

Western Australia

**Pay-roll Tax (Indigenous Wages) Rebate
Act 2012**

As at 03 Sep 2012

No. 27 of 2012

Extract from www.slp.wa.gov.au, see that website for further information

Pay-roll Tax (Indigenous Wages) Rebate Act 2012

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Defined Terms

Western Australia

Pay-roll Tax (Indigenous Wages) Rebate Act 2012

No. 27 of 2012

An Act to provide a rebate on pay-roll tax paid on wages paid to certain indigenous persons, and for related matters.

[Assented to 3 September 2012]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Pay-roll Tax (Indigenous Wages) Rebate Act 2012*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 other than sections 3, 4 and 5 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

3. Terms used

- (1) If a term is given a meaning in the *Pay-roll Tax Assessment Act 2002* or the *Taxation Administration Act 2003*, it has the same meaning in this Act unless the contrary intention appears.

- (2) In this Act —

Australia-wide wages means WA taxable wages and interstate taxable wages;

eligible employee has the meaning given in section 8;

eligible employer, for an assessment year, has the meaning given in section 7;

indigenous wages subsidy means —

- (a) a wages subsidy provided by the Commonwealth to employers who employ indigenous persons, under the scheme known as the Indigenous Employment Program;
or
- (b) a wages subsidy, provided by the Commonwealth (directly or indirectly) to employers who employ indigenous persons, that is prescribed for the purposes of this definition;

WA indigenous wages means WA taxable wages paid or payable to or in relation to an eligible employee of an eligible employer.

- (3) In this Act, a reference to a period in an assessment year includes a reference to the whole of the year unless the contrary intention appears.

4. Pro rata amounts

In this Act, a reference to an amount pro rata in relation to a period or periods is a reference to that amount multiplied by —

$$\frac{D}{365}$$

where —

D is the total number of days in the period or periods.

5. Relationship with *Taxation Administration Act 2003* and *Pay-roll Tax Assessment Act 2002*

- (1) The following provisions of the *Taxation Administration Act 2003* apply, as described, in relation to the administration and enforcement of this Act as if this Act were, for that purpose, specified as a taxation Act in section 3(1) of that Act —
- (a) Part 4 applies, as limited by subsection (2), in relation to a decision under this Act as if —
 - (i) the decision were a decision referred to in section 34(1)(b) of that Act; and
 - (ii) a person liable to repay an overpaid amount under section 10 of this Act were a taxpayer;
 - (b) Part 5 Division 1 and Part 6 Division 1 apply as if —
 - (i) an overpaid amount under section 10 of this Act were tax; and
 - (ii) a person liable to repay an overpaid amount under section 10 of this Act were a taxpayer.
- (2) An objection to or review of a decision made under this Act cannot be made or sought under the *Taxation Administration*

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Act 2003 Part 4 if the objection or review relies upon objecting to or seeking the review of an assessment of pay-roll tax.

- (3) The *Pay-roll Tax Assessment Act 2002* section 43 applies in relation to this Act as if this Act were a pay-roll tax Act as defined in the Glossary to that Act.

Part 2 — Rebate of pay-roll tax on WA indigenous wages

6. Rebate of pay-roll tax on WA indigenous wages

- (1) An employer who was an eligible employer for an assessment year commencing on or after 1 July 2012 is entitled to a rebate of pay-roll tax on WA indigenous wages paid or payable during the year, calculated in accordance with section 9.
- (2) Subject to section 12(2), the rebate to which an eligible employer is entitled is to be paid by the Commissioner to the employer.

7. Eligible employer

- (1) An employer is an eligible employer for an assessment year if —
 - (a) the employer was registered during the whole or part of the year; and
 - (b) the employer employed an eligible employee during the whole or part of the year; and
 - (c) the employer meets the threshold requirement in subsection (2); and
 - (d) the employer, and the DGE of each group of which the employer was a member during the year, have lodged all returns for the year by 31 December following the end of the year.
- (2) To meet the threshold requirement for the purposes of subsection (1)(c), the employer must satisfy at least one of the following —
 - (a) if the employer was a non-group employer for the whole of the year — the employer paid or was liable to pay Australia-wide wages, less rebatable WA indigenous wages, during the year of less than \$15 million;

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- (b) if the employer was a non-group employer for only part of the year — the employer paid or was liable to pay Australia-wide wages, less rebatable WA indigenous wages, during the period or periods, in the year, during which the employer was a non-group employer of less than \$15 million pro rata;
 - (c) if the employer was a member of a particular group for the whole of the year — the group paid or was liable to pay Australia-wide wages, less rebatable WA indigenous wages, during the year of less than \$15 million;
 - (d) if the employer was a member of a particular group for only part of the year — the group paid or was liable to pay Australia-wide wages, less rebatable WA indigenous wages, during the period, in the year, during which the group existed of less than \$15 million pro rata.
- (3) In determining what are rebatable WA indigenous wages for the purposes of subsection (2), the employer is to be treated as if the employer were an eligible employer for the relevant period.
- (4) In subsections (2) and (3) —
rebatable WA indigenous wages means WA indigenous wages in respect of which a rebate is payable under section 6.
- (5) For the purposes of subsection (1)(a), an employer is to be taken to have been registered during a month in an assessment year if —
- (a) under the *Pay-roll Tax Assessment Act 2002* section 24(1) or (2), the employer was required to apply for registration on the basis of the wages that the employer paid or was liable to pay during the month; and
 - (b) the employer has made an application for registration under section 24 of that Act.

8. Eligible employee

- (1) If an employer receives or received an indigenous wages subsidy in respect of a new employee, the employee is an *eligible employee* at any time, while the employee is an employee of the employer, during the 24 months commencing on the day on which the employee first commenced employment with the employer.
- (2) An employee of an employer is a new employee if the employee —
 - (a) commences employment with the employer on or after 1 July 2012; and
 - (b) was not an employee of the employer, or of any other employer in a group of which the employer is a member, at any time prior to the commencement of employment referred to in paragraph (a).

9. Calculation of rebate

- (1) If an eligible employer was a non-group employer for the whole of an assessment year, the rebate for the employer for the year is equal to the amount of pay-roll tax that the employer was liable to pay for WA indigenous wages paid or payable during the year.
- (2) If an eligible employer —
 - (a) was a non-group employer for only part of an assessment year; and
 - (b) meets the threshold requirement in section 7(2)(b) for the period or periods, in the year, during which the employer was a non-group employer,

the rebate for the employer for the period or periods is equal to the total amount of pay-roll tax that the employer was liable to pay for WA indigenous wages paid or payable during the period or periods.

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- (3) If an eligible employer was a member of a particular group for the whole of an assessment year, the rebate for the group for the year is equal to the amount of pay-roll tax that the group was liable to pay for WA indigenous wages paid or payable during the year.
- (4) If —
- (a) an eligible employer was a member of a particular group for only part of an assessment year; and
 - (b) the group meets the threshold requirement in section 7(2)(d) for the period, in the year, during which the group existed,
- the rebate for the group for the period is equal to the amount of pay-roll tax that the group was liable to pay for WA indigenous wages paid or payable during the period.
- (5) If, in relation to an eligible employer who was a member of a particular group for a period in an assessment year, a rebate is calculated for the group, the employer is entitled to the same proportion of the rebate as the amount of WA indigenous wages paid or payable by the employer during the period bears to the amount of WA indigenous wages paid or payable by the group during the period, in the year, during which the group existed.
- (6) The amounts to be used in calculating the rebate for an eligible employer are to be taken from the most recent assessment of the employer's or group's pay-roll tax liability for the assessment year.

Part 3 — Overpayment and underpayment of rebate

10. Overpayment of rebate

- (1) If the Commissioner is satisfied, whether as a result of an assessment or otherwise, that —
- (a) a rebate has been paid to a person who was not entitled to a rebate; or
 - (b) a rebate has been overpaid to an eligible employer,
- the person to whom the rebate was paid must repay the overpaid amount except to the extent to which, within 30 days after the day on which notice of the overpayment is issued under section 15, the Commissioner credits the overpaid amount under section 12(3).
- (2) Any amount to be repaid under subsection (1) must be paid to the Commissioner —
- (a) within 30 days after the day on which notice of the overpayment is issued under section 15; or
 - (b) in accordance with a tax payment arrangement.
- (3) A reference in subsection (1) to a rebate paid, or overpaid, to a person includes a reference to amounts credited under section 12(2) in relation to the person.

11. Underpayment of rebate

If the Commissioner is satisfied, whether as a result of an assessment or otherwise, that an eligible employer has been paid less than the amount of rebate to which the employer is entitled, the Commissioner must pay, or credit under section 12(2), the employer with the amount of the underpayment.

12. Amounts of tax and rebate may be offset against each other

- (1) In this section —
- pay-roll tax liability*** means —
- (a) a primary liability for pay-roll tax; and

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- (b) a liability to pay another amount under a taxation Act (such as penalty tax, interest or costs) in connection with that primary liability.
- (2) Instead of paying a rebate, or any additional amount under section 11, to an eligible employer, the Commissioner may credit all or part of the rebate or amount against —
 - (a) any existing unpaid pay-roll tax liability of that employer; or
 - (b) any overpaid amount of rebate to be repaid by the person to the Commissioner under the *Pay-roll Tax Rebate Act 2010* or the *Pay-roll Tax Rebate Act 2012*.
- (3) Instead of —
 - (a) refunding pay-roll tax overpaid by a person in accordance with the *Taxation Administration Act 2003* section 54(1); or
 - (b) paying a rebate under the *Pay-roll Tax Rebate Act 2010*, or any additional amount under section 10 of that Act; or
 - (c) paying a rebate under the *Pay-roll Tax Rebate Act 2012*, or any additional amount under section 10 of that Act,the Commissioner may credit all or part of the refund, rebate or amount against any overpaid amount (of rebate) otherwise to be repaid by the person under section 10 of this Act.

Part 4 — Miscellaneous

13. Prescription of indigenous wages subsidy

Regulations prescribing a wages subsidy for the purposes of the definition of *indigenous wages subsidy* in section 3(2) may be made and published during a year for which the prescription is expressed to have effect.

14. Wages prepaid before 1 July in an assessment year

If, in relation to an eligible employer, the Commissioner is satisfied that —

- (a) the employer paid wages before 1 July in an assessment year; and
- (b) the employer was not liable to pay the wages until on or after that day; and
- (c) if the employer had paid the wages on or after that day, the amount of rebate otherwise payable to the employer would be reduced,

the amount of rebate payable to the employer must be calculated as if the wages were paid on that day.

15. Notices about rebate

- (1) The Commissioner must give a notice to a person —
 - (a) if a rebate is to be paid to the person; or
 - (b) if satisfied that an overpayment or underpayment of rebate has been made to the person.
- (2) The notice must —
 - (a) be in a form approved by the Commissioner; and
 - (b) state the amount of the rebate, overpayment or underpayment; and

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- (c) if an amount is to be repaid by the person under section 10(1) — indicate the due date for payment of the amount and state the amount to be repaid; and
- (d) give details of any credit made under section 12.

16. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to this Act, including —

- (a) the calculation of a rebate;
- (b) records to be kept in relation to the entitlement to a rebate;
- (c) notification to be given regarding the rebate to eligible employers or other persons.



Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
Australia-wide wages	3(2)
eligible employee	3(2), 8(1)
eligible employer	3(2)
indigenous wages subsidy	3(2)
pay-roll tax liability	12(1)
rebatable WA indigenous wages	7(4)
WA indigenous wages	3(2)