EXPLANATORY MEMORANDUM

PAY-ROLL TAX ASSESSMENT AMENDMENT BILL 2010

The Pay-roll Tax Assessment Amendment Bill 2010 seeks to implement:

- a package of measures aimed at achieving a greater level of harmonisation in a number of areas of the pay-roll tax regime between Western Australia and the other States and Territories;
- two new exemptions announced in the 2009-10 Budget for wages paid in relation to parental or adoption leave and specified emergency services volunteers; and
- new nexus arrangements that govern where tax is to be paid when services are provided in more than one jurisdiction in a month.

HARMONISATION AMENDMENTS

The differences in pay-roll tax arrangements that currently exist between States and Territories are regularly commented on by business as increasing compliance costs, particularly for businesses that operate in more than one jurisdiction.

In March 2006, State and Territory Treasurers endorsed Western Australia leading a major project with other States and Territories to examine the feasibility of achieving greater levels of consistency in a number of areas of pay-roll tax administration.

These areas were:

- the timing of the lodgment of returns;
- the motor vehicle allowances exemption;
- the accommodation allowances exemption;
- the treatment of fringe benefits;
- the treatment of employee share acquisition schemes;
- the treatment of services performed outside a jurisdiction;
- the treatment of superannuation contributions; and
- grouping.

The final recommendations to adopt harmonised provisions and definitions in these key areas were endorsed by State and Territory Treasurers in March 2007.

The Pay-roll Tax Assessment Amendment Bill 2008 was introduced in May 2008 to legislate the above changes and was passed by the Legislative Assembly, then sent to the Uniform Legislation and Statutes Review Committee in the Legislative Council. However, the Bill lapsed when Parliament was prorogued at the time the election was called in 2008.

The Bill has not been reintroduced since that time, pending consideration and drafting of the 2009-10 Budget amendments, the 2009-10 Mid-year Review corrective measures and the design and drafting of the new nexus arrangements as noted earlier.

During that interim period, the harmonisation measures have now been included as a requirement of the Australian Government's reform agenda associated with business regulation and competition as part of the *National Partnership Agreement To Deliver A Seamless National Economy* signed in December 2008.

Further areas of harmonisation are still being considered as part of this reform program.

It is also worth noting that all jurisdictions except the ACT and Queensland have adopted template legislation, which follows the structure of the *Payroll Tax Act 2007* that applies in both New South Wales and Victoria ("template legislation").

This was not the preferred implementation approach in Western Australia, primarily because a number of jurisdictionally specific aspects of the Western Australian pay-roll tax regime have been maintained.

These include the retention of:

- quarterly and annual return provisions, which provide consistent lodgment requirements with the Commonwealth and provide a unique benefit in Western Australia;
- provisions facilitating electronic lodgment processes that support the Revenue Online system operated by the Office of State Revenue;
- specific superannuation provisions which outline the treatment of defined benefit schemes, which have been praised by practitioners and business in the past for their clarity and ease of operation; and
- the exemption of payments made for remote area housing benefits, which recognise Western Australia's extensive and unique regional industries.

In many cases the provisions of the *Pay-roll Tax Assessment Act 2002* ("the Act") are already consistent with those in other jurisdictions and no amendments are necessary to achieve harmonisation. However, some inconsistencies will continue to exist due to jurisdiction specific circumstances outlined above. In addition, while it was not considered feasible in the short term to adopt the template legislation used by most other jurisdictions, Western Australia's legislation is considered to deliver consistent outcomes.

Many of the provisions were previously contained in clauses of the Glossary at the end of the Act or the *Pay-roll Tax Assessment Regulations 2003.* The reorganisation to achieve harmonisation has provided an opportunity to include changes as a result of the Commonwealth's superannuation simplification provisions that commenced from 1 July 2007 and to reflect new methods of payment of wages.

One change has been made to the superannuation provisions previously introduced in 2008.

This is to correct a minor anomaly and ensure superannuation payments paid or payable on behalf of all non-executive directors are included in the assessment of pay-roll tax.

Prior to the change, the provisions had the unintended effect of capturing only those superannuation contributions made on behalf of non-executive directors who had also received shares or options as remuneration.

The majority of the consistency amendments commence on the date of Royal Assent, but are applied with effect from 1 July 2009 by virtue of the transitional arrangements in the Bill.

This has been necessary as pay-roll tax is an annual tax, albeit usually paid on a monthly basis, and it becomes very problematic if amendments apply part way through a year.

Under the previous Bill, the amendments were to commence on 1 July 2008, with the exception of the grouping provision amendments, which were to commence on 1 July 2009.

This Bill provides for the grouping provisions to commence on 1 July 2012, and for the remaining provisions to commence on 1 July 2009.

Using a 1 July 2009 commencement date avoids significant compliance and administration costs that would have been encountered if the 1 July 2008 commencement date was retained. These costs would have been incurred by taxpayers having to repeat the annual reconciliation process for the 2008-09 year.

The estimated cost to revenue of the harmonisation measures included in this Bill is $71 million over four years to 2012-13, $69 million of which is attributable to the harmonisation measures which were endorsed by State and Territory Treasurers in March 2007, including amendments to the grouping provisions that will take effect in 2012-13.

A detailed summary of the amendments covering each of the harmonised provisions is outlined below.

TIMING OF LODGMENTS

The due date for the June return is to be extended from 7 July to 21 July. The due date for the annual reconciliation return is also to be brought forward to 21 July from 31 August. The due date for lodgment of all other monthly returns is to remain as seven days after the end of the month. These amendments make Western Australia consistent with the majority of the other States.

ACCOMMODATION ALLOWANCES EXEMPTION

An accommodation allowance exemption (as a specified exempt allowance) is currently prescribed by regulation 39 of the *Pay-roll Tax Assessment Regulations 2003*, at the rate of $110 per night for accommodation in Western Australia, $145

per night for accommodation elsewhere in Australia and $200 per night for accommodation in another country. In addition, if an allowance is paid under an industrial award, the allowance specified in that award is the exempted allowance.

The accommodation allowance exemption is to be amended to refer to the "lowest salary band/lowest capital city" rate prescribed by the Australian Taxation Office for income tax deduction purposes, updated annually. Currently, the rate is $223.80 per night for the 2009/10 income year. This amount is the total of allowances for accommodation, meals and incidentals. Any rates paid under an award will no longer qualify as an exempt rate.

MOTOR VEHICLE ALLOWANCES EXEMPTION

The exempt rate allowed for motor vehicle allowances is prescribed by regulation 31 of the *Pay-roll Tax Assessment Regulations 2003*. The rate is either a rate specified under an industrial award or the "large car" rate prescribed by the Australian Taxation Office, which at December 2009 was 75 cents per kilometre.

Amendments to the Western Australian regulations are made annually to prescribe the Australian Taxation Office "large car" rate as the applicable rate for pay-roll tax purposes. The amendments in this Bill insert a mechanism to automatically adopt the Australian Taxation Office's "large car" rate. Rates paid under an award will no longer qualify as an exempt rate.

FRINGE BENEFITS TAX – GROSS-UP FACTOR, LIVING AWAY FROM HOME ALLOWANCES AND OTHERWISE DEDUCTIBLE RULE

Gross-up rate

The Western Australian Act requires taxpayers to apply the same gross-up rate for pay-roll tax purposes as they use for calculating their fringe benefits tax liability. Under the *Fringe Benefits Tax Assessment Act 1986* (Cwth), the taxable amount of fringe benefits provided to employees is the taxable value after application of either of the grossed-up formulae. Applying the gross-up rate has the effect of calculating the fringe benefits taxable value including the tax value of the fringe benefit (type-2 factor). From 1 July 2000, following the introduction of the goods and services tax, a second gross-up formula was introduced for determining the taxable value of fringe benefits to include the goods and services tax (type-1 factor).

The type-2 factor is applied where the employer does not have an entitlement to claim input tax credits on the acquisition of the benefit. The type-1 factor is applied in circumstances where the employer can claim input tax credits on the purchase. The type-1 factor grosses up the value of the fringe benefit at a higher rate than the type-2 factor, which excludes the benefit of the input tax credit received by the employer when acquiring the benefit for provision to the employee. This recognises that if the employee had purchased the goods or services for private use, they would not have been entitled to claim input tax credits on the acquisition.

Employers are currently required to use the same gross-up factor for pay-roll tax purposes that they use for Commonwealth taxation purposes. This method was originally chosen on the basis that it minimised employer compliance costs through consistency with Commonwealth requirements.

However, there is an argument that for pay-roll tax purposes, fringe benefits should not include the amount of input tax credits the employer could claim, as this has no relevance to the benefit the employee receives.

The Bill amends the provisions to require only the type-2 factor to be used when calculating the taxable value of fringe benefits provided for pay-roll tax purposes. This is achieved by including the formula for "type-2 benefits", which is specified in the *Fringe Benefits Tax Assessment Act 1986* (Cwth) in the valuation provision.

"Otherwise deductible rule"

The Western Australian Act currently disregards the Commonwealth "otherwise deductible rule" when valuing fringe benefits provided to employees. The otherwise deductible rule reduces the amount of fringe benefits tax payable by an employer on the basis that if the benefit had not been funded by the employer, but paid by the employee out of their own funds, the employee would have been able to claim a tax deduction. This distinction was not considered to be relevant to pay-roll tax, as the income tax and fringe benefits tax status of an employee has no bearing on the payment of pay-roll tax by the employer. However, because of the compliance costs employers bear in having to artificially separate "otherwise deductible" payments from their fringe benefits return, the amendments provide for employers to apply the "otherwise deductible rule" to reduce the taxable value of a fringe benefit by the amount of the income tax deduction that would have been claimable by an employee for pay-roll tax purposes. The amendment therefore reduces the amount of pay-roll tax payable in these circumstances.

Living away from home allowance

Currently, the Western Australian Act requires a living away from home allowance to be valued at the actual value of the allowance and not as a fringe benefit. This rule requires employers to remove the taxable value of these allowances from the fringe benefits tax return and calculate pay-roll tax liability on the actual cost of the allowance.

The amendments contained in the Bill provide that only the part of a living away from home allowance that is a fringe benefit is to be included for pay-roll tax purposes. The taxable value of the fringe benefit under the *Fringe Benefits Tax Assessment Act 1986* (Cwth) is the amount of the allowance paid, less exemption components for reasonable accommodation and food costs. The amendment therefore reduces the amount of pay-roll tax payable on living away from home allowances, as they were previously taxable on the full value.

EMPLOYEE SHARE ACQUISITION SCHEMES

Unlike the majority of other jurisdictions, the Western Australian Act has included the value of a grant of shares or options to an employee as wages for pay-roll tax purposes since 1997. These provisions are to be amended to be consistent with the harmonised provisions of the other jurisdictions.

These changes mean that employers will be able to elect the day of liability for pay-roll tax between the grant day and the vesting day. Provisions are included to allow for a refund of pay-roll tax paid on a grant of shares or options that do not vest in an employee, except when the employee has chosen not to take up the shares. A transitional provision has been included in the Bill to ensure taxpayers are still able to avail themselves of this election for the period between 1 July 2009 and the date the amending legislation receives the Royal Assent.

In addition, the methods for calculating the value of a grant of shares or options included in Commonwealth legislation are to be inserted and will replace the current valuation method.

It should be noted that the Commonwealth has recently amended the income tax provisions dealing with employee share schemes. The States and Territories are currently considering the extent to which the Commonwealth amendments will require consequential amendments to be made to the harmonised pay-roll tax employee share provisions.

WORK PERFORMED - WHOLLY OR PARTLY OUTSIDE A JURISDICTION – SERVICES PERFORMED IN OTHER COUNTRIES

The Western Australian Act currently exempts from pay-roll tax, wages paid in Western Australia for services carried out wholly in another country for a continuous period of more than six months after the period of six months from the date the wages first became payable.

The amendments extend this exemption from pay-roll tax for services performed in one or more other countries to include wages paid in the first six months. This will provide consistency with other jurisdictions and ensure wages paid in Western Australia to off-shore employees are not inappropriately excluded from pay-roll tax.

SUPERANNUATION CONTRIBUTIONS

Superannuation contributions are a form of remuneration paid by employers to their employees and are included in employers' taxable wages. The agreed interjurisdictional position involves taxing superannuation contributions for non-executive directors and non-monetary contributions. The amendments in the Bill specifically clarify pay-roll tax is imposed on superannuation contributions made on behalf of non-executive directors. Non-monetary contributions have always been included as employee wages in the Western Australian Act and no amendments are required in relation to this.

Other technical amendments have been made to reflect changes to the relevant Commonwealth superannuation legislation.

TERMINATION PAYMENTS

The Western Australian Act currently taxes eligible termination payments, within the meaning of section 27A of the *Income Tax Assessment Act 1936* (Cwth), paid to employees. The Commonwealth has amended its superannuation provisions, and as a result, the definition of "eligible termination payment" has been updated. This Bill inserts a definition of an "employment termination payment" that replaces the definition of an "eligible termination payment" and also includes termination payments paid to directors.

The Western Australian Act taxes remuneration to directors or members of the governing body of a company, however, this does not extend to termination payments to non-employee directors. As a consequence of the consistency project and the adoption of the pay-roll tax provisions of other jurisdictions, provisions have been included to impose pay-roll tax on amounts paid by a company as a consequence of the termination of the services or office of a director, which includes members of the governing body of the company. The amount is taxable whether or not it is paid to the director or to a third party. The amount is deemed to be an employment termination payment within the meaning of Commonwealth legislation.

This change will bring the pay-roll tax treatment of payments to non-employee directors into line with those relating to employees. In addition, death benefit termination payments will also become taxable for employees as well as non-employee directors.

GROUPING

The Bill seeks to make a number of changes to the grouping provisions, which are to take effect from 1 July 2012.

The grouping provision changes were originally scheduled to take effect from 1 July 2009. However, as announced in the 2009-10 Mid-Year Review in December 2009, the Government has deferred the commencement from 1 July 2009 to 1 July 2012, as part of temporary corrective measures to address short term weakness in the outlook for general government revenue.

For the purposes of the application of pay-roll tax, employers related or connected to each other are treated as a group. The tax liability of a group depends on the level of combined Australia-wide wages of all group members. The group can claim only one tax-free threshold, which is done by the designated group employer as set out in the Act. Grouping prevents employers from avoiding pay-roll tax by splitting the business into smaller businesses and, as a consequence, creating several entities which would all otherwise claim the $750,000 tax-free threshold.

Currently under the Act, employers may be grouped under a number of tests that are based on the relationship, control and connection between the businesses. Groupings are possible where:

- employers are related bodies corporate under the *Corporations Act 2001* (Cwth) ("the Corporations Act");

- the same employees carry out duties for more than one business;
- a person or persons together have a controlling interest in each of two or more businesses (the common control test);
- a head or parent business exercises managerial control over a branch, agency or subsidiary business; or
- an employer is a member of two or more groups (in which case all the groups are combined into one group).

As the provisions are drafted broadly, the Commissioner currently has a discretion in specific circumstances to exclude members from a group where he is satisfied regarding certain matters. The discretion to exclude can apply where discretionary trusts are involved, but does not extend to all other types of commonly controlled businesses, such as private companies, unit trusts and partnerships.

The changes to the grouping provisions include:

- the extension of the Commissioner's discretion to exclude all commonly controlled businesses from a group, except for related bodies corporate under the Corporations Act;
- the removal of grouping of employers where a parent or head business exercises managerial control over a branch, agency or subsidiary business;
- adopting tracing rules which take account of direct and indirect interests to address complex business structures which avoid grouping; and
- amendments to the matters that the Commissioner is to consider when determining that businesses should be excluded from a group.

In addition, the tests the Commissioner applies to exclude a member from a group will change. The current tests vary with each type of grouping, but generally relate to the nature and degree of the duties performed, the nature and degree of managerial control or whether a business is carried on substantially independently from another business. In each of the current cases, the Commissioner is also required to consider whether it is just and reasonable to include the employer as a member of a group.

The amendments introduce a single new test that applies in all relevant cases, and requires the Commissioner to be satisfied that the business conducted by a member is independent of, and not connected with, the business conducted by any other member of the group.

In considering the application of this discretion, the Commissioner is to have regard to the nature and degree of ownership and control of the businesses, the nature of the businesses, and any other relevant matters. The new discretion is available to all commonly controlled businesses, except corporations that are related bodies corporate under section 50 of the Corporations Act.

It is estimated that approximately 2,900 of the businesses that are currently grouped under the existing common control provisions may benefit from consistency of these arrangements with other States.

TRACING PROVISIONS

As a result of the adoption of the grouping provisions in the harmonised legislation, the Bill also includes provisions to consider an entity's interest in a corporation for the purposes of determining whether the entity has a controlling interest. The controlling interest may be direct or indirect.

Indirect interests may be traced through interposed entities, and may be aggregated with direct interests for the purpose of determining whether an entity has a controlling interest. An entity is defined and this may be a person, or two or more associated persons.

The Bill provides that the grouping exclusion discretion may also apply to groups formed under the tracing provisions.

PAY-ROLL TAX ASSESSMENT REGULATIONS 2003

Many of the provisions currently contained in regulations have been transferred to the Act to align the legislation with that of other jurisdictions. This has necessitated a number of amendments to the regulations. As a result, the consequential amendments to the regulations have been included with the amendments to the Act to ensure that all amendments will apply concurrently from 1 July 2009.

2009-10 BUDGET EXEMPTIONS

Two exemptions were announced in the 2009-10 Budget for wages paid in relation to parental and adoption leave, and leave for employees undertaking volunteer emergency services functions.

These exemptions form part of the further harmonisation measures that were required to be considered as part of the Council of Australian Governments reform agenda.

New South Wales, Victoria, South Australia and Tasmania provide a pay-roll tax exemption for wages paid for adoption and maternity leave periods up to a maximum of 14 weeks. In enacting their exemptions, the Northern Territory and Queensland also extended the scope to include paternal leave for fathers over the same period.

The exemption in this Bill is largely consistent with the exemption available in the ACT, on the basis that it is available for 14 weeks leave taken for maternity and adoption leave, as well as paternity leave that is taken by male and female partners of a pregnant female.

The exemption for employees who engage in volunteer emergency services work will cover volunteers under the *Fire Brigades Act 1942*, the *Bush Fires Act 1954* and the *Fire and Emergency Services Authority of Western Australia Act 1998*.

Specifically, this exemption covers volunteer fire fighters, State Emergency Service volunteers and Volunteer Marine Rescue Services volunteers.

The exemption available in all other jurisdictions is reasonably consistent.

The estimated cost of the exemptions on wages paid for parental leave and to emergency services volunteers is $2 million over four years.

These amendments are to commence on the date of Royal Assent, but also apply for the whole of the 2009-10 year on the basis of the transitional provisions.

NEW NEXUS ARRANGEMENTS

The Act currently provides that wages paid to an employee who has provided services in more than one jurisdiction in a month are regarded as being liable for pay-roll tax in the jurisdiction where the wages are paid, that is, the location of the employee's bank account into which the payment is made. This nexus is the same in all States and Territories, ensuring that instances of double taxation do not arise.

However, a recent examination of this issue by Revenue Offices around Australia has questioned the appropriateness and on-going viability of the current nexus arrangements.

In particular, concerns were raised about the robustness of the provisions, given the ease with which a bank account can be moved. Issues were also raised about the potential administrative complexity of the current nexus test.

The third initiative in this Bill seeks to introduce new nexus arrangements that determine when wages are taxable in Western Australia in the circumstances where services are provided by a person in more than one jurisdiction.

All jurisdictions have announced an intention to legislate common nexus provisions that will determine when wages are taxable in their jurisdiction.

The design of the new nexus arrangements uses a series of conceptually simple and logical rules that allow taxpayers to determine the jurisdiction to which pay-roll tax is to be paid.

It is worth noting that these changes will only affect employers that have employees who provide services in more than one jurisdiction in the course of a month.

Where that is the case, the employer is to determine where the tax is payable by reference to the principal place of residence of the relevant employee.

A number of further nexus provisions have been inserted into the nexus arrangements to deal with situations where the employee's principal place of residence is not located in Australia.

While these further provisions add a degree of complexity to the legislation, the number of taxpayers that will be affected by them is likely to be small.

The new nexus arrangements will commence on the date of Royal Assent, however, the transitional provisions apply these changes as if the provisions had commenced on 1 July 2009.

It is expected that the new nexus arrangements will have a negligible impact on revenue collections.

GENERAL PROVISIONS

The majority of changes in this Bill will be favourable to taxpayers.

However, the new nexus arrangements in particular will require a limited number of taxpayers to change the jurisdiction to which they pay some amounts of pay-roll tax.

Where taxpayers are required to make adjustments to their tax liabilities, taxpayers will have the choice of applying for a reassessment after the amending Act receives the Royal Assent using the reassessment processes set out in the *Taxation Administration Act 2003,* or waiting until the end of the 2009-10 financial year and making the required adjustments as part of the usual annual reconciliation process.

As the amendments to the Act made by this Bill introduce provisions that are consistent with those of other jurisdictions across Australia, it is considered that the Bill may be referred to the Uniform Legislation and Statutes Review Committee of the Legislative Council under Standing Order 230A.

A detailed summary of each clause follows.

Part 1 – Preliminary

Clause 1: **Short title**

This clause provides that this Act may be cited as the *Pay-roll Tax Assessment Amendment Act 2010.*

Clause 2: **Commencement**

This clause sets out the relevant commencement provisions.

Paragraph (a) specifies that Part 1, Part 2 Divisions 1 and 2 and Part 3 come into operation on the day on which the Act receives the Royal Assent.

Part 1 provides the short title and commencement provisions for the Act. Part 2 Divisions 1 and 2 contain the amendments relating to the eight consistency measures, the new exemptions for parental leave and volunteer emergency service workers and the new nexus arrangements. Part 3 contains amendments to the *Pay-roll Tax Assessment Regulations 2003*.

The interaction of this clause with clause 17 should be noted. Clause 17 inserts Schedule 1 into the Bill to provide transitional provisions such that a person's liability to pay-roll tax is to be determined as if the provisions had come into operation on 1 July 2009.

Paragraph (b) provides that Part 2 Division 3 comes into operation on 1 July 2012. Part 2 Division 3 amends the grouping provisions of the Act.

Part 2 – *Pay-roll Tax Assessment Act 2002* amended

Division 1 – Act amended

Clause 3: **Act amended**

This clause provides that the amendments in this Part are to the *Pay-roll Tax Assessment Act 2002.*

Division 2 – Amendments relating to taxable wages

Clause 4: **Section 5A inserted**

This clause inserts new section 5A into the Act, which provides the status of notes in the text of the Act.

Clause 5: **Section 5 amended**

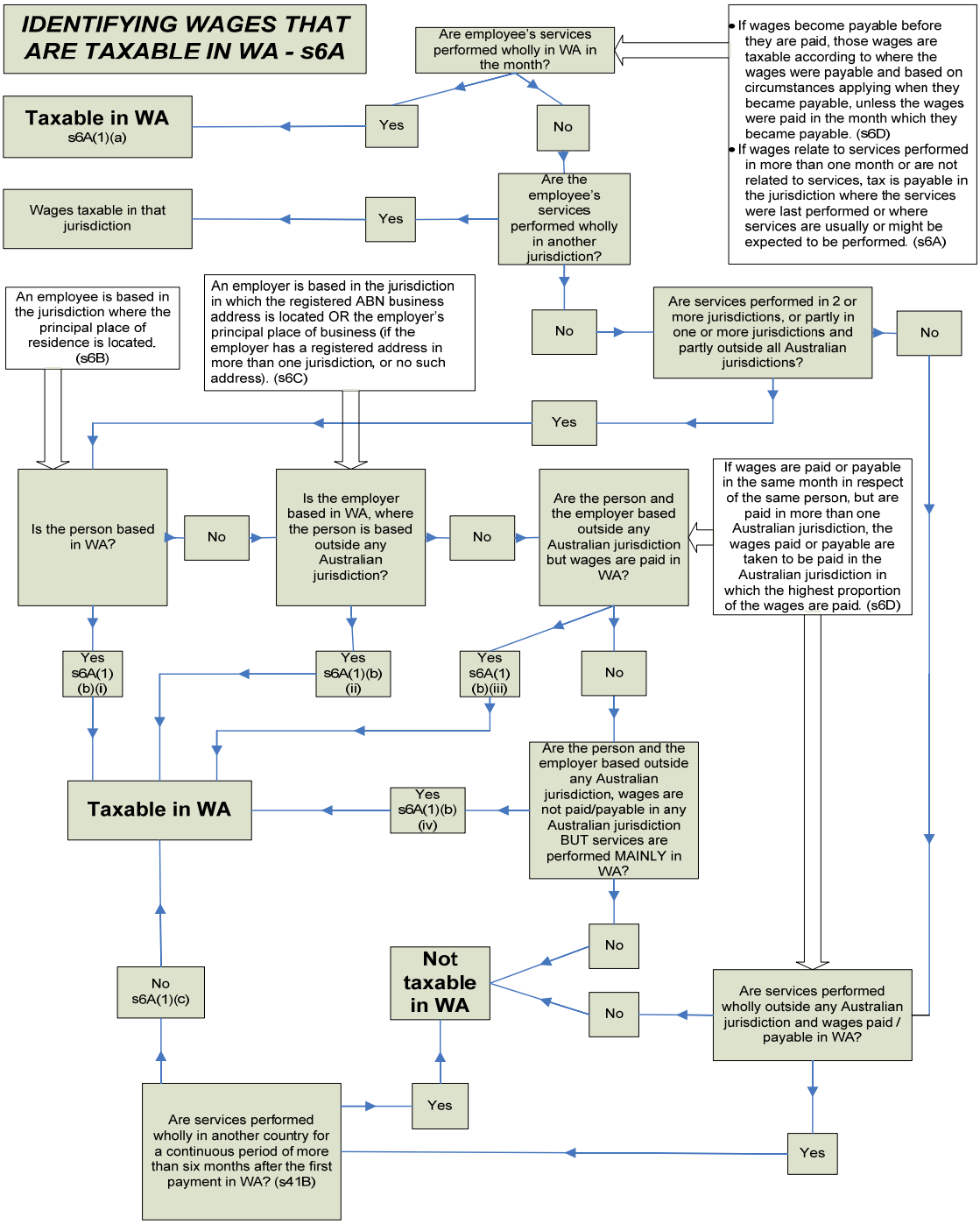
Section 5 of the Act currently provides that pay-roll tax is payable on wages in Western Australia.

Subclause (1) amends section 5(1) to make minor structural changes.

Subclause (2) provides a definition of ***WA taxable wages*** for the purposes of subsection (1) as amended. This amendment incorporates the concept that exempt wages (as defined in the Glossary) are excluded, and that wages have to be taxable in this jurisdiction to be considered to be WA taxable wages. Proposed sections 6A to 6D set out the provisions that allow a determination to be made as to whether wages are taxable in Western Australia.

Clause 6: **Sections 6A to 6D inserted**

This clause inserts new sections 6A to 6D after section 5 of the Act. Each other jurisdiction in Australia has announced an intention to legislate, or has legislated, corresponding provisions. Accordingly, if wages are not taxable in Western Australia, it is likely that they would be taxable under the corresponding provisions in another Australian jurisdiction. The diagram below sets out how these provisions interact to determine whether the wages are taxable in Western Australia.



6A. Wages that are taxable in this jurisdiction

Section 6A inserts new nexus arrangements that apply to determine whether wages are taxable in Western Australia.

Subsection (1) sets out the circumstances in which wages are taxable in Western Australia.

Paragraph (a) provides that wages that are paid or payable by an employer for or in relation to services performed by a person wholly in Western Australia are taxable in Western Australia. For employers who only have employees who provide services in Western Australia, the nexus provisions in paragraph (b) would not be required in order to determine that the wages are taxable in Western Australia.

Paragraph (b) sets out the nexus arrangements for wages that are paid or payable by an employer for or in relation to services performed by a person in two or more Australian jurisdictions, or partly in one or more Australian jurisdictions and partly outside all Australian jurisdictions. This provision often applies to employment arrangements in specific industries, such as aviation and transport, where a large percentage of the workforce routinely works in more than one Australian jurisdiction during the course of a month. It also covers circumstances where services may be performed partly in Western Australia and partly outside all Australian jurisdictions during the course of a month.

Subparagraph (i) provides that if wages are paid or payable in the circumstances provided at the beginning of paragraph (b), the wages are taxable in Western Australia if the person is based in Western Australia. Whether a person is based in Western Australia can be determined by applying the provisions set out in proposed section 6B, or in some circumstances, proposed section 6A(8).

Subparagraph (ii) provides that if wages are paid or payable in the circumstances provided at the beginning of paragraph (b), the wages are taxable in Western Australia if the person is not based in an Australian jurisdiction (meaning that proposed section 6A(1)(b)(i) would not apply), but the employer is based in Western Australia. Whether an employer is based in Western Australia can be determined by applying the provisions set out in proposed section 6C.

Subparagraph (iii) provides that if wages are paid or payable in the circumstances provided at the beginning of paragraph (b), the wages are taxable in Western Australia if the person and the employer are not both based in an Australian jurisdiction (meaning that neither proposed section 6A(1)(b)(i) nor (ii) would apply), but the wages are paid or payable in Western Australia. The provisions of proposed section 6D need to be taken into account in making the determination of whether the wages are paid or payable in Western Australia. In addition, proposed section 9DH may also be relevant if the wages payable were in the form of the grant of shares or options.

Subparagraph (iv) provides that if wages are paid or payable in the circumstances provided at the beginning of paragraph (b), the wages are taxable in Western Australia if the wages are paid or payable for services performed mainly in Western Australia. This provision is only applicable if the person and the employer are not based in an Australian jurisdiction and the wages are not paid or payable in an Australian jurisdiction (i.e. where proposed section 6A(1)(b)(i), (ii) and (iii) is not applicable).

This subparagraph is equivalent to section 10(1)(c) of the original template legislation and is designed to apply to situations like the example below.

> *An overseas-based company employs Singaporean resident employees. The employees work rotational shifts of 26 days in Western Australia, following which they are flown back to Singapore for 28 days leave. Under the terms of the employment, they perform incidental duties during the period of leave. The employees are paid monthly into Singaporean bank accounts.*
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> *Taking into account the provisions of proposed section 6A(2) (which has no equivalent in the Act currently), the employees would not be performing duties wholly in Western Australia in the month they are working 26 days in Western Australia. However, under this provision, pay-roll tax would be payable on the wages they are paid for the month on the basis that the wages are paid or payable for services performed mainly in Western Australia, even though the employee resides in Singapore, the employer is not based in an Australian jurisdiction and the wages are not paid or*

payable in an Australian jurisdiction.

As noted above, this subsection is based on an existing provision in the template legislation, and it is intended that the term “mainly” will be interpreted in a manner consistent with the interpretation of New South Wales and Victoria. That interpretation is set out in Revenue Ruling PTA001 in these jurisdictions, and relates to where more than 50% of the services are provided in that jurisdiction in a month.

Paragraph (c) provides that wages that are paid or payable by an employer for or in relation to services performed by a person wholly outside all Australian jurisdictions are taxable in Western Australia if the wages are paid or payable in Western Australia. The provisions of proposed section 6D may also be relevant in this regard.

In a Western Australian context, this provision ensures that wages that are currently taxable under the existing provisions because they are paid or payable in Western Australia to persons for or in relation to services performed outside Australia, for example on offshore rigs (i.e. rigs located outside Western Australian waters), remain taxable under the new arrangements.

Subsection (2) has no current equivalent in the Act. This provision ensures that in determining the question of whether wages are taxable in Western Australia, and subject to the remainder of the proposed section, only the services performed by the person in the month the wages are paid or payable are to be considered. This ensures that the time period for determining whether services are performed wholly in one jurisdiction, or whether they are performed in two or more jurisdictions, is the month in which the wages are paid or payable. Any other period over which the wages are paid or the pay-roll tax return is submitted (e.g. on a quarterly or annual basis) is not relevant in this regard.

Subsection (3) clarifies that all wages paid or payable by an employer in respect of a person in a particular month are taken to be paid or payable for services performed by the person for that employer during that month. As highlighted by the note under this subsection in the Bill, if wages paid in a month to a person are paid for services performed over several months, the question of whether the wages are taxable in Western Australia is determined by reference only to services performed

by the person in the month in which the wages are paid and the services performed in previous months are disregarded in that month.

> *For example, annual leave is accrued by an employee over an 11 month period. The employee takes three weeks leave in December and performs services for the remaining week in Western Australia. Three weeks of the wages paid in December while the employee is on annual leave are for or in relation to services performed by the employee in the preceding 11 months. This provision deems the wages to be paid or payable for or in relation to services performed by the person in respect of the employer in December, being the month that the wages are paid. This means that even though the employee may have worked in more than one jurisdiction in the course of the preceding 11 months when the leave was accrued, the employer only has to examine where the employee performed services in December, being the month that the wages were paid. This prevents a situation arising that would otherwise require the employer to look back at the preceding 11 month period and determine where the employee provided services in each of the months the leave was accrued. It also prevents a situation arising where the wages paid for the annual leave might be payable to a different jurisdiction than the wages paid to the employee for the week in December that was not taken as annual leave.*

Subsection (4) clarifies the place where services are taken to be performed by a person in the situation where services are not performed in a particular month in which wages are paid or payable.

Using the same example as outlined in subsection (3), if the employee took four weeks annual leave in December instead of three, no services would have been performed by the employee in respect of the employer in December. In this situation, the employer would look to paragraph (a) and determine where the employee performed services in November, being the most recent prior month in which the employee performed services in respect of the employer. Paragraph (b) then provides that the wages paid or payable in December are taken to be paid or payable for or in relation to services performed by the person in respect of the services

performed in November.

Subsection (5) ensures that where wages that are paid or payable in the month, but not for or in relation to services performed by a person during the month or in any prior month in which the wages are paid or payable, they are still capable of being wages that are taxable in Western Australia. This provision has been included to cover situations where certain types of wages (for example, some types of superannuation contributions, the grant of shares or options payable upon the appointment of a director, some termination payments and payments in advance of services being performed) may not relate to a service performed by a person.

Paragraph (a) ensures that the wages are taken to be paid or payable for or in relation to the services performed by the person during the month in which the wages are paid or payable (i.e. it provides the "when" for the purposes of determining how to work out if the tax is payable in Western Australia).

Paragraph (b) ensures that the wages are taken to be paid or payable for or in relation to the services performed at a particular place in the month in which the wages are paid or payable. This paragraph therefore answers the question of "where" these services are deemed to be performed in order to determine if the tax is payable in Western Australia.

Subsection (6) clarifies that all wages paid or payable for or in relation to services performed in a particular month are to be assessed together. As highlighted by the note under this subsection in the Bill, if a person is paid for the first two weeks of the month for working in Western Australia and is paid other wages for working in South Australia for the second two weeks, all the wages are to be assessed together as if they were paid for the services performed in that month. Accordingly, as the wages would be for services performed in two or more Australian jurisdictions in the month, the employer must look to the nexus rules set out in proposed section 6A(1)(b) to determine whether the tax is payable in Western Australia.

Subsection (7) sets out provisions that are to be used when the time at which wages are payable is different from the time at which they are paid, to the extent that the difference causes the wages to be paid or payable in a different month. Where this occurs, reference is to be made to the earlier of the relevant

months. It should be noted that the provision applies to wages that are payable before they are paid, but also to wages that are paid before they are payable (e.g. wages paid in advance of services being performed).

Subsection (8) provides an alternative nexus rule in relation to amounts that are paid or payable under section 9GA (relating to employment agents) and section 21 (relating to tax-reducing arrangements). Under these provisions, if an amount that is paid or payable under those sections, payment is taken to be wages paid or payable to another person, and that amount is paid to a company (defined in the Glossary to include all bodies and associations (corporate and unincorporated) and partnerships), then instead of subsection (1)(b) applying by determining the jurisdiction to be the one in which the worker (as referred to in the definitions of employment agent and tax-reducing arrangement) is based, the nexus is determined by looking at where the company to which the payment is made is based. That is done by artificially applying the rules in proposed section 6C to determine where the company is based, instead of where an employer is based.

6B. Jurisdiction in which person who performs services is based

This section sets out the provisions which are necessary to determine where pay-roll tax is payable under section 6A(1)(b)(i), and by default, where a person is not based in an Australian jurisdiction for the purposes of section 6A(1)(b)(ii) to (iv).

Subsection (1) provides that the jurisdiction in which a person who performs services is based is the jurisdiction in which the person's principal place of residence is located.

Subsection (2) requires that the jurisdiction in which a person is based be worked out by reference to the state of affairs that exist in the particular month in which the wages in question are paid or payable.

For example, if in September 2009, a person was paid wages that related to services performed in Western Australia and South Australia, the question of determining where the person is based under subsection (1) is to be done by determining the jurisdiction in which the person's principal place of residence is located as at September 2009.

Subsection (3) provides that if more than one jurisdiction would qualify as the jurisdiction in which the person is based, during a month, the matter is to be determined by reference to where the person's principal place of residence was on the last day of that month.

In this regard, the common law provides that a person can have only one principal place of residence at a point in time. However, it is possible, when examining the state of affairs over the course of a month, that a person could have more than one principal place of residence (e.g. the person moved house during the month). This provision has been inserted to ensure a determination can be made so that it is clear when Western Australia is to receive the payment of tax under the operation of these provisions.

Subsection (4) provides that a person who has no principal place of residence is taken to be a person who is not based in an Australian jurisdiction.

6C. Jurisdiction in which employer is based

This section sets out the provisions which are necessary to determine where pay-roll tax is payable under section 6A(1)(b)(ii), and by default, the circumstances in which an employer is considered to not be based in an Australian jurisdiction for the purposes of section 6A(1)(b)(iii) and (iv).

Subsection (1) provides that the jurisdiction in which an employer is based is either the jurisdiction in which the employer's registered business address is located (if the employer has an ABN) or if the employer does not have an ABN, the place where the employer's principal place of business is located.

Subsection (2) provides clarification on how the jurisdiction in which an employer is based is to be determined under subsection (1), if the wages are paid or payable in connection with a business carried on by an employer under a trust. In this case, the employer's registered business address is the registered business address of the trust or, if the trust does not have an ABN, the registered business address of the trustee of the trust.

Subsection (3) sets out the provisions that are to apply if an

employer has registered business addresses located in different jurisdictions at the same point in time. Where that is the case, the jurisdiction in which the employer is considered to be based at that point in time is the jurisdiction in which the employer's principal place of business is located.

Subsection (4) requires that the jurisdiction in which an employer is based be worked out by reference to the state of affairs that exist in the particular month in which the wages in question are paid or payable. For example, if in September 2009, an employer paid wages that related to services performed by an employee in Western Australia and South Australia, and that employee was not based in an Australian jurisdiction, the question of determining where the employer is based under subsection (1) is to be done by determining the jurisdiction in which the employer is based as at September 2009.

Subsection (5) sets out the provisions that are to apply if more than one jurisdiction qualifies as the jurisdiction in which an employer is based during a month. This provision should be differentiated from subsection (3), which applies when more than one registered business address exists at one point in time. The need to use this provision arises when, for example, the location of an employer's only registered business address changes jurisdictions in a particular month, or in circumstances where an employer has more than one registered business address, and the employer's principal place of business changes jurisdictions in a particular month.

Subsection (6) provides that where an employer has neither a registered business address nor a principal place of business, the employer is deemed to be an employer who is not based in an Australian jurisdiction for the purposes of this Act.

6D. Place and date of payment of wages

This section sets out provisions that are used to assist in determining the place and date of wage payments in certain circumstances. It is necessary to determine the jurisdiction in which pay-roll tax is payable, insofar as section 6A(1)(b)(iii), (iv) or (1)(c) is applicable.

Subsection (1) defines the term ***instrument*** for the purposes of this section.

Subsection (2) provides deeming provisions that determine where wages are considered to have been paid if they are paid by an instrument (as defined in subsection (1)) or if they are credited to an account.

Paragraph (a) provides that if an instrument is sent or given or an amount is transferred by an employer to a person or a person's agent, then the wages are taken to have been paid at the place where the instrument is sent to or given, or where the amount is transferred to.

Paragraph (b) provides that if an instruction is given by an employer to credit an amount to the account of a person or a person's agent, then the wages are taken to have been paid at the place where the account is located.

Subsection (3) provides deeming provisions that determine "when" wages are considered to have been paid if they are paid by an instrument (as defined in subsection (1)) or if they are credited to an account. The wages are taken to have been paid on the date the instrument was sent or given, the date the amount was transferred, or the date the account was credited.

Subsection (4) is a deeming provision that provides that wages are deemed to be both paid and payable at the place where the wages are paid, subject to the remainder of this section. This provision avoids complications that might otherwise arise in circumstances where wages are payable at a different place to where they are paid.

Subsection (5) provides a deeming provision that applies where wages payable to a particular person in a particular month are not paid before the end of the month in which they were payable. As the amounts are taxable at the time they are payable, and the place where they are payable (particularly if they are covered by a contract) may be different to where they are eventually paid (thus creating a different nexus for wages payable and wages paid), the deeming provision provides for the wages payable to be treated as if they were paid at the place the wages were last paid to the person by the employer for or in relation to services performed by the person. However, if wages have not previously been paid to the person by the employer for or in relation to services performed by the person, the wages payable are to be treated as if they were paid in the place where the person last performed services in respect of the employer before the wages (in that month) became

payable.

Subsection (6) provides for situations where different types of wages (e.g. salary and superannuation) are paid in more than one Australian jurisdiction. In order to avoid the wages components having to be split and separate amounts of pay-roll tax having to be paid to different jurisdictions, this provision has been inserted to ensure that pay-roll tax on all the different types of wages paid or payable in the month is paid to the jurisdiction in which the highest proportion of the wages are paid or payable.

Using the above example of salary and superannuation, presume section 6A(1)(b)(iii) applied to the payment of wages and the services were performed in Western Australia and South Australia. The salary component of the wages was paid in Western Australia, and the superannuation component was payable in New South Wales. Taking into account the deeming provisions of proposed section 9CB(1) and (4), which allows the superannuation component of the wages payable to be treated as if they were paid, then all of the tax on the amounts of salary and superannuation would be payable to Western Australia if the amount of the salary component of the wages exceeded the amount of the superannuation component of the wages.

However, if the amount of the superannuation component exceeded the amount of the salary component, the provisions of proposed section 9CB(1) and (4) would be relied on to determine the jurisdiction in which the tax was payable. This allows the superannuation to be treated as having been paid, as well as determining when and where the superannuation contributions are payable. In this example, the tax for the month would be payable to New South Wales.

Clause 7: **Part 2 Division 2A inserted**

This clause inserts new Division 2A after Part 2 Division 1.

Division 2A – Wages

Subdivision 1 – General concept of wages

9AA. Term used: wages

Section 9AA provides the meaning of wages for the purposes of the Act. This section was previously located in clause 2(1) of the Glossary.

In practical terms, the outcome of these amendments is that the same elements are taxable, however, in the interests of consistency, the structure is now more aligned with the template legislation.

Subsection (1) provides that "wages" means:

Paragraph (a): wages, remuneration, salary, commission, bonuses or allowances paid or payable to an employee or in relation to an employee. Amounts paid or payable in relation to an employee are included to ensure that such payments will be wages for the purposes of the Act, even though they may be paid to a person other than the employee or paid by someone other than the employer, if the payment can be seen to be in relation to an employee. This provision was previously located in Clause 2(1)(a) and (b) of the Glossary. Proposed section 9HC also deals with wages paid by or to third parties, which was previously covered in clause 2(1)(b) of the Glossary.

Paragraph (b): an amount paid or payable by way of remuneration to a person holding office under, or in the service of, the Crown in right of the State of Western Australia. This provision makes the wages taxable in the first instance, with specific exemptions then being available for wages paid by certain Crown entities under section 40 of the Act.

Paragraph (c): an amount paid or payable under a contract that is in a class of contract prescribed under section 45(2)(g), to the extent to which that payment is attributable to labour. Regulations 5 and 6 of the *Pay-roll Tax Assessment Regulations 2003* detail the contracts prescribed for the purposes of this section.

Paragraph (d): an amount paid or payable by a company by way of remuneration to or in relation to a director of that

company. The term “director” has been defined to include members of the governing body of a company by the amendments in clause 18 of the Bill.

Paragraph (e): an amount paid or payable by way of commission to an insurance or time-payment canvasser or collector.

Paragraph (f): an amount that is taken to be wages paid or payable by an employer to a person by another provision of this Division. This would include amounts such as superannuation contributions, fringe benefits, shares and options and termination payments. While these amounts are currently taxable under the Act, the provisions have been restructured to align the wages definition with the harmonised provisions of the template legislation.

Paragraph (g): a motor vehicle allowance paid or payable to an employee for a financial year, to the extent that it exceeds the exempt component determined under section 9FA.

Paragraph (h): an accommodation allowance paid or payable to an employee in a financial year in respect of a night’s absence from the person’s usual place of residence, to the extent that it exceeds the exempt rate determined under section 9FB.

Subsection (2) provides that the wages, remuneration, salary, commission, bonuses or allowances are wages:

(a) whether paid or payable at piece work rates or otherwise; and

(b) whether paid or payable in cash or in kind.

This provision was previously located in clause 2(1)(a) of the Glossary.

Subdivision 2 – Fringe benefits and specified taxable benefits

9BA. Wages include fringe benefits and specified taxable benefits

This section was previously located in clause 2(1)(i) of the Glossary.

Subsection (1) provides that the value of a fringe benefit or a specified taxable benefit that is provided by an employer to an employee, or in relation to an employee, is wages paid or payable by the employer to the employee.

This section also provides that a grant of a share or option, the value of which is taken to be wages under proposed Subdivision 4, is not included as a fringe benefit for the purposes of this Act. This ensures that the grant of the share or option is not taxed as both a share or option and a fringe benefit.

Subsection (2) provides that subsection (1) does not apply to benefits that are exempt benefits under the *Fringe Benefits Tax Assessment Act 1986* (Cwth). This ensures that benefits that are exempt from fringe benefits tax are not considered to be wages for the purposes of subsection (1). To explain this further, the wages are not taxable as a fringe benefit although in some cases, the exempt benefits under the Commonwealth's fringe benefits legislation may be taxable as other types of wages under the Act. An example of this is a Superannuation Holding Accounts Special Account which is taxable under the superannuation provisions.

9BB. Actual value of a fringe benefit

This section was previously located in clause 7 of the Glossary. It has been updated to apply the type-2 formula only, which results in a lower gross-up rate being applied to the taxable value of the fringe benefit.

Subsection (1) provides the formula for determining the value of a fringe benefit for pay-roll tax purposes. This value is the taxable value of the fringe benefit grossed up using the formula for "type-2 benefits" specified in the *Fringe Benefits Tax Assessment Act 1986* (Cwth).

Under current clause 7 of the Glossary, fringe benefits are grossed up using the "type-1 benefits" formula or the "type-2 benefits" formula, depending on which gross-up factor is used for Commonwealth taxation purposes. Reverting to a single formula is one of the reforms being implemented as part of the harmonisation process.

As an example, the current FBT rate is 0.465 and the type-2 gross-up factor is 1.8692.

The type-2 gross-up factor of 1.8692 is not referred to specifically in the Bill, but is derived from the following part of the formula:

$$\frac{1}{1 - \text{FBT rate}}$$

results in $\frac{1}{1 - 0.465}$

which is $\frac{1}{0.535}$

which equals 1.8692 (the current type-2 gross-up factor).

Subsection (2) provides that the value calculated according to the formula in subsection (1) is the actual value of the fringe benefit provided by the employer.

9BC. Basis for including the value of fringe benefits in returns

The methods for calculating the value of fringe benefits, for the purposes of lodging a pay-roll tax return, have been transferred to the Act from regulation 20 of the *Pay-roll Tax Assessment Regulations 2003*. This has been done to achieve a higher level of structural consistency with the harmonised legislation of other jurisdictions.

Subsection (1) provides that an eligible employer may use the estimated method of valuing fringe benefits provided by the employer instead of the actual value. Eligibility requirements to use the estimated value method are outlined in proposed section 9BD.

Subsection (2) requires the employer to use the same method for all returns during an assessment year unless the Commissioner allows the employer to change the method used during that year under proposed section 9BH(4).

9BD. Eligibility to use estimated value method

The requirements for eligibility to use the estimated value

method to calculate the value of fringe benefits have been transferred to the Act from regulation 22 of the *Pay-roll Tax Assessment Regulations 2003*. This has been done to achieve a higher level of structural consistency with the template legislation.

This provision allows an employer to use the estimated value method of calculating the value of fringe benefits provided by the employer, when the employer:

(a) has lodged returns for at least the fifteen months ending immediately before the beginning of the assessment year; and

(b) lodges monthly returns for the assessment year.

9BE. Returns (other than annual returns) using the estimated value method

Subsection (1) provides a formula for calculating the value of the fringe benefits to be included in each return for the year except the last return, when the employer uses the estimated value method.

Unlike the provisions of the other States and Territories, Western Australia's formula takes into account that returns may be lodged for quarterly periods in addition to monthly periods.

Subsection (2) provides that the value of the fringe benefits provided by the employer to be included in the last return for the year is the amount equal to the difference between:

(a) the actual value of the WA fringe benefits provided by the employer during the fringe benefits tax year which ended on 31 March in the assessment year; and

(b) the sum of the amounts included in each of the previous returns for the assessment year as calculated using the formula in subsection (1).

9BF. Annual returns using the estimated value method

The requirement for lodging annual returns when the employer uses the estimated value method during the assessment year has been transferred to the Act from regulation 24 of the *Pay-roll Tax Assessment Regulations 2003*. This has been

done to achieve a higher level of structural consistency with the template legislation.

This section provides for employers who lodge an annual pay-roll tax return and who use the estimated value method of calculating the value of fringe benefits during the assessment year, and advises that the value to be included in the annual return is the actual value of the fringe benefits provided by the employer.

9BG. Final returns using the estimated value method

The requirements for lodgment of the final return, when the employer has used the estimated value method for calculating the value of the fringe benefits, have been transferred to the Act from regulation 25 of the *Pay-roll Tax Assessment Regulations 2003*. This has been done to achieve a higher level of structural consistency with the template legislation.

This section provides that when an employer who has used the estimated value method to calculate the value of the fringe benefits provided to employees, ceases to carry on a business, changes the method of reporting or no longer has a requirement to lodge pay-roll tax returns, and lodges the final return for that business, the value of the fringe benefits to be included in the final return is the amount equal to the difference between:

(a) the sum of the WA fringe benefits provided by the employer during the fringe benefits tax year that ended on 31 March in the assessment year and the WA fringe benefits provided by the employer for the months of April, May and June in the assessment year (if any have been provided); and

(b) the sum of one quarter of the WA fringe benefits provided by the employer for the fringe benefits tax year that ended in the first financial year for which the employer chose to use the estimated value method and the total of the amount of WA fringe benefits included in the monthly returns for the assessment year.

This adjustment calculation must be undertaken to identify the amount to be included in the final return. This accounts for the difference between pay-roll tax paid under the estimated method, and the pay-roll tax that should have been paid on the

actual value of the fringe benefits provided, where an employer has been declaring fringe benefits under the estimated method, and the liability to pay-roll tax is to cease, or a change to the actual method is to occur.

9BH. Changing method of valuing fringe benefits

These requirements have been transferred to the Act from regulation 26 of the *Pay-roll Tax Assessment Regulations 2003*. This has been done to achieve a higher level of structural consistency with the template legislation.

Subsection (1) provides that an employer may commence using the estimated value method for an assessment year if the employer is eligible to use the estimated value method (see proposed section 9BD) and the employer is also to give the Commissioner notice of the intended change before the day on which the first or only return for the assessment year is to be lodged.

Subsection (2) provides that an employer who has been using the estimated value method may cease using that method if notice has been provided to the Commissioner before the day on which the first or only return of an assessment year is to be lodged.

Subsection (3) provides for the notice required in subsection (1) or (2) to be in a form approved by the Commissioner.

Subsection (4) provides that on written application of the employer, the Commissioner may allow the employer to change the method for calculating the value of fringe benefits if the Commissioner is satisfied that:

(a) there is a compelling reason for the change; and

(b) where it is relevant, if the change were not allowed, the amount of pay-roll tax payable by the employer would be substantially greater than if pay-roll tax is paid on the actual value of the fringe benefits.

This subsection authorises a change from the estimated value method to the actual value method and vice versa.

Subsection (5) provides a self-explanatory calculation method that applies where an employer ceases to use the estimated

value method during an assessment year. The value of the fringe benefits to be included in the last return for that year is the amount equal to the difference between:

(a) the sum of:
    (i) the actual value of the WA fringe benefits provided by the employer during the fringe benefits tax year that ended on 31 March in the assessment year; and

    (ii) the actual value of the WA fringe benefits provided by the employer for the months of April, May and June in the assessment year (if any have been provided); and

(b) the sum of:
    (i) one quarter of the actual value of the WA fringe benefits provided by the employer for the fringe benefits tax year that ended in the first financial year for which the employer chose to use the estimated value method; and

    (ii) the total amount of WA fringe benefits included in the monthly returns for the assessment year.

Subsection (6) provides a self-explanatory calculation method that applies in circumstances where an employer commences using the estimated value method during an assessment year. Where that is the case, the value of the fringe benefits to be included in the last return for the assessment year is the amount equal to the difference between:

(a) the actual value of the WA fringe benefits provided by the employer during the fringe benefits tax year that ended on 31 March in the assessment year; and

(b) the total amount of WA fringe benefits included in the returns for the assessment year.

9BI. Value of a specified taxable benefit

This section provides that the value of a specified taxable benefit is the prescribed value or the value calculated in the prescribed manner, whichever method applies.

Currently, the value of contributions to redundancy benefits schemes and portable long service leave payments are

prescribed as specified taxable benefits in regulations 11 to 15 of the *Pay-roll Tax Assessment Regulations 2003*.

Subdivision 3 – Superannuation contributions

9CA. Terms used

This section provides a number of self-explanatory definitions for the purposes of Subdivision 3.

It is worth noting that a definition of ***employer*** is included in relation to the use of that term in paragraph (b) of the definition of ***employee***. In that case, the employer is considered to mean the company. This definition ensures that a superannuation contribution constitutes wages if it is paid or payable in respect of a non-executive director, as if, for the purposes of proposed section 9CB, the director is an employee and the company is the employer. These contributions are considered to be taxable under the Act currently, however, the provisions of the template legislation specifically address this point and corresponding provisions have been included to maintain consistency.

9CB. Wages include superannuation contributions and other similar amounts

Subsection (1) provides that the amount of each of the following superannuation contributions are taken to be wages paid by the employer to the employee in the return period:

(a) a contribution made by an employer in respect of an employee in the return period;

(b) a notional contribution taken to have been made by an employer in respect of an employee in the return period;

(c) if an employer has an individual superannuation guarantee shortfall for an employee for the return period, the amount of the shortfall.

By deeming these amounts to be wages paid, this provision ensures, amongst other things, that the amounts are taxable as wages in Western Australia and the nexus provisions in proposed sections 6A to 6D apply on the basis that the amounts have been paid, rather than are payable.

Subsection (2) provides that if an employer is taken to have

made a notional superannuation contribution in relation to an employee, no actual contribution made by the employer for that employee is to be included in the pay-roll tax return as wages. An example would be an employer whose employee is a member of a defined benefit fund and a notional contribution amount has been actuarially calculated to be payable. Should the employer then pay that amount, both the contribution paid and the contribution payable would be liable for pay-roll tax. This provision exempts the contribution that has been paid from pay-roll tax.

Subsection (3) provides that if a contribution was payable but not paid, and an individual superannuation guarantee shortfall results from the employer's failure to pay the contribution, then the amount of the shortfall is reduced by the amount of the contribution. If an employer has a superannuation guarantee shortfall, this is paid to the Australian Taxation Office with a penalty and includes the amount that should have been paid as a contribution. However, under these provisions, the employer would be liable for pay-roll tax on the contribution that is payable but not paid, as well as the amount paid to the Australian Taxation Office. Without this provision, the employer would be liable for pay-roll tax on both contributions.

Subsection (4) provides that the provisions in proposed section 6D(5) (which determine how wages that are not paid by the end of the month in which they are payable are treated), apply to a superannuation contribution that is payable but not paid, a superannuation contribution that is or is required to be credited as a contribution, a notional contribution or an individual superannuation guarantee shortfall amount as if the provisions of proposed section 6D(5) referred to contributions and not wages, and the amounts were contributions payable.

Subsection (5) provides for the purposes of subsection (1)(c) of this section:

(a) an individual superannuation guarantee shortfall imposed on the employer, because of non-compliance with the choice of funds requirements, is not included for pay-roll tax. This is because a superannuation contribution would have been paid, but to the incorrect fund; and

(b) if an employer has an individual guarantee shortfall for an employee, that shortfall is taken to be for the last month of the quarter.

Section 6 of the *Superannuation Guarantee (Administration) Act 1992* (Cwth) defines a superannuation guarantee shortfall.

9CC. Superannuation contributions

Subsection (1) provides that a superannuation contribution is made by an employer in respect of an employee if:

(a) a contribution paid or payable by an employer to or as a superannuation fund in respect of an employee; or

(b) an amount, although not paid or payable, is or is required to be credited under a superannuation fund as an employer's contribution in respect of an employee. This means that an employer has an obligation to credit an account in a superannuation fund, but does not. Where such an obligation exists, the employer is deemed to have made the credit.

As an example, if an employment contract or award outlined an amount to be credited to an in-house unregulated accumulation fund, and the transaction is not performed, this subsection deems the crediting to have occurred on the basis of the obligation.

Subsection (2) provides that subsection (1)(b) applies only in respect of Australian superannuation funds that do not provide for any defined superannuation benefits in respect of any person.

Subsection (3) deems the setting aside of money or anything worth money as, or as part of, a superannuation fund, to be paying a contribution to a superannuation fund.

Subsection (4) deems contributions in kind to be paying a contribution of the amount equal to the value of the contribution, and provides that proposed section 9HA is to apply for valuing any contribution in kind as if the references to wages were references to the contribution.

9CD. Notional contributions

This section provides the process for determining contributions for Australian superannuation funds that are either not regulated or are unfunded public sector schemes (whether or

not they are regulated) where the fund provides a defined benefit. This section also applies to funds that provide both a defined benefit and any other benefit that is not a defined benefit (hybrid funds).

Subsection (1) provides that notional contributions are deemed to have been made in respect of an employee if the employee is a member of an Australian superannuation fund and that fund is a defined benefit superannuation fund.

Subsection (2) deems a notional contribution to be payable for each return period.

Subsection (3) requires the notional contribution to be determined by an actuary and provides the principle upon which it is calculated.

This principle requires that the amount is sufficient, together with earnings, to provide for the cost to the employer of the entitlement accruing in respect of services performed or rendered in the return period. This principle assumes that a fund to which this section relates is fully funded. As such, it is irrelevant whether a fund is in surplus or deficit.

Subsection (4) provides that the regulations can include rules on how an actuary is to determine the amount under subsection (3).

Subdivision 4 – Shares and options

The value of a grant of a share or an option to an employee as wages has been included in the pay-roll tax base since 1997, using a simple method of valuation. The provisions taxing these arrangements are to be amended to be consistent with the template legislation.

9DA. Wages include shares and options granted to employees

Subsection (1) provides that the grant of a share or option to an employee, in respect of the appointment of the employee or for services performed by the employee, constitutes wages for pay-roll tax purposes.

However, subsection (1) does not apply to the grant of a share or an option if the grant is wages under another paragraph of

proposed section 9AA(1), other than paragraph (f). An example would be where shares or options are provided to an employee as part of a salary sacrifice arrangement.

Subsection (2) provides that a share or option is granted to the person by adopting section 139G of the *Income Tax Assessment Act 1936* (Cwth), or in circumstances prescribed by regulations.

Section 139G of the *Income Tax Assessment Act 1936* provides that:
"A person ***acquires*** a share or right if:

(a) another person transfers the share or right to that person (other than, in the case of a share, by issuing the share to that person); or
(b) in the case of a share – another person allots the share to that person; or
(c) in the case of a right – another person creates the right in that person; or
(d) the person otherwise acquires a legal interest in the share or right from another person; or
(e) the person acquires a beneficial interest in the share or right from another person."

Subsection (3) provides that the value of the grant of a share or an option is taken to be wages paid or payable on the relevant day. The meaning of relevant day is set out in proposed subsection (4).

Subsection (4) provides that the ***relevant day*** is the day the employer elects to treat as the day on which the wages are paid or payable (see proposed section 9DB below).

Subsection (5) provides that the grant of a share or option by or to a third party is valuable consideration under the third party payment provisions in proposed section 9HC.

9DB. Relevant day – choice of

Subsection (1) permits employers to elect to treat the wages constituted by the grant of a share or option as having been paid or payable on the date the share or option is granted to the employee, or the date on which the share or option vests in the employee.

Subsection (2) provides a self-explanatory meaning of the

vesting day in respect of a share for the purposes of proposed subsection (1).

Subsection (3) provides a self-explanatory meaning of the ***vesting day*** in respect of an option for the purposes of proposed subsection (1).

9DC. Relevant day – special cases

Subsection (1) provides that, where an employer does not include the value of a grant of a share or option in its taxable wages in a return for the financial year in which the grant occurred, the wages constituted by the grant are taken to have been paid or payable on the vesting date of the share or option. This provision ensures that a taxpayer is not able to initially elect the vesting day to be the relevant day, but later change to the grant day after a return is lodged if that date is more favourable from a tax point of view. However, it should be noted that clause 17 of the Bill includes transitional arrangements relating to this provision to ensure that taxpayers are not disadvantaged because of the manner in which the commencement arrangements apply.

Subsection (2) provides that where the value of a grant of a share or an option is nil, or the wages constituted by such a grant would not be liable to pay-roll tax on the date of the grant (for example, the employee has paid the full purchase price for the share or option), such wages will be treated as paid or payable on the date that the share or option was granted.

9DD. Value of shares and options

Subsection (1) defines the ***Commonwealth income tax provisions*** to mean the provisions of Subdivision F of Division 13A of the *Income Tax Assessment Act 1936* (Cwth).

Subsection (2) provides that the value of a share or an option is the market value of the share or option (expressed in Australian currency) on the relevant day.

Any consideration paid or given by an employee in respect of the share or option is to be deducted from the value of the share or option for pay-roll tax purposes, unless that consideration is in the form of services performed.

Subsection (3) provides for the market value of shares or

options on the relevant day to be determined in accordance with Commonwealth income tax provisions.

Subsection (4) provides required modifications to the relevant Commonwealth income tax provisions so that the provisions make sense in the context of pay-roll tax.

9DE. Effect of rescission, cancellation etc. of share or option

Subsection (1) ensures that pay-roll tax will continue to be payable in respect of a grant of a share or option that is withdrawn, cancelled or exchanged for valuable consideration.

The day that the share or option is withdrawn, cancelled or exchanged is deemed to be the relevant day and the market value of the share or option on that day, is the valuable consideration.

Subsection (2) provides that in circumstances where an employer:

(a) has granted shares or options to an employee the value of which is taken to be wages; and

(b) has included the value of those shares or options in a pay-roll tax return; and

(c) the grant has been rescinded because the conditions attaching to the grant have not been met,

then the employer may reduce the amount of wages returned in the period in which the grant was rescinded by the value of the shares or options as specified in the previous return.

Subsection (3) prevents subsection (2) from applying in the circumstances where an employee fails to exercise an option or to exercise their rights in respect of a grant of a share or an option. Currently, there is no provision similar to subsection (2) which provides for the reduction in value of a contribution to a share acquisition scheme where the grant of shares or options has been rescinded because conditions attached to the grant have not been met. While this exception has now been included, subsection (3) ensures that pay-roll tax continues to be payable on the value of the grant of shares or options irrespective of whether an employee fails to exercise an option

or exercise their rights in respect of a share or an option.

9DF. Grant of share under exercise of option

This section ensures that where an employer has paid any applicable pay-roll tax in respect of the grant of an option, the subsequent grant of a share pursuant to the exercise of that option is not subject to pay-roll tax. This prevents the same matter being taxed twice.

9DG. Wages include certain shares and options granted to directors

Subsection (1) ensures that the grant of a share or an option to a director, as remuneration for the appointment or services of the director, constitute wages for pay-roll tax purposes, as if the director were an employee and the company were the employer.

Subsection (2) provides that for the purposes of subsection (1), the other provisions of this Subdivision apply to a grant of shares or options to a director as if references to the employer were references to the company and references to the director were references to an employee.

Subsection (3) provides that references to a director include references to persons to be appointed as directors (under a contract or other arrangement) and former directors of a company.

9DH. Place where wages (as shares or options) are payable

The provisions of this section are sometimes relevant to determining whether the wages are liable to pay-roll tax. In most circumstances, services are performed in only one jurisdiction, and the nexus provisions of proposed section 6A(1)(a) will apply to determine where wages (as shares or options) are payable. Where services are performed in two or more Australian jurisdictions, or partly in one or more Australian jurisdictions and partly outside all Australian jurisdictions, the nexus for wages that are shares or options will be determined by reference to the arrangements in proposed section 6A(1)(b)(i) and (ii). However, if these paragraphs are not applicable, it is necessary to determine where the wages (as shares or options) are payable in order to apply the remaining

provisions of proposed section 6A(1)(b).

Subsection (1) defines ***local company*** for the purposes of this section. At first examination, it appears that this provision would also not apply if the employer is not based in an Australian jurisdiction (see proposed section 6A(1)(b)(ii)). However, it is worth noting that shares or options may be issued in a subsidiary or related company of an employer, and that subsidiary or related company may be a local company, meaning that it would be possible for the employer to not be based in an Australian jurisdiction (see proposed section 6C), while the company in which the shares or options are issued could be a local company.

Subsection (2) provides that wages constituted by the grant of a share or option will be taken to be paid or payable in Western Australia if the share is a share in a local company or the option is an option to acquire shares in a local company.

Subsection (3) provides that the wages are taken to be paid outside Western Australia in any other case.

Subdivision 5 – Termination payments

9EA. Wages include termination payments

Subsection (1) provides that a termination payment, as defined in subsection (2), constitutes wages paid or payable by the employer to the employee, or by the company (as an employer) to the director, for pay-roll tax purposes.

Subsection (2) defines an ***employment termination payment*** to mean —

(a) an employment termination payment within the meaning of section 82-130 of the *Income Tax Assessment Act 1997* (Cwth); or

(b) a payment that would be an employment termination payment within the meaning of section 82-130 of the *Income Tax Assessment Act 1997* (Cwth) but for the fact it was received later than 12 months after the termination of a person's employment; or

(c) a transitional termination payment within the meaning of section 82-10 of the *Income Tax (Transitional Provisions)*

Act 1997 (Cwth).

A ***termination payment*** is defined to mean —

(a) a payment made in consequence of the retirement from, or termination of, any office or employment of an employee, being —
    (i) an unused annual leave payment; or
    (ii) an unused long service leave payment; or
    (iii) so much of an employment termination payment paid or payable by an employer, whether or not paid to the employee or to any other person or body, that would be included in the assessable income of an employee under Part 2-40 of the *Income Tax Assessment Act 1997* (Cwth) if the whole of the employment termination payment had been paid to the employee; or

(b) an amount paid or payable by a company as a consequence of the termination of the services or office of a director of the company, whether or not paid to the director or to any other person or body, that would be an employment termination payment if that amount had been paid or payable as a consequence of termination of employment.

This provision includes amounts paid or payable to non-executive directors as a result of the harmonisation process. These amounts are not currently taxable under the Act.

Definitions of ***unused annual leave*** and ***unused long service leave*** have been adopted from the relevant provisions of the *Income Tax Assessment Act 1997* (Cwth).

A payment that is received in consequence of the termination of employment, is an ***unused annual leave*** payment if:
(a) it is for annual leave not used; or
(b) it is a bonus or other additional payment for annual leave not used; or
(c) it is for annual leave, or is a bonus or other additional payment for annual leave, to which the employee was not entitled just before the employment termination, but that would have been made available to the employee at a later time if it were not for the employment termination.

A payment received in consequence of the termination of

employment is an ***unused long service leave*** payment if:

(a) it is for long service leave not used; or

(b) it is for long service leave to which the employee was not entitled just before the employment termination, but that would have been made available to the employee at a later time if it were not for the employment termination.

Subdivision 6 – Allowances

9FA. Motor vehicle allowances

Subsection (1) provides that, for the purposes of section 9AA(1)(g), the exempt component of a motor vehicle allowance paid or payable in respect of a financial year is to be calculated in accordance with the provided formula. Section 9AA(1)(g) provides that the amount of the motor vehicle allowance that is taxable as wages is the amount by which the allowance exceeds the exempt component.

The exempt component is a function of the number of business kilometres travelled during the financial year and the exempt rate (being a rate prescribed by regulations under the *Income Tax Assessment Act 1997* (Cwth), or otherwise as prescribed by regulations).

Subsection (2) provides that the number of business kilometres is to be determined —

(a) in accordance with the applicable recording method prescribed in the regulations if paragraph (b) does not apply to the employer. Regulations 30 and 32 to 38 of the *Pay-roll Tax Assessment Regulations 2003* provide the different recording methods available; or

(b) if the Commissioner approves in writing, the use of another method of determining the number of business kilometres travelled during a financial year, the employer must use that method.

Subsection (3) provides the exempt rate for a financial year is —

(a) the rate prescribed by regulations under the *Income Tax Assessment Act 1997* (Cwth) for calculating the deduction for car expenses for a large car using the cents per kilometre method in the financial year immediately

preceding the financial year in which the allowance is paid or payable; or

(b) if no rate is prescribed under the income tax legislation under paragraph (a), as prescribed by regulations. As a rate is currently prescribed by the income tax legislation and is updated annually, no other rate is intended to be prescribed at this point.

The rates for calculating the deduction for car expenses are located in regulation 28-25.01 and Part 2 of Schedule 1 of the *Income Tax Assessment Regulations 1997* (Cwth). The relevant amount for the 2008-09 year, which will be relevant for allowances paid or payable during 2009-10, is $0.75 per kilometre.

9FB. Accommodation allowances

This section provides the exempt rate for the financial year for the purposes of section 9AA(1)(h). The exempt rate is:

(a) calculated by reference to the lowest capital city for the lowest salary band determined by the Commonwealth Commissioner of Taxation in respect of reasonable daily travel allowance expenses; or

(b) if no determination is made as referred to in paragraph (a), as prescribed by regulations. As a determination is currently available and is updated annually, no other rate is intended to be prescribed at this point.

Section 9AA(1)(h) provides that the amount of the accommodation allowance that is taxable as wages is the amount by which the allowance exceeds the exempt rate.

The Commissioner of Taxation includes the reasonable amounts for daily travel expenses according to salary level and destination in a Taxation Determination each year. Currently, the ATO's TD 2009/15 sets out that the reasonable travel expenses for the lowest capital city (Hobart) / lowest salary band ($93,600 or below) is $223.80 per day.

Subdivision 7 – Employment agents

9GA. Wages include amounts paid by employment agents

The employment agent provisions are not one of the agreed eight areas forming part of the recommendations of the initial stage of the harmonisation project. As a result, this section has reproduced current clause 2(1)(h) of the Glossary. No amendments have been made to the Western Australian provisions (apart from those necessary to relocate the provision and ensure it operates in conjunction with the new nexus arrangements) and pay-roll tax continues to apply where an agent procures for a client the services of an individual worker to perform employee-like functions and the worker does not become the employee of either the agent or the client.

This section treats as wages any amount paid or payable by an employment agent, either directly or indirectly, to a person engaged to perform services for a client of that agent, or to some other person in respect of those services, if the employment agent receives a lump sum or ongoing fee during or in respect of the period the services are provided to the client. The term ***employment agent*** is defined in the Glossary.

Subdivision 8 – Miscellaneous provisions

9HA. Value of wages paid in kind

This section sets out the method for determining the value of wages (except fringe benefits or specified taxable benefits) that are paid or payable in kind. The value is the greater of:

(a) the value agreed, the value attributed to the wages, or the value ascertainable for the wages from arrangements between the employer and the employee, whichever is the greater of the three amounts; and

(b) if the regulations prescribe how the value of wages of that type is to be determined, that value.

This provision does not apply to determine the value of fringe benefits or specified taxable benefits. These values are determined in accordance with the provisions located in Subdivision 2 of Part 2 of this Bill, while the value of specified taxable benefits is the prescribed value (see proposed section 9BI of this Bill). In this regard, regulations 11 to 15 of the *Pay-roll Tax Assessment Regulations 2003* set out how to determine the value of contributions to redundancy benefits schemes and portable long service leave payments, which are prescribed as specified taxable benefits.

9HB. GST excluded from wages

Subsection (1) provides for GST to be excluded from wages in circumstances where payment for a supply of services is taken to be wages under the Act, and the payment includes an amount of GST.

Subsection (2) provides that subsection (1) does not apply in respect of wages that comprise a fringe benefit. The taxable value of a fringe benefit will include the GST amount where applicable.

9HC. Wages paid by or to third parties

Currently these provisions are contained in clauses 2(1)(b), 2(2) and 5 of the Glossary. The amendments introduce more specific third party provisions to be consistent with the legislation that applies in other jurisdictions. The provisions cover third party payments relating to directors in addition to third party payments to employees.

Subsection (1) ensures that payments of money or the provision of other valuable consideration, which is referable to an employee's services to his or her employer, is taken to be wages paid or payable by the employer to the employee (and therefore subject to pay-roll tax), even if the amount is paid, or the benefit is provided, by —

(a) a third party to the employee; or

(b) the employer to a third party; or

(c) a third party to a third party.

Subsection (2) provides that the same principles as set out by subsection (1) apply to payments of money or the provision of other valuable consideration by way of remuneration for the appointment or services of a company director.

Subsection (3) provides that references to a director include references to persons to be appointed as directors and former directors of a company.

Clause 8: **Section 21 amended**

This clause amends section 21(1)(c) as a consequence of the amendments to the nexus arrangements in proposed sections 6A to 6D by ensuring that this provision can be read in the context of the new nexus arrangements. It should be noted that the context of the references to "the services" and "the worker" come from the definition of ***tax-reducing arrangement*** in the Glossary.

Clause 9: Section 26 amended

Section 26 provides the dates for lodgment of monthly pay-roll tax returns.

This clause repeals section 26(2) and inserts new section 26(2) and (3) to require that returns due for a month other than June are to be lodged by the 7th day of the following month and the June return is to be lodged by the 21st day after the end of the month (that is 21 July).

These amendments make the lodgment dates for monthly returns in Western Australia consistent with those applying in all States and Territories except the Northern Territory, whose monthly returns are due by the 21st day of the following month.

Clause 10: Section 27 amended

Section 27(2)(c) currently requires additional (reconciliation) returns to be lodged within two months after the end of the assessment year. This paragraph is amended to require the additional return to be lodged within 21 days after the end of the assessment year.

These amendments make the lodgment dates for the reconciliation return in Western Australia consistent with those applying in all other States and Territories.

Clause 11: Section 31 amended

This clause deletes a reference to "carries out" and replaces it with a reference to "performs" to ensure the language of the Act is consistent with the new nexus arrangements in proposed sections 6A to 6D.

Clause 12: Part 5 heading replaced

This clause deletes and replaces the heading to Part 5 as a

result of the amendments set out in clauses 13 and 14.

Clause 13: **Section 40 amended**

Subclause (1) deletes section 40(1)(b). This paragraph previously included a cross reference to the exemption in section 40(3). Section 40(3) has been deleted by subclause (4) and reintroduced as proposed section 41B.

Subclause (2) inserts a new paragraph (p) into section 40(2) to provide an exemption for wages paid or payable during an assessment year by an employer to or in relation to a person for the period the person was engaged in certain volunteer functions. The exemption is subject to the qualifications in proposed subsection (3).

Paragraph (p) exempts wages where the person is performing functions as:

(i) a volunteer member of a FESA Unit, an SES Unit or a VMRS Group under the *Fire and Emergency Services Authority of Western Australia Act 1998;* or

(ii) a member of a volunteer fire brigade under the *Fire Brigades Act 1942; or*

(iii) a volunteer member of a bush fire brigade under the *Bush Fires Act 1954.*

The terms FESA Unit, SES Unit and VMRS Group are defined in section 3 of the *Fire and Emergency Services Authority of Western Australia Act 1998* as follows:

FESA Unit means a group of persons approved by the Authority under section 18M;

SES Unit means a group of persons approved by the Authority under section 18C;

VMRS Group means a group of persons approved by the Authority under section 18H. VMRS stands for Volunteer Marine Rescue Services.

A volunteer fire brigade is defined in section 4(1) of the *Fire Brigades Act 1942* to mean “any association of persons authorised by the Authority and formed for the purpose of the

prevention and extinguishing of fires and the protection of life and property from fire, if the carrying out of the purpose of such association is not the sole or principal calling or means of livelihood of such persons or of a majority of them."

A bush fire brigade is defined in section 7(1) of the *Bush Fires Act 1954* to mean "a bush fire brigade for the time being registered in a register kept pursuant to section 41."

The relevant provisions of section 41 of the *Bush Fires Act 1954* are set out below:

"(1) For the purpose of carrying out normal brigade activities a local government may, in accordance with its local laws made for the purpose, establish and maintain one or more bush fire brigades and may, in accordance with those local laws, equip each bush fire brigade so established with appliances, equipment and apparatus.

(2) A local government shall keep a register of bush fire brigades and their members in accordance with the regulations and shall register therein each bush fire brigade established by it under subsection (1) and each member of each such brigade."

Subclause (3) deletes a reference in section 40(2)(r) to "carried out" and replaces it with a reference to "performed" to ensure the language of the Act is consistent with the new nexus arrangements in proposed sections 6A to 6D.

Subclause (4) deletes and replaces section 40(3), which currently relates to the payment of wages in Western Australia for services carried out wholly in another country for a continuous period of more than six months. An amended provision to replace current section 40(3) has been inserted into proposed section 41B.

A new section 40(3) has been inserted to ensure that the availability of the exemption provided in proposed section 40(2)(p) does not apply to wages paid or payable as annual leave, long service leave, recreation leave or sick leave.

Subclause (5) deletes section 40(5), which related to an exemption previously located in section 40(2)(p). The exemption in section 40(2)(p) was removed with effect from 10 June 2009 by the *Training Legislation Amendment and*

Repeal Act 2008, however, the corresponding provision in section 40(5) was not removed at that time and is now being deleted.

Clause 14: **Sections 41A and 41B inserted**

41A. Exempt wages – parental and adoption leave

This clause inserts new section 41A, which provides an exemption for wages paid or payable to or in relation to an employee for adoption, maternity or parental leave.

It should be noted that the exemption in Western Australia does not completely align with that available in other jurisdictions. In most other jurisdictions, an exemption is only available for maternity or adoption leave. In the Northern Territory and Queensland, the exemption is available for paternity leave, not parental leave, meaning that it is only payable in relation to leave given to a male employee in connection with the pregnancy of a female carrying his unborn child, or the birth of the male employee's child.

In Western Australia, the provisions of section 6A of the *Artificial Conception Act 1985* have been taken into account, resulting in the parental leave exemption being available in respect of wages paid or payable to a male or female employee in connection with the pregnancy of a female carrying the employee's child or the birth of the employee's child. This is similar to the corresponding exemption available in the ACT.

Subsection (1) contains self-explanatory definitions of the terms ***adoption leave***, ***maternity leave*** and ***parental leave*** for the purposes of this section.

Subsection (2) provides an exemption from pay-roll tax for wages paid or payable to or in relation to an employee for maternity leave, adoption leave or parental leave.

Subsection (3) clarifies that the leave can be taken during or after the pregnancy or before or after the adoption. Notably, no exemption is provided in the event that leave is taken before a pregnancy (for example, to undertake artificial fertilisation procedures).

Subsection (4) limits the amount of the exemption to wages paid or payable for up to and including 14 weeks leave for any

one pregnancy or adoption. The method of calculation is also specified, in order to avoid confusion in the event that, for example, the employee (whether they work on a full or part-time basis) takes 14 weeks leave at half pay.

Subsection (5) provides that the exemption for maternity, adoption and parental leave does not apply to wages that are payable in the form of a fringe benefit under the *Fringe Benefits Tax Assessment Act 1986* (Cwth). This provision has been inserted to reduce the compliance burden on employers claiming the exemption. If fringe benefits provided by an employer were not excluded, employers would need to apportion the value of taxable fringe benefits to calculate exempt wages attributable to the period of leave.

41B. Exempt wages – wages paid or payable for or in relation to services performed in other countries

This section replaces the exemption previously located in section 40(3) for services performed by a person wholly in another country.

Subsection (1) exempts wages that are paid or payable in Western Australia for or in relation to services performed by a person wholly in one or more other countries for a continuous period of more than 6 months.

Subsection (2) provides a power to require the Commissioner to reassess the tax payable to give effect to subsection (1). This is necessary as any tax paid on the amount up until the six month period has expired will need to be refunded to the taxpayer.

Clause 15: Part 6 heading inserted

This clause inserts a new heading as a result of the insertion of the new exemption provisions, requiring the Part 5 heading to be inserted.

Clause 16: Section 45 amended

This clause amends section 45(2)(g) to change the reference to clause 2(1)(e) of the Glossary so that it refers to section 9AA(1)(c). This is required as clause 2 of the Glossary has been repealed and the relevant provision is now located in the definition of “wages” in section 9AA.

Clause 17: **Section 46 and Schedule 1 inserted**

This clause inserts section 46 and Schedule 1, which include the transitional provisions that relate to amendments made to the Act.

Schedule 1 – Transitional provisions

Division 1 – Provisions for the *Pay-roll Tax Assessment Amendment Act 2010* in relation to taxable wages

1. Liability to tax for the assessment years commencing on 1 July 2009 and 1 July 2010

This clause provides that a taxpayer's liability for pay-roll tax under this Act, for the assessment years that commence on 1 July 2009 and 1 July 2010 is to be determined as if the *Pay-roll Tax Assessment Amendment Act 2010* had come into operation on 1 July 2009. The provision ensures that the transitional provisions apply to the assessment year commencing on 1 July 2009, and also on 1 July 2010 if the Bill is not passed by Parliament and Royal Assent is not received on or before 1 July 2010. This provision also ensures that the provisions in the Bill (other than the grouping provisions in Part 2 Division 3, which come into operation on 1 July 2012), operate for a full financial year.

Once this Bill is passed by the Parliament, taxpayers will have the option of applying for a reassessment in relation to matters where returns have been lodged on the basis of existing legislation, or waiting until the end of the financial year and adjusting the relevant details as part of the annual reconciliation process.

2. Shares and options granted on or after 1 July 2009 and before the *Pay-roll Tax Assessment Amendment Act 2010* received the Royal Assent

This clause is necessary as the Bill, once enacted, will commence some time after 1 July 2009, but have operation from 1 July 2009. The current employee share scheme arrangements require that tax is payable on the basis of the value of shares and options on the grant day. As the provisions in the Bill introduce a choice to pay on the value of shares and options on an alternative and later day (i.e. the vesting day), a

transitional provision is required to ensure that taxpayers are not disadvantaged by complying with the law as it currently stands should they wish to pay on the vesting day.

Subclause (1) operates if the employer granted a share or option to a person on or after 1 July 2009 and before the *Pay-roll Tax Assessment Amendment Act 2010* received the Royal Assent. If that is the case, the employer may give notice to the Commissioner to elect to treat wages as being paid on the vesting day if the requirements in subclause (1)(b), (c) and (d) are met.

Subclause (2) limits the period within which a notice to elect the vesting day may be made to three months after the *Pay-roll Tax Assessment Amendment Act 2010* received the Royal Assent.

Subclause (3) requires the Commissioner to make a reassessment to give effect to clause 2 upon receipt of an application. The application would be made by way of the notice referred to in subclause (2), providing it is made within the required timeframe.

3. Notices under the *Pay-roll Tax Assessment Regulations 2003* regulation 26(1) or (2)

This clause is a transitional provision that provides that a notice issued under regulation 26(1) or (2) in relation to the assessment year commencing 1 July 2009 or the assessment year commencing on 1 July 2010 has effect as if it had been issued under proposed section 9BH(1) or (2). These notices relate to the use of the actual or estimated value method for valuing fringe benefits.

Clause 18: Glossary amended

This clause amends a number of definitions (many of which relate to the superannuation provisions) in clause 1 of the Glossary.

Subclause (1) deletes a number of definitions that are no longer required, the majority of which relate to superannuation. This is due to the update of the superannuation provisions in the Act to reflect the amended superannuation legislation of the Commonwealth.

Subclause (2) inserts a number of definitions into clause 1 of the Glossary. These definitions are required to accommodate the relocation of provisions into the Act from the *Pay-roll Tax Assessment Regulations 2003*.

Subclause (3) amends the definition of ***defined superannuation benefit*** to delete "scheme" and insert "fund" and to delete each occurrence of "participant's" and insert "member's".

Subclause (4) deletes a reference to "carry out" and "provided" in the definition of ***employment agent*** and replaces these terms with a reference to "perform" and "performed" to ensure the language of the Act is consistent with the new nexus arrangements in proposed sections 6A to 6D.

Subclause (5) amends the definition of ***exempt*** to refer to Part 5 instead of section 40. This amendment is necessary as additional exemptions for wages paid to volunteers and employees taking maternity leave, adoption leave or parental leave have been included in new Part 5 of the Act.

Subclause (6) amends the definition of ***individual superannuation guarantee shortfall*** by deleting "*Superannuation Guarantee (Administration) Act 1992* of the Commonwealth" and inserting Superannuation Guarantee Act, a newly defined term in the Glossary.

Subclause (7) deletes a reference to "carries out" in the definition of ***tax-reducing arrangement*** and replaces it with a reference to "performs" to ensure the language of the Act is consistent with the new nexus arrangements in proposed sections 6A to 6D.

Subclause (8) amends the definition of ***value*** by replacing clause references in the Glossary with the relevant new section references.

Subclause (9) amends the definition of ***wages*** in clause 1 of the Glossary by deleting "definition given in clause 2" and inserting "meaning given in section 9AA" due to the relocation of the relevant definition.

Subclause (10) deletes clauses 2 to 12 of the Glossary, as these provisions have been transferred to the main body of the Act.

Clause 19: **Various penalties amended**

This clause amends various sections of the Act, which include a penalty at the end of each section. Inserted after the word "Penalty:" are the words "a fine of". This is to make clear that the penalty is a fine imposed by the courts and not the Commissioner.

Division 3 – Amendments relating to grouping of employers

The amendments contained in Division 3 are to the grouping provisions to ensure consistency with the pay-roll tax legislation of other jurisdictions.

Clause 20: **Section 31 amended**

This clause amends section 31(4) by deleting the basis on which an exclusion is approved under current section 31.

Section 31(4) currently contains the provisions that allow discretion to exclude businesses from grouping when the Commissioner is satisfied of certain matters. To achieve greater consistency with other jurisdictions, the matters the Commissioner is to consider when excluding a business from a group have been standardised and inserted into section 38. When excluding a business from a group, the Commissioner will be required to take account of the matters listed in section 38.

Clause 21: **Section 32 amended**

Section 32 provides for commonly controlled businesses to be grouped and for discretion to exclude those businesses when grouped under the provisions relating to discretionary trusts.

This clause repeals subsections (3) and (4) which list the existing matters the Commissioner is to take account of to exclude a business from a group and inserts a discretion for the Commissioner to exclude a person from a group in accordance with section 38. The new discretion will apply to all commonly controlled businesses, except related bodies corporate.

Clause 22: **Section 33 amended**

This clause amends section 33 to replace the term ***related corporation*** with ***related body corporate***. This is to ensure the term is consistent with the *Corporations Act 2001* (Cwth).

Clause 23: **Section 35 replaced**

Section 35 provides that two businesses together constitute a group in the circumstances where one of the businesses is the head or parent business and the second business is a branch, agency or subsidiary of the first business and that business exercises managerial control over the branch, subsidiary or agency business.

As Queensland and Western Australia are the only jurisdictions that have had or currently have these provisions, the relevant sections have been removed to achieve consistency in the grouping arrangements across Australia. However, this policy change is effective from 1 July 2012, and the repeal of this provision should not be interpreted in the interim as a relevant factor to exclude a business from a group under section 35(2). Relevant transitional provisions dealing with this change are set out in clause 26 of this Bill.

35A. Groups arising from tracing of interests in corporations

Subsection (1) contains a definition of ***associated person***, and defines a number of other relevant terms.

Subsection (2) provides that an entity and a corporation can be grouped through the tracing of interests in the corporation.

Subsection (3) provides that an entity (defined in subsection (1) as a person or two or more persons who are associated persons) and a corporation form part of a group if the entity has a controlling interest in the corporation. Such a controlling interest exists if the entity has a direct interest, an indirect interest, or an aggregate interest in the corporation, and the value of that interest exceeds 50%.

Subsection (4) provides that the Commissioner may exclude an entity from a group in accordance with section 38.

35B. Direct interests

Subsection (1) provides that an entity has a direct interest in a

corporation if:

(a) the entity can directly or indirectly exercise, control the exercise of, or substantially influence the exercise of voting power attached to any voting shares in the corporation; or

(b) where the entity is 2 or more associated persons, each person can, directly or indirectly exercise, control the exercise of, or substantially influence the exercise of voting power attached to voting shares in the corporation.

Subsection (2) provides that the percentage interest of voting power which an entity controls, is the percentage of the total voting power which the entity can exercise, control the exercise of, or substantially influence the exercise of.

For example, A (the entity) has 90% of the voting shares in B Pty Ltd. A (the entity) therefore has a direct interest in B Pty Ltd and the value of that direct interest is 90%.

35C. Indirect interests

Subsection (1) provides that an entity has an ***indirect interest*** in a corporation (called the ***indirectly controlled corporation*** by subsection (3)) if the entity is linked to that corporation by a direct interest in another corporation (called the ***directly controlled corporation***) that has a direct and/or indirect interest in the indirectly controlled corporation.

For example, A (the entity) has 90% of the voting shares in B Pty Ltd (the directly controlled corporation). B Pty Ltd has 40% of the voting shares in C Pty Ltd. A (the entity) therefore has an indirect interest in C Pty Ltd (the indirectly controlled corporation).

Subsection (2) provides that a corporation is linked to a directly controlled corporation if the corporation is part of a chain of corporations:

(a) that starts with the directly controlled corporation; and

(b) in which a link in the chain is formed if the corporation has a direct interest in the next corporation in the chain.

Following on from the above example, corporations B Pty Ltd and C Pty Ltd form part of a chain of corporations and C Pty

Ltd is linked to B Pty Ltd.

To take the example one step further, C Pty Ltd also has a direct interest in D Pty Ltd. Corporations B Pty Ltd, C Pty Ltd and D Pty Ltd form part of a chain of corporations. Both corporations C Pty Ltd and D Pty Ltd are linked to B Pty Ltd. A (the entity) that has a direct interest in B Pty Ltd has an indirect interest in both C Pty Ltd and D Pty Ltd.

Subsection (3) provides that the value of an entity's indirect interest in an indirectly controlled corporation is determined by multiplying:

(a) the value of the entity's direct interest in the directly controlled corporation; and

(b) the value of the directly controlled corporation's interest in the indirectly controlled corporation.

Subsection (4) provides that if a corporation has more than one indirect interest in a corporation, the value of the interest is calculated under proposed section 35D, as an aggregate interest.

35D. Aggregate interests

Subsection (1) provides that an entity has an ***aggregate interest*** in a corporation if:

(a) the entity has a direct interest and one or more indirect interests; or

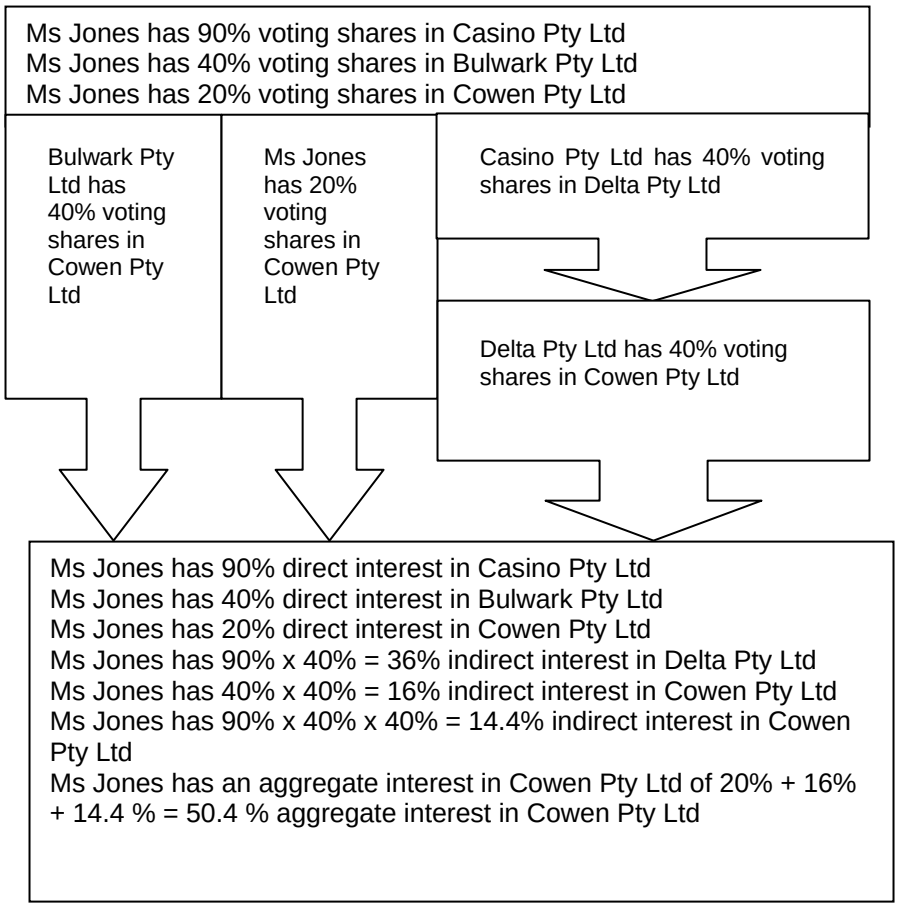
(b) the entity has two or more indirect interests.

Subsection (2) provides that the value of an entity's aggregate interest is the sum of:

(a) the value of the entity's direct interest in the corporation; and

(b) the value of each of the entity's indirect interest in that corporation.

The following is an example of the application of the tracing provisions to group businesses and the value of an aggregate interest.



Ms Jones has 1 direct link to Casino Pty Ltd.
Ms Jones has an indirect link through 1 corporation to Cowen Pty Ltd.
Ms Jones has an indirect link through a chain of 2 corporations to Cowen Pty Ltd.
Ms Jones and Casino Pty Ltd are a group.
Ms Jones and Cowen Pty Ltd are a group.
Casino Pty Ltd and Cowen Pty Ltd are subsumed into a group.

Clause 24: **Section 36 amended**

Subclause (1) amends section 36(3) to align section 36 to be consistent with section 69 of the template legislation. This ensures that small and large groups are constituted in the same manner in all jurisdictions.

Subclause (2) inserts an exclusion power referring to section

38, as the factors in section 38 that should be considered when excluding a person from a group will now apply to larger groups created by subsuming smaller groups under section 36.

Clause 25: **Section 38 amended**

This clause repeals and replaces subsection (1) of section 38.

Subsection (1) provides the Commissioner with a discretion to exclude a member from a group if satisfied that the business conducted by that member is independent of, and not connected with, the business conducted by any other member of the group.

In considering the application of this discretion, the Commissioner will have regard to the nature and degree of ownership and control of the businesses, the nature of the businesses, and any other relevant matters. The discretion is not available for corporations that are related bodies corporate under section 50 of the *Corporations Act 2001* (Cwth).

Clause 26: **Schedule 1 amended**

This clause inserts transitional provisions (in a new Division 2), relating to the grouping provisions after clause 3 of Schedule 1 to the Act.

Division 2 – Provisions for the *Pay-roll Tax Assessment Amendment Act 2010* in relation to grouping of employers

4. Exclusion, from a group, in force before 1 July 2012

This provision ensures that exclusions granted prior to 1 July 2012 that are still effective and in force immediately before 1 July 2012, continue to have effect on and after 1 July 2012, as if they had been granted under the grouping provisions in Part 4 that apply on and after 1 July 2012.

For example, if the Commissioner has excluded a person from a group under section 31(4) or 32(3) using the mechanisms provided to him under current section 38 of the Act and that exclusion was in force immediately before 1 July 2012, the exclusion will continue on and from 1 July 2012. Commissioner's Practice PT 2.0 outlines the major factors the Commissioner currently takes into account when considering an exclusion from grouping for an employer.

The changes to the grouping exclusion results in it operating more broadly than the current provisions to exclude employers from grouping. This provision has been inserted on the basis that any employer currently excluded from grouping would be able to satisfy the requirements of an exclusion from grouping under the exclusion provision that is to operate from 1 July 2012.

5. Exclusion, from a group, granted on or after 1 July 2012

This provision ensures that the power to exclude that operates from 1 July 2012 cannot be used retrospectively for liabilities that arose prior to the introduction of the amended exclusion powers on 1 July 2012.

For example, during 2011-12, the discretion in section 32(3) could only be applied for where the person has a controlling interest as the beneficiary under a discretionary trust. Section 32 is amended, so that after 1 July 2012, the discretion to exclude applies to all types of commonly controlled businesses (other than related corporations). This provision ensures that the extended exclusion for commonly controlled businesses under the amended arrangements cannot be applied in relation to periods prior to the date the amended arrangements commenced (e.g. the extended exclusion could not be applied to a grouping arrangement during the 2011-12 year).

6. Exclusion, from a group, having effect before 1 July 2012

This provision allows an exclusion to be granted by the Commissioner after 1 July 2012 for a period before 1 July 2012 as if the new grouping provisions in the *Pay-roll Tax Assessment Amendment Act 2010* had not commenced. This provision is intended to allow an exclusion on the basis of the arrangements that applied at the time the liability occurred (where that liability is before 1 July 2012), even if the exclusion is considered and approved after 1 July 2012. Examples where this is relevant include a decision under section 35(2) to exclude a business from grouping on the basis that it is a head and branch business, or under sections 31(4) or 32(3) where the decision to exclude was based on different factors before 1 July 2012.

It should also be noted that the power for an exclusion to take effect at a date earlier than the date of the notice is usually only applied back to the date an application is made by the taxpayer to be excluded from a group.

Clause 27: **Glossary amended**

This clause replaces the definition of ***related corporation*** in clause 1 of the Glossary with a definition of a ***related body corporate***. This is to update the definition to be consistent with the definition in the *Corporations Act 2001* (Cwth) and also for the purposes of the tracing provisions.

Part 3 – *Pay-roll Tax Assessment Regulations 2003* amended

Clause 28: **Regulations amended**

This clause provides that the amendments in this Part are to the *Pay-roll Tax Assessment Regulations 2003*. The amendments to these regulations have been done as part of this Bill, rather than using the usual regulation amendment process, as many of the amendments shift provisions from the existing regulations into the Act, and are also required to operate with effect from 1 July 2009.

Clause 29: **Regulation 5 amended**

Regulation 5 prescribes an amount paid or payable under a contract to the extent to which that payment is attributable to labour.

The regulation currently prescribes contracts made between a ship or boat builder and another party for the procurement of the services of persons for the construction, fit-out or maintenance of a ship or boat for the purposes of the definition of wages.

This regulation is to be amended to refer to proposed section 9AA(1)(c) of the Act and not clause 2(1)(e) of the Glossary, as clause 2 of the Glossary is to be repealed.

Clause 30: **Regulation 12 amended**

Regulation 12 prescribes the value of contributions to a redundancy benefits scheme that are specified benefits, and

refers to current clause 6 of the Glossary.

The regulation is amended to refer to proposed section 9BI of the Act instead of clause 6 of the Glossary.

Clause 31: **Regulation 14 amended**

Regulation 14 prescribes the value of contributions to a portable long service leave fund that are specified taxable benefits, and refers to current clause 6 of the Glossary to the Act.

The regulation is amended to refer to proposed section 9BI of the Act instead of clause 6 of the Glossary.

Clause 32: **Regulations 16 to 18 deleted**

Regulations 16, 17 and 18 provide that contributions to an employee share acquisition scheme are specified taxable benefits and therefore taken to be wages for the purposes of pay-roll tax. These regulations also provide the valuation method to use for a contribution to an employee of a share or an option under an employee share acquisition scheme.

This clause deletes these regulations as they are to be transferred to proposed Part 2 Division 2A Subdivision 4 of the Act.

Clause 33: **Regulations 19 to 26 deleted**

This clause deletes regulations 19 to 26 as the relevant provisions have been relocated into the Act.

Regulations 19 to 26 prescribe excluded fringe benefits and the methods of calculating the value of fringe benefits included in a taxpayer's return.

Regulation 19 prescribes a living away from home allowance as an excluded fringe benefit. This requires taxpayers to calculate the full taxable value of the allowance and not use the fringe benefits tax amount from their fringe benefits tax return. To achieve consistency, these allowances will now only be taxable on the part that is a fringe benefit. The taxable value of the fringe benefit under the *Fringe Benefits Tax Assessment Act 1986* (Cwth) is the amount of the allowance paid, less exemption components for reasonable costs.

The methods of calculating and returning the value of fringe benefits provided to employees are contained in regulations 20 to 26.

Regulation 27 that requires notification to the Commissioner by an employer when an amended assessment is received under the *Fringe Benefits Tax Assessment Act 1986* (Cwth) within 30 days of receiving it, will continue to apply and will remain in the regulations.

Clause 34: **Part 3 heading replaced**

The current heading to Part 3 refers to specified exempt allowances. As the regulations contained in Part 3 will refer to record keeping for motor vehicle allowances only, the heading has been amended.

Clause 35: **Regulations 28 and 29 deleted**

Regulations 28 and 29 prescribe exempt motor vehicle allowances and the extent of the exemption, including a formula to calculate the exemption.

As these provisions have been transferred to proposed section 9FA of the Act, these regulations are deleted.

Clause 36: **Regulation 30 amended**

Regulation 30 contains provisions dealing with the calculation of the number of business kilometres depending on the record keeping method selected by the employer.

Regulation 30 is amended by inserting a reference to proposed section 9FA(2) of the Act, which will contain the motor vehicle allowances provisions.

Clause 37: **Regulation 31 deleted**

Regulation 31 prescribes the exempt rate allowed for business kilometres. Currently, this rate is the rate specified in the award when an allowance is paid under an award, or in any other case, is equal to the rate prescribed by the Commonwealth for a large car using the cents per kilometre method.

The amendments to the Act have included the exempt motor

vehicle rate in proposed section 9FA and apply the Commonwealth's large car rate automatically without requiring it to be prescribed specifically in these regulations. In addition, as the rate specified in an award will no longer be applicable, this regulation is not required.

Clause 38: **Part 3 Division 2 deleted**

Part 3 Division 2 currently contains regulations 39 and 40 that refer to accommodation allowances. As these provisions are now in proposed Part 2 Division 2A Subdivision 6 of the Act, this Division is no longer required in the regulations.

Clause 39: **Regulation 41 amended**

Regulation 41 prescribes the requirements for actuarial determinations for some superannuation contributions.

Subregulation (1) is amended by deleting "If an amount contributed to a superannuation scheme is taken by clause 8 in the Glossary to the Act to be paid" and inserting instead "If a superannuation contribution to a superannuation fund is taken by section 9CB of the Act to be wages paid".

This amendment is required as the superannuation provisions in the Glossary have been transferred to proposed Part 2 Division 2A Subdivision 3 of the Act, and have also been amended to reflect technical changes made to the relevant Commonwealth legislation.

Clause 40: **Regulation 42 amended**

Regulation 42 prescribes that an actuarial determination must be made in relation to each participant of a superannuation scheme and if an actuary considers it reasonable to do so, the participants may be divided into categories.

The amendments in subclauses (1) to (4) have been made to ensure the language used in the regulations is consistent with the Commonwealth legislation.

Clause 41: **Regulation 43 deleted**

Regulation 43 refers to the rate of earnings referred to in clause 10(3) of the Glossary. The provisions of clause 10 of the Glossary have been transferred to proposed section 9CD of the

Act, therefore this regulation is no longer required.

Clause 42: **Regulation 44 amended**

Regulation 44 refers to the scope of actuarial determinations to be made for each participant or category of participants for each return period.

The amendments in subclauses (1) to (4) have been made to ensure the language used in the regulations is consistent with the Commonwealth legislation.

Clause 43: **Regulation 46 amended**

Regulation 46 sets out the prescribed records that are required to be kept by section 44 of the Act.

Subclause (1) amends regulation 46(1) to insert a requirement to keep documents and records that are set out in the remainder of the regulation.

Subclause (2) amends regulation 46(2) to accommodate the relocation of provisions relating to shares and options, accommodation allowances, motor vehicle allowances and superannuation.

Subclause (3) inserts new subregulation (3A) after regulation 46(2).

Subregulation (3A) inserts record keeping requirements in relation to the new exemption for maternity, adoption or parental leave. This record keeping requirement ensures that the exemption is based on proper records indicating the relevant dates of pregnancy and/or birth or adoption that are relevant to the calculation of the 14 week period that the exemption is available.

Clause 44: **Glossary amended**

Subclause (1) deletes definitions no longer required by the regulations as the provisions referred to have been transferred to the Act or have been updated.

Clause 45: **Power to amend or repeal regulations unaffected**

This clause provides that the inclusion of the consequential

amendments to the regulations with the amendments to the Act in this Bill, does not prevent the regulations being amended or repealed as delegated legislation under the *Pay-roll Tax Assessment Act 2002.*

COMPARISON TABLE – NEW PROVISIONS TO OLD PROVISIONS

NEW SECTION	NEW SECTION NUMBER	OLD SECTION	OLD SECTION NUMBER	NSW/VIC SECTION NUMBER
Notes in the text	Section 5A	No WA equivalent		
Wages that are taxable in this jurisdiction	Section 6A	Pay-roll tax on wages	Section 5(2)	Section 11
Jurisdiction in which person who performs services is based	Section 6B	No WA equivalent		Section 11A
Jurisdiction in which employer is based	Section 6C	No WA equivalent		Section 11B
Place and date of payment of wages	Section 6D	Place of payment of wages	Clause 4 Glossary	Section 11C
Term used: “wages”	Section 9AA(1)	Definition of “wages”	Clause 2 Glossary	Section 13
	Section 9AA(1)(a)	Definition of “wages”	Clause 2(1)(a) Glossary	Section 13(1)
	Section 9AA(1)(b)	Definition of “wages”	Clause 2(1)(c) Glossary	Section 13(1)(a)
	Section 9AA(1)(c)	Definition of “wages”	Clause 2(1)(e) Glossary	Section 13(1)(b)
	Section 9AA(1)(d)	Definition of “wages”	Clause 2(1)(f) Glossary	Section 13(1)(c)
	Section 9AA(1)(e)	Definition of “wages”	Clause 2(1)(g) Glossary	Section 13(1)(d)

NEW SECTION	NEW SECTION NUMBER	OLD SECTION	OLD SECTION NUMBER	NSW/VIC SECTION NUMBER
Term used “wages”	Section 9AA(1)(f)	No WA equivalent		Section 13(1)(e)
	Section 9AA(1)(g)	Exempt motor vehicle allowances	Regulation 28 Section 40(1)(d)	Section 29(3)
	Section 9AA(1)(h)	Exemptions for accommodation allowances	Regulation 39 Section 40(1)(d)	Section 30(1) & (2)
	Section 9AA(2)	Definition of “wages”	Clause 2(1)(a) Glossary	Section 13(2)
Wages include fringe benefits and specified taxable benefits	Section 9BA	Fringe benefits and specified taxable benefits	Clause 2(1)(i) Glossary	Section 14
Actual value of a fringe benefit	Section 9BB	Value of fringe benefits	Clause 7 Glossary	Section 15(1)
Basis for including the value of fringe benefits in returns	Section 9BC(1)	Methods for calculating fringe benefits	Regulation 20(1) and (2)	N/A
	Section 9BC(2)	Methods for calculating fringe benefits	Regulation 20(3)	N/A

NEW SECTION	NEW SECTION NUMBER	OLD SECTION	OLD SECTION NUMBER	NSW/VIC SECTION NUMBER
Eligibility to use estimated value method	Section 9BD	Eligibility to use estimated value method	Regulation 22	Section 16
Returns (other than annual returns) using the estimated value method	Section 9BE(1)	Monthly returns using the estimated value method	Regulation 23(1)	Section 16
	Section 9BE(2)	Monthly returns using the estimated value method	Regulation 23(2)	Section 16
Annual returns using the estimated value method	Section 9BF	Annual returns using the estimated value method	Regulation 24	Section 16
Final returns using the estimated value method	Section 9BG	Final returns using the estimated value method	Regulation 25	Section 16
Changing method of valuing fringe benefits	Section 9BH(1)	Changing method of valuing fringe benefits	Regulation 26(1)	Section 16
	Section 9BH(2)	Changing method of valuing fringe benefits	Regulation 26(2)	Section 16
	Section 9BH(3)	Changing method of valuing fringe benefits	Regulation 26(3)	Section 16
	Section 9BH(4)	Changing method of valuing fringe benefits	Regulation 26(4)	Section 16
	Section 9BH(5)	Changing method of valuing fringe benefits	Regulation 26(5)	Section 16
	Section 9BH(6)	Changing method of valuing fringe benefits	Regulation 26(6)	Section 16
Value of a specified taxable benefit	Section 9BI	Value of wages paid in kind and other benefits	Clause 6(2) Glossary	

NEW SECTION	NEW SECTION NUMBER	OLD SECTION	OLD SECTION NUMBER	NSW/VIC SECTION NUMBER
Terms used	Section 9CA	New definitions for the purpose of this subdivision		Sections 17(6) & 3
Wages include superannuation contributions and other similar amounts	Section 9CB(1)	Wages - meaning Superannuation benefits	Clause2(1)(d) Glossary Clause 8(1) Glossary	Section 17(1)
	Section 9CB(1)(b)	Contributions to defined superannuation benefit schemes	Clause 10(2) Glossary	Section 17(2)
	Section 9CB(1)(c)	Superannuation guarantee charge	Clause 12(1) Glossary	Section 17(2)(b)
	Section 9CB(2)	Unfunded credit to certain unregulated schemes	Clause 11(5) Glossary	Section 17(2)(c)(iii)
	Section 9CB(3)	Superannuation guarantee charge	Clauses 12(4) & (5) Glossary	Section 17(2)(b)
	Section 9CB(4)		Clause 4 Glossary	
	Section 9CB(5)	No WA equivalent		

NEW SECTION	NEW SECTION NUMBER	OLD SECTION	OLD SECTION NUMBER	NSW/VIC SECTION NUMBER
Superannuation contributions	Section 9CC(1)(a)	Superannuation contributions	Clause 8(1) Glossary	Section 17(2)(a)
	Section 9CC(1)(b)	Unfunded credit to certain unregulated schemes	Clauses 11(1) & (2) Glossary	Section 17(2)(c)(iii)
	Section 9CC(2)	Unfunded credit to certain unregulated schemes	Clause 11(1) Glossary	Section 17(2)(c)(iii)
	Section 9CC(3)	Superannuation fund contributions	Clause 9(1) Glossary	Section 17(3)
	Section 9CC(4)	Superannuation fund contributions	Clause 9(2) Glossary	Section 17(4)
Notional contributions	Section 9CD(1)	Contributions to defined benefit funds	Clause 10(1) Glossary	Section 17(2)(c)(iii)
	Section 9CD(2)	Contributions to defined benefit funds	Clause 10(2) Glossary	Section 17(2)(c)(iii)
	Section 9CD(3)	Contributions to defined benefit funds	Clause 10(3) Glossary	Section 17(2)(c)(iii)
	Section 9CD(4)	Contributions to defined benefit funds	Clause 10(4) Glossary	Section 17(2)(c)(iii)
Wages include shares and options granted to employees	Section 9DA	Fringe benefits and specified taxable benefits	Clause 2(1)(i) Glossary	Section 18(1)

NEW SECTION	NEW SECTION NUMBER	OLD SECTION	OLD SECTION NUMBER	NSW/VIC SECTION NUMBER
Relevant day - choice of	Section 9DB	No WA equivalent		Section 19
Relevant day - special cases	Section 9DC	No WA equivalent		Section 20
Value of shares and options	Section 9DD	Market value of shares and options	Regulations 17 & 18	Section 23
Effect of rescission, cancellation etc, of shares & options	Section 9DE	No WA equivalent		Section 21
Grant of share under exercise of option	Section 9DF	No WA equivalent		Section 22
Wages include certain shares and options granted to directors	Section 9DG	No WA equivalent		Section 24
Place where wages (as shares and options) are payable	Section 9DH	No WA equivalent		Section 26
Wages include termination payments	Section 9EA(1)	Wages - meaning	Clause 2(1)(j) Glossary	Section 28
	Section 9EA(2)	Definitions	Clause 1 Glossary	Section 27
Motor vehicle allowances	Section 9FA(1)	Extent of exemption for motor vehicle allowance	Regulation 29	Section 29(4)
	Section 9FA(2)	Business kilometres travelled in a return period	Regulation 30	Section 29(5) & (6)

NEW SECTION	NEW SECTION NUMBER	OLD SECTION	OLD SECTION NUMBER	NSW/VIC SECTION NUMBER
Motor vehicle allowances	Section 9FA(3)	Rate allowed for business kilometres	Regulation 31	Section 29(7)
Accommodation allowances	Section 9FB	Exemptions for accommodation allowances	Regulation 39(3)	Section 30(3)
Wages include amounts paid by employment agents	Section 9GA	Wages - meaning	Clause 2(1)(h) Glossary	Section 40
Value of wages paid in kind	Section 9HA	Value of wages paid in kind	Clause 6(1) Glossary	Section 43
GST excluded from wages	Section 9HB	GST excluded	Clause 3 Glossary	Section 44
Wages paid by or to third parties	Section 9HC	Third party payments	Clauses 2(1)(a), (b) & 2(2) Glossary	Section 46
Exempt wages	Section 40(2)(p)	New exemption		Sections 55 & 56
Exempt wages – parental and adoption leave	Section 41A	New exemption		Section 53 (not paternal leave)
Exempt wages – paid or payable for or in relation to services performed in other countries	Section 41B	Exempt wages	Section 40(3)	Sections 10(2) & 66A

COMPARISON TABLE – NEW PROVISIONS TO OLD PROVISIONS AND CORRESPONDING TEMPLATE LEGISLATION PROVISIONS

AMENDMENTS IN RELATION TO THE ASSESSMENT YEAR COMMENCING ON 1 JULY 2012 AND SUBSEQUENT YEARS

NEW SECTION	NEW SECTION NUMBER	OLD SECTION	OLD SECTION NUMBER	NSW/VIC SECTION NUMBER
Grouping commonly controlled businesses	Sections 32(3) & 38	Grouping commonly controlled businesses	Section 32(3) & (4) deleted	Section 79
Groups arising from tracing of interests in corporations	Section 35A	No WA equivalent	Section 35 replaced	Section 73
Direct interests	Section 35B	No WA equivalent	Section 35 replaced	Section 76
Indirect interests	Section 35C	No WA equivalent	Section 35 replaced	Section 77
Aggregate interests	Section 35D	No WA equivalent	Section 35 replaced	Section 78