

## EXPLANATORY MEMORANDUM

### PAY-ROLL TAX ASSESSMENT AMENDMENT BILL 2019

This Bill contains amendments to the *Pay-roll Tax Assessment Act 2002* to remove the payroll tax exemption for eligible new trainees with effect from 1 July 2019. The estimated savings of \$109 million over the period 2019-20 to 2021-22 will be redirected to fund a new incentive scheme for employers of apprentices and trainees. The scheme will be administered by the Department of Training and Workforce Development.

These reforms were part of a two-stage package of measures announced by the Government on 30 November 2017 to better target training assistance provided to employers. Stage 1 required amendments to the Pay-roll Tax Assessment Act to limit the exemption for trainees to new employees whose ordinary wages did not exceed \$100,000 per annum.<sup>1</sup> The amendments, which took effect from 1 December 2017, closed a tax minimisation mechanism used by employers to reduce their payroll tax liability by placing a large number of existing employees on training contracts.

The amendments in this Bill are part of the Stage 2 reforms to transition the exemption to an employer incentive scheme. This will not affect the exemption for wages paid to apprentices, which will continue to apply.

Transitional provisions in the Bill preserve the exemption for the remaining term of eligible training contracts lodged with the Department of Training and Workforce Development prior to 1 July 2019.

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<sup>1</sup> *Pay-roll Tax Assessment Amendment (Exemption for Trainees) Act 2018*

## Part 1 – Preliminary

### Clause 1: Short Title

This clause provides the short title of this Act is the *Pay-roll Tax Assessment Amendment Act 2019*.

### Clause 2: Commencement

This clause specifies the commencement dates for the Act.

Paragraph (a) provides that sections 1 and 2 come into operation on the day on which the Royal Assent is received.

Paragraph (b) provides the rest of the Act comes into operation on 1 July 2019.

### Clause 3: Act amended

This clause provides that this Act amends the *Pay-roll Tax Assessment Act 2002*.

### Clause 4: Section 41D amended

Section 41D contains the exemptions for wages paid or payable to apprentices and trainees under registered training contracts. This section amends section 41D to remove the exemption for wages paid to new employee trainees. The exemption for wages paid or payable to apprentices remains unchanged.

Subclause (1) deletes the definitions of **group member**, **initial employer** and **nominal period** set out in section 41D(1). These definitions are relevant only to the exemption for eligible new employee trainees and are no longer required

Subclause (2) deletes sections 41D(3) to (6) and inserts a new subsection (3).

Subsection (3) currently provides an exemption for wages paid to eligible new employee trainees, subject to the qualifications in subsections (4) to (6).

Subsection (6) also currently provides that the exemption for apprentices under subsection (2) does not apply for any period that the training contract is suspended.

New subsection (3) preserves the exclusion from the exemption for apprentices previously provided under subsection (6) for the period the training contract is suspended.

The heading of the section is also amended to remove the reference to 'trainees'.

**Clause 5: Schedule 1 clause 15 amended**

Division 6 in Schedule 1 provides the transitional arrangements for the *Pay-roll Tax Assessment Amendment (Exemption for Trainees) Act 2018*.

That Act amended the Pay-roll Tax Assessment Act to limit the exemption for trainees to new employees whose ordinary wages did not exceed \$100,000 per annum at the time the training contract was lodged for registration with the Department of Training and Workforce Development. The amendments applied with effect from 1 December 2017.

Division 6 sets out how the amendments made by that Act apply to existing training contracts lodged before 1 December 2017.

Clause 15 contains definitions of the terms used in Division 6. This clause deletes the definitions of **apprentice** and **existing training contract**. These terms are used in clause 16, which is being deleted by clause 6 of this Bill.

The definition of **commencement day** is retained for the purposes of clause 17. Due to the retrospective commencement of the Pay-roll Tax Assessment Amendment (Exemption for Trainees) Act, clause 17 is required to enable the Commissioner to make any reassessment necessary to give effect to the amendments made by that Act.

The clause heading is also amended.

**Clause 6: Schedule 1 clause 16 deleted**

Clause 16 preserves the exemption for the remaining term of a training contract lodged with the Department of Training and Workforce Development prior to 1 December 2017 for existing employees, provided the employee's ordinary annual wages do not exceed \$100,000 and the contract has not exceeded the nominal period.

This clause deletes clause 16 as it refers to subsections of section 41D that are removed by clause 4 of this Bill. The deletion of clause 16 does not affect the exemption available for wages paid or payable before 1 July 2019 for training contracts lodged with the Department of Training and Workforce Development prior to 1 December 2017. This is because the deletion of clause 16 only takes effect on 1 July 2019.

The previous operation of the clause or any right to an exemption under section 41D (as modified by clause 16) as it stood when the right accrued is not affected by the repeal of the provision.<sup>2</sup>

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<sup>2</sup> *Interpretation Act 1984 (WA)*, section 37(1).

The exemption for wages paid or payable on or after 1 July 2019 for the remaining term of a training contract lodged with the Department of Training and Workforce Development before 1 December 2017 will be preserved by proposed clause 20.

**Clause 7: Schedule 1 Division 7 inserted**

This clause inserts a new Division 7 in Schedule 1. It sets out the transitional arrangements for wages paid on or after 1 July 2019 to trainees under a training contract lodged with the Department of Training and Workforce Development before 1 December 2017 or between 1 December 2017 and 30 June 2019.

**Division 7 – Provisions for the *Pay-roll Tax Assessment Amendment Act 2019***

**18. Terms used**

This clause defines the following terms used in this Division:

***apprentice*** has the meaning given in section 60A of the VET Act.

***commencement day*** is the day on which section 4 of this Act comes into operation.

***former section 41D*** means section 41D as in force immediately before commencement day.

***VET Act*** means the *Vocational Education and Training Act 1996*.

**19. Application of amendments made by *Pay-roll Tax Assessment Amendment Act 2019***

This clause provides that the amendments made by this Act apply to wages paid or payable on or after 1 July 2019.

**20. Exemption for wages paid or payable: training contracts lodged for registration before 1 December 2017**

This clause preserves the exemption for wages payable to trainees on or after 1 July 2019 for the remaining term of training contracts lodged with the Department of Training and Workforce Development prior to 1 December 2017.

Subclause (1) provides the clause applies to a training contract (the ***pre-1 December 2017 training contract***) if the employee is referred to as a trainee in accordance with the VET Act and the training contract was lodged with the Department of Training and Workforce Development before 1 December 2017.

Subclause (2) provides that, despite the amendments in this Bill to remove the exemption for trainees, wages paid or payable to an employee are exempt from payroll tax if:

- (a) the wages are paid or payable for a period during which the employee is a trainee under a pre-1 December 2017 training contract; and

- (b) the wages would have been exempt from payroll tax under former section 41D, as modified by clause 16 of Schedule 1 (as that clause was in force immediately before commencement day).

**21. Exemption for wages paid or payable: training contracts lodged for registration between 1 December 2017 and 30 June 2019**

This clause preserves the exemption for wages payable on or after 1 July 2019 to new employee trainees whose training contracts were lodged with the Department of Training and Workforce Development between 1 December 2017 and 30 June 2019.

Subclause (1) provides the clause applies to a training contract (the **pre-1 July 2019 training contract**) if the employee is referred to as a trainee in accordance with the VET Act and the training contract was lodged with the Department of Training and Workforce Development between 1 December 2017 and 30 June 2019.

Subclause (2) provides that, despite the amendments in this Bill to remove the exemption for trainees, wages paid or payable to an employee are exempt from payroll tax if:

- (a) the wages are paid or payable for a period during which the employee is a trainee under the pre-1 July 2019 training contract; and
- (b) the wages would have been exempt from pay-roll tax under former section 41D.