

Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011 No 19

[2011-19]



New South Wales

Status Information

Currency of version

Historical version for 25 October 2011 to 5 January 2012 (accessed 29 November 2024 at 13:36)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2011 No 62](#) (not commenced — to commence on 6.1.2012)
- **Proposed repeal**
The Act is to be repealed on 1.7.2018 — see sec 63.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 16 November 2011

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New South Wales

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Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011 No 19



New South Wales

An Act to establish a payroll tax rebate scheme to assist in the creation of new jobs.

Part 1 Preliminary

1 Name of Act

This Act is the *Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Object of Act

- (1) The object of this Act is to assist in the creation of new jobs by establishing a payroll tax rebate scheme that gives employers an incentive to increase the number of their full time equivalent employees for a period of at least 2 years.
- (2) It is the intention of Parliament that the rebate scheme assist in the creation of 100,000 new jobs, with 60% of those jobs being in the metropolitan area and 40% of those jobs being in the non-metropolitan area.
- (3) The Minister is to exercise his or her functions under this Act having regard to this section.

4 Definitions

- (1) In this Act:

administration of this Act includes the execution and enforcement of this Act.

authorised officer—see section 45.

claimant for a rebate includes a former claimant for a rebate.

eligible employment—see section 7.

exercise a function includes perform a duty.

full time employee means an employee whose standard or average hours of work per week is 35 hours or more.

full time equivalent employee—see section 9.

function includes a power, authority or duty.

maximum vacancy period—see section 10.

metropolitan area means the following parts of the State:

(a) the Sydney metropolitan area—being the area constituted by the following local government areas:

Ashfield, Auburn, Bankstown, Baulkham Hills, Blacktown, Blue Mountains, Botany Bay, Burwood, Camden, Campbelltown, Canada Bay, Canterbury, Fairfield, Gosford, Hawkesbury, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, Strathfield, Sutherland Shire, Sydney, Warringah, Waverley, Willoughby, Wollondilly, Woollahra, Wyong,

(b) the Newcastle local government area,

(c) the Wollongong local government area.

minimum employment period—see section 10.

new job—see section 8.

non-metropolitan area means that part of the State that does not fall within the metropolitan area.

part time employee means an employee who is not a full time employee.

premises includes any building, structure, vehicle, vessel or aircraft and any place, whether built on or not.

rebate means a rebate under this Act.

rebate criteria—see section 11.

rebate scheme means the rebate scheme established by this Act.

registered claimant—see section 19.

relevant third party—see section 31.

scheme closure date—see section 13.

- (2) Other expressions used in this Act have the same meaning as they have in the [Payroll Tax Act 2007](#).
- (3) For the purposes of this Act, the anniversary of employment commencing on 29 February in a leap year is taken to be 1 March in a year that is not a leap year.
- (4) Notes included in this Act do not form part of this Act.

Part 2 Rebate scheme

5 Rebate scheme

There is established by this Act a rebate scheme for payroll tax paid or payable by employers who employ people in new jobs on or after 1 July 2011.

6 Entitlement to rebate

- (1) An employer is entitled to a rebate under the rebate scheme in respect of the employment of a person if the employment is eligible employment.
- (2) The entitlement to a rebate is subject to the other provisions of this Act.

7 Eligible employment

Employment is ***eligible employment*** if:

- (a) a person is employed (as a full time employee or part time employee) in a position that is a new job, and
- (b) the employment commences on or after 1 July 2011, and
- (c) the employment is maintained for the minimum employment period, and
- (d) the services of the employee are performed wholly or mainly in New South Wales, and
- (e) the employment satisfies any further eligibility criteria set out in the rebate criteria, and
- (f) the employment is not excluded from the rebate scheme.

8 What is a new job

- (1) A position is a ***new job*** if the employment of a person in that position results in a sustained increase in the employer's full time equivalent employees.
- (2) The employment of a person results in a sustained increase in an employer's full time equivalent employees if the number of full time equivalent employees of the employer on both the first and second anniversary of the date the eligible employment is

claimed to commence is higher than the number of full time equivalent employees of the employer on that commencement date.

- (3) A rebate may be paid on a claim before a determination can be made as to whether the employment has resulted in a sustained increase in an employer's full time equivalent employees.
- (4) However, it is a condition of the payment of a rebate in respect of any employment that the employment results in a sustained increase in the employer's full time equivalent employees, subject to subsection (5).
- (5) The Chief Commissioner may pay a rebate claimed in respect of a year of employment even if there is not a sustained increase in an employer's full time equivalent employees if satisfied that the increase did not occur because of circumstances beyond the employer's control.
- (6) The Chief Commissioner may impose conditions on the payment of the rebate in such a case.
- (7) In such a case, this Act applies as if the rebate had been paid in respect of the employment of a person in a new job.
- (8) A claimant is required to repay an amount paid by way of rebate if a condition imposed by or under this section is contravened.

9 Calculation of number of full time equivalent employees

- (1) The number of full time equivalent employees of an employer on a date is to be calculated as follows:

$$F + A/B$$

where:

F is the number of full time employees of the employer on the relevant date.

A is the total number of hours worked in the employer's preceding pay period by all part time employees of the employer employed on the relevant date.

B is the average number of hours worked in the employer's preceding pay period by all full time employees of the employer employed on the relevant date.

- (2) To calculate the number of full time equivalent employees of an employer on the date eligible employment is claimed to have commenced, in connection with a claim for a rebate for that employment, the employee in respect of whom the rebate is claimed and the hours worked by that employee are to be disregarded.
- (3) To calculate the average number of hours worked by full time employees of an

employer, overtime is to be excluded.

- (4) In this section, the **preceding pay period** is the last pay period to end on or before the date for which the calculation is being made.

10 Minimum employment period

- (1) The **minimum employment period** is a period of 2 years starting on the date the eligible employment is claimed to commence.
- (2) Employment is maintained for the minimum employment period if during the minimum employment period there is always a person employed in the position in respect of which the rebate is claimed.
- (3) For the purpose of determining whether employment is maintained for the minimum employment period, a vacancy in a position is to be disregarded if the number of days vacant does not exceed the maximum vacancy period.
- (4) The **maximum vacancy period** is a total of 30 days in each year of employment in respect of which a rebate is claimed.
- (5) A rebate may be paid on a claim before a determination can be made as to whether the employment has been maintained for the minimum employment period.
- (6) However, it is a condition of the payment of a rebate in respect of employment that the employment is maintained for the minimum employment period, subject to subsection (7).
- (7) The Chief Commissioner may pay a rebate in respect of a year of employment even if there is a vacancy in the position that exceeds the maximum vacancy period if satisfied that the length of the vacancy concerned is due to circumstances beyond the employer's control.
- (8) The Chief Commissioner may impose conditions on the payment of the rebate in such a case.
- (9) A claimant is required to repay an amount paid by way of rebate if a condition imposed by or under this section is contravened.

11 Rebate criteria

- (1) The Minister may, by order published on the NSW legislation website, determine further criteria for the payment of rebates under this Act (the **rebate criteria**).

Note—

Section 43 of the [Interpretation Act 1987](#) provides that a power to make an order includes a power to amend or repeal any order made in exercise of that power.

- (2) Without limiting subsection (1), the rebate criteria may provide for:

- (a) further criteria for eligibility for a rebate, and
 - (b) any other matter that is required or permitted to be dealt with by the rebate criteria under this Act.
- (3) The rebate criteria may confer functions on the Chief Commissioner.
- (4) The rebate criteria must not be inconsistent with this Act or the regulations.
- (5) An amendment to the rebate criteria may, if the amendment so provides, extend to employment that commenced before the date of publication of the amendment on the NSW legislation website.
- (6) However, any such amendment does not affect an employer's eligibility for a rebate in respect of a year of employment that started before the date of publication of the amendment, except by agreement between the Chief Commissioner and the employer concerned.
- (7) Subsection (6) does not apply in respect of an amendment to the rebate criteria to the extent that it appoints a scheme closure date.

12 Excluded employment

- (1) The employment of a person by an employer is excluded from the rebate scheme if:
- (a) the person was employed by the employer at any time within the period of 12 months before it is claimed the eligible employment, or the employment of the person in the position concerned, commenced, or
 - (b) the employer (***the current employer***) is a member of a group (within the meaning of Part 5 of the [Payroll Tax Act 2007](#)) and the person was employed by another member of that group within 12 months before employment with the current employer commenced, or
 - (c) the person's employment with the employer is a continuation of employment with another employer, or
 - (d) any wages paid or payable by the employer to the person are not taxable wages (within the meaning of the [Payroll Tax Act 2007](#)), or
 - (e) any wages paid or payable by the employer to the person are exempt wages (within the meaning of the [Payroll Tax Act 2007](#)), or
 - (f) the employer is entitled to a rebate of payroll tax paid in respect of any wages paid or payable to the person under the [Payroll Tax Act 2007](#), or
 - (g) a rebate, subsidy, or other assistance is payable to the employer in respect of the employment of the person by the State, or

- (h) the employer is taken to be the employer of the person under Division 7 of Part 3 of the *Payroll Tax Act 2007* (which relates to contractors), or
 - (i) the employer is taken to be the employer of the person under Division 8 of Part 3 of the *Payroll Tax Act 2007* (which relates to employment agents), or
 - (j) the employer is the Crown in right of New South Wales or in any of its other capacities or a body representing the Crown in right of New South Wales or in any of its other capacities, or
 - (k) the employer is a public, local or municipal body or authority constituted under the law of the Commonwealth or of a State or Territory.
- (2) A person's employment with an employer (***the new employer***) is a continuation of employment with another employer (***the previous employer***) if:
- (a) the person was, within 12 months before the date on which the person commenced employment with the new employer, employed by the previous employer in a business or undertaking, and
 - (b) that business or undertaking has been the subject of a merger with the business or undertaking of the new employer or has been taken over or otherwise acquired by the new employer.
- (3) To avoid doubt, this section applies to the employment of any person in the position for which the rebate is claimed during the minimum employment period.
- (4) Accordingly, if any person employed in the position during the minimum employment period is a person whose employment is excluded from the rebate scheme, the employment is not (and is taken never to have been) eligible employment.
- (5) This section is subject to any exceptions provided for by the rebate criteria.
- (6) The rebate criteria may specify other circumstances in which the employment of a person is excluded from the rebate scheme.

13 Closure of rebate scheme

- (1) The rebate criteria may appoint a date as a scheme closure date.
- (2) A date may be appointed as a scheme closure date for the metropolitan area or the non-metropolitan area, or both.
- (3) For the purposes of this Act, the ***scheme closure date*** for an area is:
 - (a) the date appointed by the rebate criteria as the scheme closure date for the area, or
 - (b) if no date is appointed by the rebate criteria as the scheme closure date for the

area, 30 June 2013.

- (4) An order appointing a scheme closure date must be published on the NSW legislation website no less than 30 days before the scheme closure date so appointed.

Note—

A person cannot apply to be registered as a rebate claimant in respect of the employment of a person after the scheme closure date for the area in which the person is employed.

Part 3 Calculation of rebate

14 Periods in respect of which rebate can be claimed

- (1) A rebate in respect of eligible employment can be claimed for the following periods only:
 - (a) the first year of employment,
 - (b) the second year of employment.
- (2) The first year of employment is the period commencing on the date the eligible employment is claimed to commence and ending on the first anniversary of that date.
- (3) The second year of employment is the period commencing the day after that first anniversary and ending on the second anniversary of the date the eligible employment is claimed to commence.

Note—

A rebate cannot be claimed until the end of the year of employment concerned.

15 Amount of rebate

- (1) The rebate payable for a year of employment is:
 - (a) \$2,000 for a full time employee, or
 - (b) the relevant proportion for a part time employee.
- (2) The relevant proportion is the amount calculated as follows:

$$\$2,000 \times C/D$$

where:

C is the number of hours worked by the employee in respect of which the rebate is claimed during the year of employment concerned.

D is the average number of hours worked by all full time employees of the employer during that same period.

- (3) The rebate payable for a year of employment is taken to be the rebate payable for a part time employee if:
 - (a) a person is employed in the position in respect of which the rebate is claimed otherwise than as a full time employee at any time during the year of employment, or
 - (b) the position in respect of which the rebate is claimed is vacant during the year of employment for a period exceeding the maximum vacancy period and the rebate is paid despite the vacancy.
- (4) To calculate the average number of hours worked by full time employees of an employer, overtime is to be excluded.
- (5) An amount paid by way of rebate is not to exceed the maximum rebate payable for a year of employment.

16 Maximum rebate payable

- (1) The maximum rebate payable for a year of employment is the amount of the employer's net payroll tax liability for the financial year in which the claim for the rebate is made.
- (2) An employer's **net payroll tax liability** is the correct amount of payroll tax payable by the employer (within the meaning of Part 6 of the [Payroll Tax Act 2007](#)) less any rebates of payroll tax paid or payable to the employer in respect of that financial year under that Act.
- (3) This section does not prevent the Chief Commissioner from paying a rebate before an assessment is made of an employer's net payroll tax liability.
- (4) However, a claimant is required to repay any amount paid by way of rebate in excess of the maximum rebate payable.

17 Compromise calculation

- (1) In a difficult case, the Chief Commissioner may determine the number of full time equivalent employees of an employer, or the rebate payable to an employer, by any method agreed between the claimant and the Chief Commissioner.
- (2) A difficult case is any case in which the Chief Commissioner and a claimant agree that it is difficult or impracticable for the relevant determination to be made as otherwise provided by this Act without undue delay or expense (whether because of the complexity or uncertainty of the case or for any other reason).
- (3) The Chief Commissioner cannot vary or reverse a decision to pay a rebate in accordance with a determination made under this section except:

- (a) with the agreement of the claimant, or
- (b) in a case where the decision was procured by fraud or there was a deliberate failure to disclose material information.

Part 4 Payment of rebate

Division 1 Registration and claim for rebate

18 Rebate to be paid only to registered claimants

A rebate may be claimed in respect of eligible employment only if the employer is a registered claimant in respect of the employment concerned.

19 Chief Commissioner to register claimants

- (1) The Chief Commissioner may register an employer as a claimant in respect of the employment of a person in a specified position.
- (2) A **registered claimant** is an employer registered by the Chief Commissioner as a claimant.

20 Application for registration as claimant

- (1) An employer may apply to the Chief Commissioner for registration as a claimant in respect of the employment of a person in a specified position.
- (2) The application must:
 - (a) be made in a form approved by the Chief Commissioner, and
 - (b) contain or be accompanied by the information specified in the form.
- (3) An application can be made only by an employer who is registered as an employer under the [Payroll Tax Act 2007](#).
- (4) An application must be made within 30 days after the employment to which the application relates first commences or within such further period as the Chief Commissioner may allow in respect of the employer.

21 No registration after scheme closure date

- (1) The Chief Commissioner is not to register an employer as a claimant in respect of the employment of a person if the application for registration is made after the scheme closure date for the area in which the person is employed.
- (2) The rebate criteria may make provision for determining the area in which a person is employed.

22 Claim required at the end of each year

- (1) A rebate may be paid to a registered claimant in respect of a year of employment only if the rebate is claimed in accordance with this section.
- (2) An employer who is a registered claimant may claim the rebate payable for a year of employment at the end of that year.
- (3) The claim must be made no later than 30 days after the end of the year of employment concerned or within such further period as the Chief Commissioner may allow in respect of the employer.
- (4) A claim must:
 - (a) be made to the Chief Commissioner, and
 - (b) be made in a form approved by the Chief Commissioner, and
 - (c) contain or be accompanied by the information specified in the form.

Division 2 Decision with respect to claim

23 Chief Commissioner to decide claim

The Chief Commissioner is to decide whether a rebate is payable in respect of a claim and the amount of the rebate payable.

24 Discretion to refuse contrived claim

- (1) The Chief Commissioner may refuse to pay a rebate, or require repayment of a rebate already paid, 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 rebate under the rebate scheme.
- (2) Without limiting subsection (1), the following is evidence that an increase in the number of full time equivalent employees is contrived:
 - (a) the fact that the number of full time equivalent employees of an employer at any time during the period of 3 months before the employment commencement date is higher than the number of full time equivalent employees of the employer on the employment commencement date,
 - (b) the fact that the number of full time equivalent employees of an employer is, for a period exceeding 30 days during a year of employment for which a rebate is claimed, lower than the number of full time equivalent employees of the employer on a relevant anniversary date.
- (3) In this section:

employment commencement date means the date on which eligible employment is claimed to commence.

relevant anniversary date is the first or second anniversary of the employment commencement date.

25 Payment of rebate

- (1) A rebate is to be paid:
 - (a) to the claimant, or
 - (b) to some other person to whom the claimant directs in writing that the rebate be paid.
- (2) A rebate may be paid by electronic funds transfer, by cheque or in any other way the Chief Commissioner thinks appropriate.

26 Use of rebate to offset tax liability

- (1) The Chief Commissioner may, instead of paying a rebate, apply the amount of the rebate, or part of the rebate, towards a liability of the claimant for payroll tax or any other tax of the State.
- (2) Consent of the claimant is not required.
- (3) An amount so applied is taken to be an amount paid by way of rebate for the purposes of this Act.

27 Power to correct decision

- (1) If the Chief Commissioner decides a claim, and is later satisfied (independently of an objection under this Act) that the decision is incorrect, the Chief Commissioner may vary or reverse the decision.
- (2) A decision cannot be varied or reversed under this section more than 5 years after it was made.
- (3) The 5-year time limit on varying or reversing a decision does not apply to a decision that was made on the basis of false or misleading information provided by a claimant or by a person on behalf of the claimant.

28 Notification of decision

- (1) The Chief Commissioner must give a claimant notice of a decision to grant or refuse a claim or vary or reverse an earlier decision on a claim.
- (2) Notice of a decision to refuse a claim, or vary or reverse an earlier decision on a claim, must include the reasons for the decision.

- (3) Notice of a decision to grant a claim must include notice of any decision to apply the amount of the rebate towards a liability for tax.

Part 5 Repayment of rebate

29 Power to require repayment from claimant

- (1) The Chief Commissioner may, by written notice, require a claimant for a rebate to repay to the Chief Commissioner an amount paid by way of rebate on a claim if:
 - (a) the amount was paid in error, or
 - (b) the Chief Commissioner varies or reverses the decision under which the amount was paid for any other reason, or
 - (c) the claimant is or can be required by or under this Act to repay the amount paid.
- (2) The Chief Commissioner may, by written notice, require the claimant to pay a penalty determined by the Chief Commissioner if the amount paid by way of rebate was paid as a result of the claimant's dishonesty.
- (3) The penalty is not to exceed the amount the claimant is required to repay.
- (4) A claimant for a rebate is liable to pay to the Chief Commissioner an amount the Chief Commissioner requires the claimant to pay under this section.
- (5) The Chief Commissioner may recover the amount payable as a debt due to the Crown.
- (6) The Chief Commissioner may, by written notice, require a claimant to pay interest on the amount required to be paid to the Chief Commissioner under this section if the claimant fails to pay the amount in accordance with the requirements specified by the Chief Commissioner in the notice requiring payment.
- (7) Interest is to be charged in the manner applicable to tax defaults under the [Taxation Administration Act 1996](#).

30 Power to require repayment from non-claimant

- (1) If an amount is paid in error on a claim for a rebate to a person who is not the claimant, the Chief Commissioner may, by written notice, require the person to repay the amount to the Chief Commissioner.
- (2) The person is liable to pay to the Chief Commissioner an amount the Chief Commissioner requires the person to pay under this section.
- (3) The Chief Commissioner may recover the amount payable as a debt due to the Crown.
- (4) The Chief Commissioner may, by written notice, require a person to pay interest on the amount required to be paid to the Chief Commissioner under this section if the

person fails to pay the amount in accordance with the requirements specified by the Chief Commissioner in the notice requiring payment.

- (5) Interest is to be charged in the manner applicable to tax defaults under the *Taxation Administration Act 1996*.

31 Recovery from third parties

- (1) The Chief Commissioner may, by written notice, require a relevant third party to pay an unpaid amount that a rebate recipient is liable to pay to the Chief Commissioner under this Part.
- (2) Each of the following persons is a **relevant third party**:
- (a) a person who owes money to the rebate recipient or may subsequently owe money to the rebate recipient,
 - (b) a person who holds or may subsequently hold money for or on account of the rebate recipient,
 - (c) a person who holds or may subsequently hold money on account of some other person for payment to the rebate recipient,
 - (d) a person having authority from some other person to pay money to the rebate recipient.
- (3) A copy of the notice must be served on the rebate recipient.
- (4) The amount of money required to be paid to the Chief Commissioner is:
- (a) if the amount of the money so owing, held or authorised to be paid does not exceed the amount payable by the rebate recipient to the Chief Commissioner—all the money, or
 - (b) if the amount of the money exceeds the amount payable—sufficient money to pay the amount payable.
- (5) The money must be paid to the Chief Commissioner on receipt of the notice, or when the money is held by the person and becomes due to the rebate recipient, or by the end of such period (if any) as may be specified by the Chief Commissioner in the notice requiring payment, whichever is the later.
- (6) A person subject to a requirement of the Chief Commissioner under this section must comply with the requirement.
- Maximum penalty: 100 penalty units.
- (7) A person who makes a payment in accordance with this section is taken to be acting under the authority of the rebate recipient and of all other persons concerned and is

indemnified by this section in respect of the payment.

(8) If, after a person is given a notice under this section by the Chief Commissioner, the whole or a part of the amount is paid by another person, the Chief Commissioner must promptly notify the person to whom the notice is given of the payment and the notice is taken to be amended accordingly.

(9) In this section:

rebate recipient means a claimant for a rebate or any other person to whom an amount is paid by way of rebate under this Act.

32 Payment by instalments

(1) The Chief Commissioner may enter into an arrangement for payment by instalments of an outstanding amount that a person is liable to pay under this Part.

(2) The arrangement may include provision for the payment of interest at the rate applicable to tax defaults under the [Taxation Administration Act 1996](#).

33 Write off of liabilities

The Chief Commissioner may write off the whole or part of a liability outstanding under this Part if satisfied that action, or further action, to recover the amount outstanding is impracticable or unwarranted.

34 Remission of amounts payable

(1) The Chief Commissioner may remit, in whole or in part, any amount a person is required to pay under this Part.

(2) An amount remitted is taken to have been paid.

Part 6 Objections and reviews

Division 1 Objections

35 Objections

(1) A claimant for a rebate who is dissatisfied with any of the following decisions of the Chief Commissioner may lodge a written objection to the decision with the Chief Commissioner:

(a) a decision on the person's claim for a rebate (including a decision to vary or reverse an earlier decision made independently of an objection under this Act),

(b) a decision to require the person to repay an amount paid by way of rebate under this Act,

- (c) a decision to require the person to pay a penalty under this Act,
 - (d) a decision to require the person to pay interest on an amount unpaid under this Act.
- (2) A person (other than a claimant for a rebate) who is dissatisfied with any of the following decisions of the Chief Commissioner may lodge a written objection to the decision with the Chief Commissioner:
- (a) a decision to require the person to repay an amount paid by way of rebate under this Act (made on the basis that the amount was paid in error),
 - (b) a decision to require the person to pay interest on an amount unpaid under this Act.
- (3) A person who is dissatisfied with a decision of the Chief Commissioner to require the person to pay an amount to the Chief Commissioner under this Act made on the basis that the person is a relevant third party may lodge a written objection to the decision with the Chief Commissioner.

36 Time for lodging objection

- (1) An objection must be lodged within 60 days after the date notice of the decision concerned is served on the objector.
- (2) If the Chief Commissioner is satisfied that an objector has a reasonable excuse for failing to lodge an objection within the 60-day period, the Chief Commissioner may extend the time for lodging the objection.

37 Grounds for objection to be stated

The grounds for an objection must be stated fully and in detail in the notice of objection.

38 Onus of proof on objection

An objector has the onus of proving the objector's case on an objection.

39 Powers of Chief Commissioner on objection

After considering an objection, the Chief Commissioner may:

- (a) allow the objection in whole or in part or disallow the objection, and
- (b) accordingly reverse, vary or confirm the decision to which the objection was made.

40 Notice of determination of objection

- (1) The Chief Commissioner must give an objector written notice of the determination of the objection.

- (2) The Chief Commissioner must, in the notice, give the reasons for disallowing the objection or for allowing the objection in part only.
- (3) The reasons for a determination of an objection must set out the matters referred to in section 49 (3) of the *Administrative Decisions Tribunal Act 1997* in respect of the determination.
- (4) The notice must also inform the objector of the objector's right to make an application for review under Division 2 in the case of a determination to disallow the objection or to allow the objection in part only.

Division 2 Reviews

41 Reviews by Administrative Decisions Tribunal

- (1) An objector may apply to the Administrative Decisions Tribunal for a review of the decision (the **original decision**) to which the objection was made if:
 - (a) the objector is dissatisfied with the Chief Commissioner's determination of the objection, or
 - (b) 90 days have passed since the objection was lodged with the Chief Commissioner and the Chief Commissioner has not determined the objection.
- (2) The claimant's and respondent's cases on an application for review are not limited to the grounds of the objection.
- (3) The claimant has the onus of proving the claimant's case in an application for review.
- (4) An application for review:
 - (a) following a determination by the Chief Commissioner of an objection—must be made not later than 60 days after the date of issue of the notice of the Chief Commissioner's determination of the objection, or
 - (b) following a failure of the Chief Commissioner to determine an objection within the relevant 90-day period—may be made at any time after the end of that period (but must be made as required by paragraph (a) following a subsequent determination of the objection by the Chief Commissioner).
- (5) The Administrative Decisions Tribunal may extend the time for making an application for review.
- (6) The following provisions of the *Administrative Decisions Tribunal Act 1997* do not apply to an application made under this section:
 - (a) Part 2 of Chapter 5,
 - (b) section 55 (1) (b) and (d),

(c) Division 2 of Part 3 of Chapter 5.

(7) For the purposes of section 58 (1) (a) of the *Administrative Decisions Tribunal Act 1997*:

- (a) the obligation of the Chief Commissioner under that paragraph to lodge a statement of reasons with the Administrative Decisions Tribunal in respect of an application is limited to providing the Tribunal with a statement of reasons only in respect of the matters arising from the grounds specified in the application, and
- (b) if one of the grounds specified in the application relates to a matter raised in an objection determined by the Chief Commissioner—the Chief Commissioner may rely on reasons previously given to the objector by the Chief Commissioner under this Act for the determination of the objection in explanation of that part of the original decision.

42 Powers of Administrative Decisions Tribunal on review

- (1) On a review, the Administrative Decisions Tribunal may:
 - (a) confirm, vary or reverse the original decision, and
 - (b) make any further orders as to costs or otherwise that it thinks fit.
- (2) This section does not limit the generality of Division 3 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.

Part 7 Administration

Division 1 Administration generally

43 Administration

The Chief Commissioner is responsible to the Minister for the administration of the rebate scheme.

44 Delegation

The Chief Commissioner may delegate functions related to the administration of the rebate scheme other than this power of delegation.

45 Authorised officers

- (1) A person who is an authorised officer for the purposes of the taxation laws, as referred to in section 68 of the *Taxation Administration Act 1996*, is taken to be an authorised officer for the purposes of this Act.
- (2) Without limiting subsection (1), the Chief Commissioner may appoint persons to be authorised officers for the purposes of this Act.

Division 2 Powers of investigation

46 Chief Commissioner may carry out authorised investigation

- (1) The Chief Commissioner may carry out an authorised investigation for the purposes of this Act.
- (2) In this Division, an **authorised investigation** is an investigation to determine:
 - (a) whether an application or claim under this Act has been properly made, or
 - (b) whether an objection to a decision made under this Act should be upheld, or
 - (c) whether a claimant to whom, or for whose benefit, a rebate has been paid under this Act was eligible for the rebate, or
 - (d) any other matter reasonably related to the administration of this Act.

47 Powers in connection with authorised investigation

- (1) For the purposes of an authorised investigation, the Chief Commissioner may, by written notice, require a person:
 - (a) to give the Chief Commissioner written information specified in the notice, or
 - (b) to attend at a specified time and place before the Chief Commissioner or an authorised officer to answer questions relevant to the investigation, or
 - (c) to produce any document to the Chief Commissioner at a specified time and place.
- (2) A specified time and place for the attendance of a person, or the production of a document, must be a time and place that is reasonable in the circumstances.
- (3) The Chief Commissioner may require that information given, or to be given, under this section be verified on oath or by statutory declaration.

48 Access to public records without fee

The Chief Commissioner is entitled, for the purposes of an authorised investigation, to inspect and take copies of any public record kept under an Act or law of this State without payment of any fee that would be payable but for this section.

49 Power of entry to premises

- (1) The Chief Commissioner may enter and remain on 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 this Act.
- (2) Entry may be made at any reasonable time.

- (3) The power of an authorised officer to enter premises may not be exercised unless the authorised officer has a written delegation covering entry issued by the Chief Commissioner and produces it if requested to do so by the owner or occupier of the premises, or a person in physical occupation of the premises.
- (4) Before the Chief Commissioner or an authorised officer enters premises under this Act, the Chief Commissioner or authorised officer must give the owner or occupier of the premises, or a person in physical occupation of the premises, reasonable notice of the intention to enter unless:
 - (a) entry is made with the consent of the owner, occupier or person, or
 - (b) the giving of notice would, in the opinion of the Chief Commissioner or authorised officer, defeat the purpose for which it is intended to enter the premises.
- (5) The powers of entry and inspection conferred by this Part are not exercisable in relation to premises or a part of premises used for residential purposes except:
 - (a) with the consent of the owner or occupier of the premises or part, or a person in physical occupation of the premises or part, or
 - (b) under the authority conferred by a search warrant.

50 Functions exercisable on entry

- (1) The Chief Commissioner or an authorised officer who has entered premises in accordance with this Division may:
 - (a) require any person at those premises to produce any documents in the custody or possession or under the control of the person (including a written document that reproduces in an understandable form information stored by computer, microfilm or other means or process), and
 - (b) require any person at those premises to answer questions or otherwise furnish information, and
 - (c) require the owner or occupier of the premises, or any person physically in occupation of the premises, to provide the Chief Commissioner or authorised officer with such assistance and facilities as are reasonably necessary to enable the Chief Commissioner or authorised officer to exercise the functions of the Chief Commissioner or an authorised officer under this Part.
- (2) A receipt is to be issued for anything removed.

51 Use and inspection of documents

- (1) The Chief Commissioner or an authorised officer may take and retain possession of any document provided or produced to the Chief Commissioner or authorised officer

under this Part for the purpose of:

- (a) inspecting the document, or
 - (b) taking copies of, or extracts of and notes from, the document.
- (2) However, if the document was provided or produced to the Chief Commissioner or authorised officer on the premises where it is normally kept, the Chief Commissioner or authorised officer may remove it from those premises only:
- (a) with the consent of the owner or occupier of the premises, or
 - (b) if it is not practicable to inspect or copy or take extracts or notes from the document on the premises.
- (3) The Chief Commissioner or authorised officer may retain possession of the document for a reasonable period, but not exceeding 28 days without the consent of the person entitled to it.
- (4) The Chief Commissioner or authorised officer must permit a person who would be entitled to inspect the document if it were not in the possession of the Chief Commissioner or authorised officer to inspect the document at any reasonable time.
- (5) Nothing in this section prejudices a lien a person has on the document.

52 Search warrant

- (1) The Chief Commissioner or an authorised officer under this Act may apply to an authorised officer under the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) for a warrant to search any premises if the Chief Commissioner or the authorised officer under this Act has reasonable grounds to believe that there is on the premises any document relevant to the administration of this Act.
- (2) An authorised officer under the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the Chief Commissioner or authorised officer under this Act to enter and search the premises.
- (3) This section does not limit any power conferred on the Chief Commissioner or an authorised officer by another provision of this Part.

53 Obstruction or failure to comply

- (1) A person must not:
- (a) prevent the Chief Commissioner or an authorised officer from exercising a function under this Part, or
 - (b) hinder or obstruct the Chief Commissioner or an authorised officer in the exercise

of such a function, or

- (c) without reasonable excuse, refuse or fail to comply with a requirement made by the Chief Commissioner or an authorised officer under this Part.

Maximum penalty: 100 penalty units.

- (2) A person is not guilty of an offence under this section arising from the entry of the Chief Commissioner or an authorised officer onto premises unless it is established that, at the material time, the Chief Commissioner or the authorised officer:
 - (a) identified himself or herself as the Chief Commissioner or an authorised officer, and
 - (b) warned the person that a failure to comply with the requirement may constitute an offence.

54 Defence of reasonable compliance

A person is not guilty of an offence under this Part if the court hearing the charge is satisfied that:

- (a) the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates, or
- (b) the defendant complied with the requirement to the extent of his or her ability to do so.

55 Functions may be exercised concurrently with functions under other taxation legislation

- (1) The functions conferred on the Chief Commissioner or an authorised officer by this Part with respect to an authorised investigation may be exercised concurrently with any functions conferred on the Chief Commissioner or authorised officer by other taxation legislation.
- (2) In particular, an authorised investigation under this Part may be conducted in conjunction with any investigation or audit conducted under other taxation legislation.
- (3) A person who enters premises under other taxation legislation may exercise on the premises any function the person would have under this Act if the premises had been entered under this Act.
- (4) This section applies despite section 71 of the *Taxation Administration Act 1996*.
- (5) In this section:

other taxation legislation means:

- (a) the *Taxation Administration Act 1996*, or

(b) the *Payroll Tax Rebate Scheme (Disability Employment) Act 2011*.

Part 8 Miscellaneous

56 Knowingly giving false or misleading information

- (1) A person must not make a statement, or give any information, to an authorised officer knowing that it is false or misleading in a material particular.

Maximum penalty: 100 penalty units.

- (2) A person must not, in or in relation to an application or claim under this Act, make a statement or give any information knowing that it is false or misleading in a material particular.

Maximum penalty: 100 penalty units.

- (3) This section applies to any statement or information, whether given orally or in writing.

57 Protection of confidential information

- (1) A person who is subject to a duty of confidentiality must not disclose protected information except as permitted by this section.

Maximum penalty: 100 penalty units.

- (2) A person is subject to a duty of confidentiality if:

- (a) the person is, or has been, engaged in work related to the administration of this Act, or
- (b) the person has obtained access to protected information (directly or indirectly) from a person who is, or has been, engaged in work related to the administration of this Act.

- (3) Information is protected information if it is information about a claimant for a rebate obtained in the course of work related to the administration of this Act.

- (4) Protected information may be disclosed:

- (a) at the request or with the consent of the person to whom the information relates or a person acting on that person's behalf, or
- (b) in connection with the administration of the following laws (including for the purpose of any legal proceedings arising out of any of those laws or a report of any such proceedings):
- (i) this Act,

- (ii) a taxation law of the Commonwealth or a State or Territory, or
- (c) as authorised by the regulations.

58 Evidence

- (1) A certificate signed by the Chief Commissioner stating that a rebate was paid to a person named in the certificate on a specified date is admissible in legal proceedings as evidence of the payment.
- (2) A copy of a notice issued by the Chief Commissioner imposing a penalty under this Act is admissible in legal proceedings as evidence of the imposition of the penalty.
- (3) A copy of a notice issued by the Chief Commissioner requiring the payment or repayment of a specified amount is admissible in legal proceedings as evidence:
 - (a) that the requirement was made, and
 - (b) that the amount specified in the notice was outstanding at the date of the notice.

59 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations may be dealt with before the Local Court or before the Supreme Court in its summary jurisdiction.
- (2) Proceedings for an offence against this Act or the regulations may be commenced at any time within 3 years after the date on which it is alleged the offence was committed.

60 Standing appropriation

The Consolidated Fund is appropriated to the extent necessary for the payment of rebates under this Act.

61 Personal liability

- (1) A matter or thing done or omitted to be done by a protected person does not, if the matter or thing was done or omitted in good faith for the purpose of administering this Act, subject the person so acting personally to any action, liability, claim or demand.
- (2) In this section, a **protected person** means:
 - (a) the Chief Commissioner or an authorised officer, or
 - (b) a member of the Government Service involved in the administration of this Act, or
 - (c) a person to whom the Chief Commissioner has delegated functions under this Act.

62 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect

to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

63 Repeal of Act

This Act is repealed on 1 July 2018.

Schedule 1 Savings, transitional and other provisions

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

 this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Schedule 2 (Repealed)