Absolutely, there is a big cost in compliance, but I think if we polled most businesses, we would find that they would rather have an exemption, even if it is a hard one to lodge for, rather than simplicity and an incredibly high tax bill. I reject the assertion that keeping things simple, but increasing the cost of payroll tax, is a desirable outcome for business. Even if there is some complexity with a slightly different definition, being able to access that exemption for up to six months after taking someone on far outweighs the cost.

Hon SUE ELLERY: There is nothing in the argument that has just been put that was not put when we were last in committee debating this. What is different is that there is a different amendment before us now. I have previously addressed all the issues the member just raised in my response to Hon Rick Mazza, but, I guess, for completion, large numbers of employers operate in Western Australia and elsewhere in Australia and they want consistency across Australia. If our terms were at odds with the commonwealth, for example, the capacity for employers to access commonwealth incentives, whether they operated in other jurisdictions or just in WA, would be misaligned as well because we would have a different set of arrangements. It would have a direct impact even on employers who do not operate across state borders. For the same reasons I have articulated already, we will not be supporting the amendment.

Hon Dr STEVE THOMAS: I thank Hon Rick Mazza for the change of amendment. The amendment proposed last week when we were examining this bill made a very complicated argument because it effectively put in a definition of a new employee that in my view was in contradiction to the definition that came later in the bill. I think the amendment before the chamber is a much more appropriate amendment to put forward to give rise to the intent of the member. I ask a question, because as I now understand the amendment before the chamber at the moment, it defines, again, at an appropriate place whether an employee is a new employee. If the amendment were to proceed, an employee would be a new employee unless they had been in full-time employment for more than three months, excluding any probationary employment not exceeding six months. That changes things slightly in that an employee could effectively be on probation for six months and then be off probation, but there would then be a three-month window. The first thing that concerns me is the time frame. Does this not encourage exceptionally long probation? Having been an employer of a large number of people over many, many years, I would have thought that six months' probation is a significantly long time. I am also of the view that it is unlikely that an employer would stump up the money to put a probationary employee into training. There have now been a few days for the minister and us to think about this process, and I would be interested in whether any thought has been

put into what might be the economic effect of this proposed change. The intent of the amendment has not changed; the intent is to put in that probationary period. The question, I guess, is whether it is three months or six months. Under the amendment before the chamber at the moment, a six-month probationary period can be written off in its entirety before an employee goes into the three months of employment. At that point, we are potentially looking at employees who have been on probation for nine months. There might then be an incentive for employers to put an employee on probation for six months. Any person can fake being a good employee for a few weeks. To be honest, I think six months is a long time to be on probation. I have never put on an employee for a six-month probationary period. There may be examples of where that happens. I would be interested if the proposer of the amendment, or the minister, could give us some indication of the financial impact of this amendment. We understand the intent of the amendment. We also understand the minister's comments about the need for uniformity in legislation. I suspect that it will not have a significant financial impact. Therefore, the question that faces us as an opposition is how seriously do we need to look at this amendment.

Other members made comments about the potential impact of such a long probationary period. That leaves a lot of uncertainty for an employee, particularly one whom the employer then needs to train. An employer may say to an employee, "I will start you on the floor, but I intend to train you up to perform a greater role." If I were an employee and the employer asked me to wait for six months so that they could decide whether I was adequate to perform the job, I would be looking for alternative employment fairly quickly. I would be interested in some feedback from both sides of the argument on how the minister sees those interacting.

Hon RICK MAZZA: Six months' probation is not unusual these days. We need to bear in mind that the purpose of this amendment is to provide flexibility. If an employer wants to put an employee into a training contract within the first week, that is up to the employer. If an employer wants to wait a bit longer to see whether the employee is suitable to enter into a training contract, this will provide them with that flexibility. The minister talked about inconsistency with the commonwealth act. Companies that operate under both the state act and the commonwealth act will still be able to use the three-month probationary period if that is what they want to do. However, this will provide businesses that operate exclusively in Western Australia with some flexibility. I mentioned earlier that proposed subsection (4)(b) refers to part-time or casual employment. Proposed subsection (4)(c) provides that four months of part-time or casual employment is taken to be equivalent to one month of full-time employment. Hon Dr Steve Thomas spoke about six months' probation. The temptation for some employers, if they want to have a longer period of probation, would be to employ a person part-time for 30 hours a week and keep them on that contract for 12 months before they enter into a training contract. This amendment will provide some flexibility. I am hopeful that it will be supported.

Hon AARON STONEHOUSE: I echo the sentiments expressed by Hon Rick Mazza. Six-month probationary periods are not uncommon—a few seconds of research will find that out. If it helps as an anecdote, I recently went through the process of hiring new electorate staff, and a six-month probationary period is what the Department of the Premier and Cabinet recommends for new electorate staff. Although I have never owned a business, I have been in various management positions and responsible for hiring and training staff. In many cases, employers want to test a new employee, sound them out, and see how quick a learner they are and how quick they are on their feet, before they decide what training pathway might be suitable for them. It is about providing employers with the flexibility of a six-month or three-month probationary period before they make a decision about what training is suitable for that staff member. We need to keep in mind that we are proposing to remove a big exemption for existing employees. It is, therefore, important that we retain as much flexibility as possible in the availability of the exemption, at the same time as we are raising payroll costs for employers across the state.

Hon SUE ELLERY: We are not arguing about the difference between three months and nine months; we are arguing about the difference between six months and nine months, because it is three months under the act and another three months when employees enter into the training contract. It is worth noting that the commonwealth funds the Australian Apprenticeship Support Network, which conducts assessments of the suitability of employees who have been signed up to a training contract. That provides employers with professional assistance in determining the suitability of an employee for training. For that reason, and for the reasons I have already articulated, we will not be supporting the amendment.

Division

Amendment put and a division taken, the Deputy Chair (Hon Matthew Swinbourn) casting his vote with the noes, with the following result —

Ayes (11)

Hon Jim Chown
Hon Peter Collier
Hon Donna Faragher

Hon Nick Goiran
Hon Rick Mazza
Hon Michael Mischin

Hon Charles Smith
Hon Aaron Stonehouse
Hon Dr Steve Thomas

Hon Colin Tincknell
Hon Ken Baston (*Teller*)

Extract from Hansard
[COUNCIL — Tuesday, 15 May 2018]
p2707b-2711a

Hon Rick Mazza; Hon Sue Ellery; Hon Aaron Stonehouse; Hon Dr Steve Thomas

Noes (17)

Hon Jacqui Boydell
Hon Tim Clifford
Hon Alanna Clohesy
Hon Colin de Grussa
Hon Sue Ellery

Hon Diane Evers
Hon Adele Farina
Hon Laurie Graham
Hon Colin Holt
Hon Alannah MacTiernan

Hon Kyle McGinn
Hon Samantha Rowe
Hon Matthew Swinbourn
Hon Darren West
Hon Alison Xamon

Hon Pierre Yang
Hon Martin Pritchard (*Teller*)

Pairs

Hon Tjorn Sibma
Hon Simon O'Brien
Hon Martin Aldridge

Hon Dr Sally Talbot
Hon Stephen Dawson
Hon Robin Chapple

Amendment thus negatived.

Hon RICK MAZZA: I have one question on clause 5. Is the \$100 000 indexed in any way?

Hon SUE ELLERY: Indexed?

Hon RICK MAZZA: Yes; to adjust for inflation.

Hon SUE ELLERY: No.

Hon AARON STONEHOUSE: Not to be funny about it, but is there a reason indexing that price was not considered—or was it considered at all?

Hon SUE ELLERY: Members will remember from the discussions about policy that we had more broadly there are two phases to this policy shift. These arrangements will be in place until and unless they are replaced by what comes out of phase 2 of the consultations, when we are proposing to put in place a grant scheme. We anticipate coming back to Parliament with legislation to give effect to those changes, so there was no need to build in an indexing regime until we know what the final version looks like after we come through phase 2 of the consultations.

Clause put and passed.

Clause 6 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

HON SUE ELLERY (South Metropolitan — Minister for Education and Training) [9.06 pm]: I move —

That the bill be now read a third time.

HON DR STEVE THOMAS (South West) [9.06 pm]: I do not intend to speak very long. I thank all honourable members who contributed to debate on the Pay-roll Tax Assessment Amendment (Exemption for Trainees) Bill 2018. Obviously, the opposition is not in favour of removing the exemptions on payroll tax that have been decided on by the government. I particularly want to note that I said fairly extensively during my second reading contribution that the Pay-roll Tax Assessment Act 1971 and the updated Pay-roll Tax Assessment Act 2002 had the same agenda—neither was to restrict the payroll exemption to new employees. The minister and several members stated that it was always intended that the payroll tax exemption would apply to new employees.

I guess just to finish the debate, because I did not have an opportunity earlier, the Pay-roll Tax Bill 2001 became the Pay-roll Tax Amendment Act 2002. Members should note that that was a significant opportunity, if the intent had always been that payroll tax exemptions should apply to new employees. The amendment bill introduced in 2001 that became an act in 2002 was the obvious time to change that. I looked back to work out who was so perhaps neglectful as to have missed entirely that the intent of the payroll tax exemption was to apply to new employees. It turns out that the Pay-roll Tax Bill 2001 was one of the first bills introduced by the then new Treasurer of Western Australia—Hon Eric Ripper, then member for Belmont. I said a few nice things about Hon Eric Ripper during my budget reply this evening, and I maintain that he was a reasonable Treasurer. I would have thought that if the Labor Party's intent had always been to make the exemption on payroll tax to apply only to new employees, perhaps somebody might have told Hon Eric Ripper when he introduced his bill that later became the act. I have in front of me the second reading speech that the member for Belmont made on Wednesday, 5 December 2001—an election year in which the old-growth forest election resulted in the rise of the Gallop government. It is a very lovely speech. I will make it available to all members who would like to read it.

Hon Rick Mazza; Hon Sue Ellery; Hon Aaron Stonehouse; Hon Dr Steve Thomas

The DEPUTY PRESIDENT: Order! We are not doing the second reading debate of a bill from 2002. We are debating this bill and it is the third reading. If the member could restrict himself to the third reading of this bill, which I point out has come out of Committee of the Whole without amendment, that would be good.

Hon Dr STEVE THOMAS: I thank you for your guidance, Mr Deputy President.

The third reading debate is to sum up those issues that were raised during the second reading debate. During the second reading debate, the Leader of the House suggested that it was always the intention that the payroll tax exemption should not apply to new employees. The Labor Party's history in this debate suggests that that was not and was never the case, and that this is a tax grab by the current government.

Division

Question put and a division taken, the Deputy President casting his vote with the noes, with the following result —

Ayes (17)

Hon Jacqui Boydell
Hon Tim Clifford
Hon Alanna Clohesy
Hon Colin de Grussa
Hon Sue Ellery

Hon Diane Evers
Hon Adele Farina
Hon Laurie Graham
Hon Colin Holt
Hon Alannah MacTiernan

Hon Kyle McGinn
Hon Samantha Rowe
Hon Matthew Swinbourn
Hon Darren West
Hon Alison Xamon

Hon Pierre Yang
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Hon Simon O'Brien

Hon Charles Smith
Hon Aaron Stonehouse
Hon Dr Steve Thomas

Hon Colin Tincknell
Hon Ken Baston (*Teller*)

Pairs

Hon Stephen Dawson
Hon Dr Sally Talbot
Hon Robin Chapple

Hon Martin Aldridge
Hon Jim Chown
Hon Tjorn Sibma

Question thus passed.

Bill read a third time and passed.