



New South Wales

Small Business Grants (Employment Incentive) Bill 2015

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to assist in the creation of new jobs by establishing a grant scheme that gives small business employers an incentive to increase the number of their full time equivalent employees for a period of at least a year.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 provides for the object of the proposed Act, as set out in the Overview.

Clause 4 defines certain words and expressions used in the proposed Act.

Part 2 Grant scheme

Clause 5 establishes a grant scheme for small business employers who employ people in new jobs on or after 1 July 2015.

Clause 6 provides that an employer is entitled to a grant under the grant scheme (subject to the other provisions of the proposed Act) in respect of the employment of a person if the employment is eligible employment.

Clause 7 provides that employment is *eligible employment* if:

- (a) the employer is an eligible small business, and
- (b) a person is employed (as a full time or part time employee) in a position that is a new job, and
- (c) the employment commences on or after 1 July 2015 and before 1 July 2019, and
- (d) the employment is maintained for the minimum employment period, and
- (e) the services of the employee are performed wholly or mainly in New South Wales, and
- (f) the employment satisfies any further eligibility criteria set out in the grant criteria, and
- (g) the employment is not excluded from the grant scheme.

Clause 8 defines what is meant by an *eligible small business*. An employer is an eligible small business if the employer has an ABN, carries on a business for the whole of the grant period and is not liable to pay payroll tax.

Clause 9 defines what is meant by a *new job*. A position is a new job if the employment of a person in that position results in a sustained increase in the number of the employer's full time equivalent employees (that is, an increase that is sustained for 1 year).

Clause 10 provides for the calculation of the number of full time equivalent employees of an employer.

Clause 11 provides for the *minimum employment period* in respect of a new job. The minimum employment period is 1 year starting on the date eligible employment is claimed to commence. A person must be employed in the position for which the grant is claimed for the whole of the minimum employment period (disregarding short vacancies).

Clause 12 permits a grant to be paid in circumstances where all the criteria for eligible employment have not been met. This is to occur subject to a condition that those criteria are met. However, the Chief Commissioner of State Revenue (the *Chief Commissioner*) may pay a grant without the criteria being met if satisfied that the failure to meet the criteria was due to circumstances beyond the control of the employer.

Clause 13 authorises the Minister for Finance, Services and Property (the *Minister*), by order published on the NSW legislation website, to determine further criteria for the payment of grants under the proposed Act. This order constitutes the *grant criteria*.

Clause 14 sets out the types of employment that are excluded from the grant scheme.

Clause 15 permits a grant to be claimed in respect of the employment of an internally transferred employee in a new job. A person is an internally transferred employee if the person's employment is transferred from one employer (the *former employer*) to another employer (the *new employer*) and either or both of the following applies:

- (a) the former and new employers are members of the same group for payroll tax purposes,
- (b) the transfer occurs because the business or undertaking of the former employer is merged with, or taken over or otherwise acquired by, the new employer.

Clause 16 provides for the closure of the grant scheme on a date appointed by the grant criteria (or on 30 June 2019, if no date is appointed).

Part 3 Calculation of grant

Clause 17 provides that a grant can be claimed for the grant period only. The *grant period* is the period commencing on the date the eligible employment is claimed to commence and ending on the first anniversary of that date.

Clause 18 provides that the grant payable is \$2,000 for each full time employee and a proportional amount for a part time employee.

Clause 19 enables the Chief Commissioner to determine the number of full time equivalent employees of an employer, and the amount of the grant, by agreement with the claimant in certain cases.

Part 4 Payment of grant

Division 1 Registration and claim for grant

Clause 20 provides that an employer must be registered as a claimant to claim a grant under the grant scheme.

Clause 21 enables the Chief Commissioner to register an employer as a claimant in respect of the employment of a person in a specified position.

Clause 22 sets out the procedure for applying to be registered as a claimant.

Clause 23 provides that a person cannot be registered as a claimant for a grant in respect of the employment of a person if the application for registration is made more than 3 months after the scheme closure date.

Clause 24 sets out the procedure for making a claim for a grant.

Division 2 Decision with respect to claim

Clause 25 provides that the Chief Commissioner is to decide whether a grant is payable in respect of a claim and the amount of the grant payable.

Clause 26 gives the Chief Commissioner power to refuse a claim if the Chief Commissioner is of the opinion that a claimed increase in the number of full time equivalent employees of an employer is contrived for the purpose of claiming a grant under the grant scheme.

Clause 27 gives the Chief Commissioner power to refuse a claim if the Chief Commissioner is of the opinion that an employer has failed to disclose material information.

Clause 28 sets out how the grant is to be paid.

Clause 29 enables the Chief Commissioner to correct a decision relating to a claim.

Clause 30 requires the Chief Commissioner to notify a claimant of a decision to grant or refuse a claim or vary or reverse an earlier decision on a claim and to include reasons for the decision.

Part 5 Repayment of grant

Clause 31 authorises the Chief Commissioner to require a claimant to repay a grant in certain circumstances. The provision also authorises the Chief Commissioner to charge interest on an overdue payment and to charge a penalty for a dishonest claim.

Clause 32 authorises the Chief Commissioner to require a person (other than the claimant) to whom a grant is paid in error to repay the grant. The provision also authorises the Chief Commissioner to charge interest on an overdue payment.

Clause 33 authorises the Chief Commissioner to recover from a relevant third party any amount that is payable by a grant recipient but remains unpaid.

Clause 34 authorises the Chief Commissioner to enter into an arrangement for the payment of a liability under the proposed Act by instalments.

Clause 35 authorises the Chief Commissioner to write off liabilities under the proposed Act.

Clause 36 authorises the Chief Commissioner to remit, in whole or in part, an amount a person is required to pay under the proposed Act.

Part 6 Objections and reviews

Division 1 Objections

Clause 37 enables an objection to be made to decisions made by the Chief Commissioner under the proposed Act.

Clause 38 sets a time limit for the lodging of an objection.

Clause 39 requires the grounds for an objection to be stated in the notice of objection.

Clause 40 provides that an objector has the onus of proving an objector's case.

Clause 41 provides that the Chief Commissioner may allow or disallow an objection and reverse, vary or confirm the original decision.

Clause 42 requires the Chief Commissioner to give an objector notice of the determination of an objection.

Division 2 Reviews

Clause 43 enables an objector who is dissatisfied with the Chief Commissioner's determination of an objection to apply to the Civil and Administrative Tribunal for an administrative review of the Chief Commissioner's original decision.

Clause 44 provides that the Civil and Administrative Tribunal may confirm, vary or reverse the original decision and make further orders as to costs or otherwise.

Part 7 Administration

Division 1 Administration generally

Clause 45 provides that the Chief Commissioner is responsible to the Minister for the administration of the grant scheme.

Clause 46 authorises the Chief Commissioner to delegate functions related to the administration of the grant scheme.

Clause 47 authorises the Chief Commissioner to appoint persons as authorised officers. A person who is an authorised officer for the purposes of a taxation law (as referred to in section 68 of the *Taxation Administration Act 1996*) is taken to be an authorised officer for the purposes of the proposed Act.

Division 2 Powers of investigation

Clause 48 authorises the Chief Commissioner to carry out an *authorised investigation* for the purposes of the proposed Act, including in relation to whether an application or a claim has been properly made, whether a claimant who has received a grant was eligible for the grant and any other matter reasonably related to the administration of the proposed Act.

Clause 49 authorises the Chief Commissioner to exercise certain powers in connection with authorised investigations.

Clause 50 gives the Chief Commissioner access to public documents without the payment of fees.

Clause 51 authorises the Chief Commissioner to enter premises if the Chief Commissioner has reason to believe or suspect that there are documents at the premises that are relevant to the administration of the proposed Act. Entry cannot be made to residential premises without either consent or a search warrant.

Clause 52 provides that an officer who has entered premises under the proposed Part may require records to be produced, ask questions and require reasonable assistance and facilities to be provided.

Clause 53 authorises the Chief Commissioner or an authorised officer to take possession of a document and to take copies, extracts or notes of it.

Clause 54 deals with applications for search warrants.

Clause 55 makes it an offence to prevent the Chief Commissioner or an authorised officer from exercising a function under the proposed Part, to hinder or obstruct the Chief Commissioner or an authorised officer in the exercise of such a function, or to refuse or fail to comply with a requirement made by the Chief Commissioner or an authorised officer. The maximum penalty is 100 penalty units (currently, \$11,000).

Clause 56 provides a defence to a prosecution for an offence under the proposed Part if the court is satisfied that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement concerned or that the defendant complied with the requirement to the extent of his or her ability to do so.

Clause 57 makes it clear that the powers conferred on the Chief Commissioner and authorised officers by the proposed Act can be exercised in conjunction with powers conferred by taxation legislation.

Part 8 Miscellaneous

Clause 58 makes it an offence to knowingly give false or misleading information to an authorised officer or in relation to an application or claim under the proposed Act. The maximum penalty is 100 penalty units (currently, \$11,000).

Clause 59 protects the confidentiality of certain information obtained in the course of work related to the administration of the proposed Act.

Clause 60 enables evidence relating to grants or the imposition of penalties to be given by a certificate signed by the Chief Commissioner.

Clause 61 provides that offences under the proposed Act are to be dealt with summarily and proceedings for an offence may be commenced within 3 years of the date on which it is alleged an offence was committed.

Clause 62 provides for the appropriation of funds from the Consolidated Fund for the payment of grants under the proposed Act.

Clause 63 protects persons involved in the administration of the proposed Act from personal liability.

Clause 64 confers power to make regulations under the proposed Act.

Clause 65 provides for the repeal of the proposed Act on 1 July 2023.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions.

Schedule 2 Amendment of Acts

Schedule 2.1 amends the *Law Enforcement (Powers and Responsibilities) Act 2002* to provide for the issue of search warrants under the proposed Act.

Schedule 2.2 amends the *Taxation Administration Act 1996* to permit a tax officer to disclose information obtained under or in relation to the administration of a taxation law in connection with the administration or execution of the proposed Act or the *Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011*.