

# Pay-roll Tax Assessment Amendment Bill 2010

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Western Australia

LEGISLATIVE ASSEMBLY

## **Pay-roll Tax Assessment Amendment Bill 2010**

**A Bill for**

***An Act to amend the *Pay-roll Tax Assessment Act 2002* and the  
*Pay-roll Tax Assessment Regulations 2003*.***

The Parliament of Western Australia enacts as follows:

1  
2  
3  
4  
5  
6  
7  
8

**Part 1 — Preliminary**

**1. Short title**

This is the *Pay-roll Tax Assessment Amendment Act 2010*.

**2. Commencement**

This Act comes into operation as follows —

- (a) Part 1, Part 2 Divisions 1 and 2 and Part 3 — on the day on which this Act receives the Royal Assent;
- (b) Part 2 Division 3 — 1 July 2012.

1 **Part 2 — *Pay-roll Tax Assessment Act 2002* amended**

2 **Division 1 — Act amended**

3 **3. Act amended**

4 This Part amends the *Pay-roll Tax Assessment Act 2002*.

5 **Division 2 — Amendments relating to taxable wages**

6 **4. Section 5A inserted**

7 After section 4 insert:

8

9 **5A. Notes in the text**

10 A note included in this Act is explanatory and is not  
11 part of this Act.  
12

13 **5. Section 5 amended**

14 (1) In section 5(1) delete “taxable in Western Australia under  
15 subsection (2) except wages that are exempt under section 40.”  
16 and insert:

17

18 WA taxable wages.  
19

20 (2) Delete section 5(2) and insert:

21

22 (2) ***WA taxable wages*** are wages, other than exempt  
23 wages, that are taxable in this jurisdiction.  
24

25 Note: The heading to amended section 5 is to read:

26 **Pay-roll tax on WA taxable wages**

1 **6. Sections 6A to 6D inserted**

2 After section 5 insert:

3

4 **6A. Wages that are taxable in this jurisdiction**

5 (1) Wages are taxable in this jurisdiction if —

6 (a) the wages are paid or payable by an employer  
7 for or in relation to services performed by a  
8 person wholly in this jurisdiction; or

9 (b) the wages are paid or payable by an employer  
10 for or in relation to services performed by a  
11 person in 2 or more Australian jurisdictions, or  
12 partly in one or more Australian jurisdictions  
13 and partly outside all Australian jurisdictions,  
14 and —

15 (i) the person is based in this jurisdiction;  
16 or

17 (ii) the employer is based in this  
18 jurisdiction — in a case where the  
19 person is not based in an Australian  
20 jurisdiction; or

21 (iii) the wages are paid or payable in this  
22 jurisdiction — in a case where both the  
23 person and the employer are not based  
24 in an Australian jurisdiction; or

25 (iv) the wages are paid or payable for  
26 services performed mainly in this  
27 jurisdiction — in a case where both the  
28 person and employer are not based in an  
29 Australian jurisdiction and the wages  
30 are not paid or payable in an Australian  
31 jurisdiction;

32 or



1                   (c) the wages are paid or payable by an employer  
2                   for or in relation to services performed by a  
3                   person wholly outside all Australian  
4                   jurisdictions and are paid or payable in this  
5                   jurisdiction.

6                   Note: Section 41B provides an exemption for wages paid or payable for  
7                   services performed wholly in one or more other countries for a  
8                   continuous period of more than 6 months.

9                   (2) The question of whether wages are taxable in this  
10                  jurisdiction is, subject to this section, to be determined  
11                  by reference only to the services performed by the  
12                  person in respect of the employer during the month in  
13                  which the wages are paid or payable.

14                  (3) For that purpose, any wages paid or payable by an  
15                  employer in respect of a person in a particular month  
16                  are taken to be paid or payable for or in relation to the  
17                  services performed by the person in respect of the  
18                  employer during that month.

19                  Note: For example, if wages paid in a month are paid to a person for services  
20                  performed over several months, the question of whether the wages are  
21                  taxable in this jurisdiction is to be determined by reference only to  
22                  services performed by the person in the month in which the wages are  
23                  paid. The services performed in previous months are disregarded for  
24                  this purpose.

25                  (4) If no services are performed by a person in respect of  
26                  an employer during a month in which wages are paid  
27                  or payable to or in relation to the person by the  
28                  employer —

29                         (a) the question of whether the wages are taxable  
30                         in this jurisdiction is to be determined by  
31                         reference only to the services performed by the  
32                         person in respect of the employer during the  
33                         most recent prior month in which the person  
34                         performed services in respect of the employer;  
35                         and

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**Division 2** Amendments relating to taxable wages

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- 1 (b) the wages are taken to be paid or payable for or  
2 in relation to the services performed by the  
3 person in respect of the employer during that  
4 most recent prior month.
- 5 (5) If no services are performed by a person in respect of  
6 an employer during a month in which wages are paid  
7 or payable to or in relation to the person by the  
8 employer and no services were performed by the  
9 person in respect of the employer during any prior  
10 month —
- 11 (a) the wages are taken to be paid or payable for or  
12 in relation to services performed by the person  
13 during the month in which the wages are paid  
14 or payable; and
- 15 (b) the services are taken to have been performed  
16 at a place or places where it may be reasonably  
17 expected that the services of the person in  
18 respect of the employer will be performed.
- 19 (6) All amounts of wages paid or payable in the same  
20 month by the same employer in respect of the same  
21 person are to be aggregated for the purposes of  
22 determining whether they are taxable in this  
23 jurisdiction.
- 24 Note: For example, if one amount of wages is paid by an employer in a  
25 particular month for services performed in this jurisdiction, and another  
26 amount of wages is paid by the same employer in the same month for  
27 services performed by the same person in another Australian  
28 jurisdiction, the wages paid are to be aggregated as if they were paid  
29 for all the services performed by the person in that month.
- 30 (7) If wages are paid in a different month from the month  
31 in which they are payable, the question of whether the  
32 wages are taxable in this jurisdiction is to be  
33 determined by reference to the earlier of the relevant  
34 months.

1           (8) If an amount that is paid or payable to a company is,  
2           under section 9GA or 21, taken to be wages paid or  
3           payable to another person, subsection (1)(b) has effect  
4           as if references to the jurisdiction in which the person  
5           who performs the services is based were references to  
6           the jurisdiction in which the company is based and, for  
7           that purpose, the jurisdiction in which the company is  
8           based is to be worked out under section 6C as if the  
9           company were an employer.

10           **6B. Jurisdiction in which person who performs services**  
11           **is based**

- 12           (1) The jurisdiction in which a person who performs  
13           services is based is the jurisdiction in which the  
14           person's principal place of residence is located.
- 15           (2) The jurisdiction in which the person is based is to be  
16           determined by reference to the state of affairs existing  
17           during the month in which the relevant wages are paid  
18           or payable.
- 19           (3) If more than one jurisdiction would qualify as the  
20           jurisdiction in which the person is based during a  
21           month, the jurisdiction in which the person is based is  
22           to be determined by reference to the state of affairs  
23           existing on the last day of that month.
- 24           (4) If the person does not have a principal place of  
25           residence, the person is taken to be a person who is not  
26           based in an Australian jurisdiction.

27           **6C. Jurisdiction in which employer is based**

- 28           (1) The jurisdiction in which an employer is based is —  
29           (a) the jurisdiction in which the employer's  
30           registered business address is located — if the  
31           employer has an ABN; or

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- 1 (b) the jurisdiction in which the employer's  
2 principal place of business is located — in any  
3 other case.
- 4 (2) If wages are paid or payable in connection with a  
5 business carried on by an employer under a trust, the  
6 employer's registered business address is the registered  
7 business address of the trust or, if the trust does not  
8 have an ABN, the registered business address of the  
9 trustee of the trust.
- 10 (3) If an employer has registered business addresses  
11 located in different jurisdictions at the same point in  
12 time, the jurisdiction in which the employer is based at  
13 that point in time is the jurisdiction in which the  
14 employer's principal place of business is located.
- 15 (4) The jurisdiction in which an employer is based is to be  
16 determined by reference to the state of affairs existing  
17 during the month in which the relevant wages are paid  
18 or payable.
- 19 (5) If more than one jurisdiction would qualify as the  
20 jurisdiction in which an employer is based during a  
21 month, the jurisdiction in which the employer is based  
22 is to be determined by reference to the state of affairs  
23 existing on the last day of that month.
- 24 (6) An employer who has neither a registered business  
25 address nor a principal place of business is taken to be  
26 an employer who is not based in an Australian  
27 jurisdiction.

28 **6D. Place and date of payment of wages**

- 29 (1) In this section —  
30 *instrument* includes a cheque, bill of exchange,  
31 promissory note, money order or a postal order issued  
32 by a post office.

- 1           (2) Wages are taken to have been paid at a place if, for the  
2           purpose of the payment of those wages —
- 3               (a) an instrument is sent or given or an amount is  
4               transferred by an employer to a person or a  
5               person’s agent at that place; or
- 6               (b) an instruction is given by an employer for the  
7               crediting of an amount to the account of a  
8               person or a person’s agent at that place.
- 9           (3) The wages are taken to have been paid on the date that  
10           the instrument was sent or given, the amount was  
11           transferred or the account credited in accordance with  
12           the instruction (whichever is relevant).
- 13           (4) Subject to this section, wages are taken to be payable at  
14           the place at which they are paid.
- 15           (5) Wages that are not paid by the end of the month in  
16           which they are payable are taken to be payable at —
- 17               (a) the place where wages were last paid by the  
18               employer for or in relation to services  
19               performed by the person; or
- 20               (b) if wages have not previously been paid by the  
21               employer for or in relation to services  
22               performed by the person — the place where the  
23               person last performed services in respect of the  
24               employer before the wages became payable.
- 25           (6) If wages paid or payable in the same month by the  
26           same employer in respect of the same person are paid  
27           or payable in more than one Australian jurisdiction, the  
28           wages paid or payable in that month are taken to be  
29           paid or payable in the Australian jurisdiction in which  
30           the highest proportion of the wages are paid or payable.  
31

1 **7. Part 2 Division 2A inserted**

2 After Part 2 Division 1 insert:

3  
4

**Division 2A — Wages**

5

**Subdivision 1 — General concept of wages**

6

**9AA. Term used: wages**

7

(1) In this Act —

8

*wages* means —

9

(a) wages, remuneration, salary, commission,  
10 bonuses or allowances paid or payable to or in  
11 relation to an employee; and

12

(b) an amount paid or payable by way of  
13 remuneration to a person holding an office  
14 under, or in the service of, the Crown in right of  
15 the State of Western Australia; and

16

(c) an amount paid or payable under a contract in a  
17 class of contract prescribed under  
18 section 45(2)(g), to the extent to which that  
19 payment is attributable to labour; and

20

(d) an amount paid or payable by a company by  
21 way of remuneration to or in relation to a  
22 director of that company; and

23

(e) an amount paid or payable by way of  
24 commission to an insurance or time-payment  
25 canvasser or collector; and

26

(f) an amount that is taken to be wages paid or  
27 payable by an employer to a person by another  
28 provision of this Division; and

29

(g) a motor vehicle allowance paid or payable to an  
30 employee for a financial year, to the extent to  
31 which it exceeds the exempt component  
32 determined under section 9FA; and

- 1 (h) an accommodation allowance paid or payable  
2 to an employee in a financial year in respect of  
3 a night's absence from the person's usual place  
4 of residence, to the extent to which it exceeds  
5 the exempt rate determined under section 9FB.
- 6 (2) Wages, remuneration, salary, commission, bonuses,  
7 allowances or other amounts referred to in  
8 subsection (1) are wages —
- 9 (a) whether paid or payable at piece work rates or  
10 otherwise; and
- 11 (b) whether paid or payable in cash or in kind.

12 **Subdivision 2 — Fringe benefits and specified**  
13 **taxable benefits**

14 **9BA. Wages include fringe benefits and specified taxable**  
15 **benefits**

- 16 (1) The value of a fringe benefit or a specified taxable  
17 benefit that is provided by an employer to or in relation  
18 to an employee is taken to be wages paid by the  
19 employer to the employee unless the benefit is a fringe  
20 benefit constituted by the grant of a share or an option  
21 the value of which is taken to be wages under  
22 Subdivision 4.
- 23 (2) Subsection (1) does not apply to benefits that are  
24 exempt benefits for the purposes of the FBTA Act.

25 **9BB. Actual value of a fringe benefit**

- 26 (1) The value of a fringe benefit (V) is to be calculated in  
27 accordance with the formula —

28 
$$V = TV \times \frac{1}{1 - \text{FBT rate}}$$

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- 1 where —
- 2 **FBT rate** is the rate of fringe benefits tax, imposed for
- 3 the purposes of the FBTA Act, that applies when the
- 4 liability to pay-roll tax under this Act arises;
- 5 **TV** is the taxable value of the benefit as a fringe benefit
- 6 for the purposes of the FBTA Act.
- 7 (2) The value of a fringe benefit calculated in accordance
- 8 with subsection (1) is the **actual value** of the fringe
- 9 benefit.
- 10 **9BC. Basis for including the value of fringe benefits in**
- 11 **returns**
- 12 (1) If an employer is required to specify in a return WA
- 13 taxable wages that include the value of fringe benefits
- 14 provided by the employer, the employer may, instead
- 15 of including the actual value of the fringe benefits,
- 16 include a value of the fringe benefits calculated using
- 17 the estimated value method, if the employer is eligible
- 18 to do so.
- 19 (2) An employer must use the same basis upon which to
- 20 include the value of fringe benefits in returns for all
- 21 returns for an assessment year unless the
- 22 Commissioner allows a change during that year under
- 23 section 9BH(4).
- 24 **9BD. Eligibility to use estimated value method**
- 25 An employer is eligible to use the estimated value
- 26 method to calculate the value of fringe benefits
- 27 provided by the employer in an assessment year if the
- 28 employer —
- 29 (a) has provided WA fringe benefits for at least the
- 30 15 months ending immediately before the
- 31 beginning of the assessment year; and
- 32 (b) lodges monthly returns for the assessment year.



- 1           **9BE. Returns (other than annual returns) using the**  
2           **estimated value method**
- 3           (1) If an employer, other than one who lodges an annual  
4           return, uses the estimated value method for an  
5           assessment year, the value of the fringe benefits (**V**) to  
6           be included in each return for the year except the last  
7           return is to be calculated in accordance with the  
8           formula —
- 9           
$$V = AV \times \frac{1}{N}$$
- 10           where —
- 11           *AV* is the actual value of the fringe benefits provided  
12           by the employer in relation to the FBT year ending on  
13           31 March in the financial year immediately before the  
14           assessment year;
- 15           *N* is the number of returns in the assessment year.
- 16           (2) The value of the fringe benefits to be included in the  
17           employer's last return for the assessment year is the  
18           amount equal to the difference between —
- 19           (a) the actual value of the WA fringe benefits  
20           provided by the employer during the FBT year  
21           that ended on 31 March in the assessment year;  
22           and
- 23           (b) the sum of the amounts included in each of the  
24           previous returns for the assessment year under  
25           subsection (1).
- 26           **9BF. Annual returns using the estimated value method**
- 27           If an employer who lodges an annual return for an  
28           assessment year uses the estimated value method for  
29           the assessment year, the value of the fringe benefits to  
30           be included in the return is the amount equal to the  
31           actual value of the WA fringe benefits provided by the

1 employer for the FBT year that ended on 31 March in  
2 the assessment year.

3 **9BG. Final returns using the estimated value method**

4 If an employer who uses the estimated value method  
5 lodges a final return for an assessment year, the value  
6 of the fringe benefits to be included in the return is the  
7 amount equal to the difference between —

- 8 (a) the sum of —
- 9 (i) the WA fringe benefits provided by the  
10 employer for the FBT year that ended  
11 on 31 March in the assessment year; and
  - 12 (ii) the WA fringe benefits provided by the  
13 employer for April, May and June in the  
14 assessment year (if any);

15 and

- 16 (b) the sum of —
- 17 (i) one quarter of the WA fringe benefits  
18 provided by the employer for the FBT  
19 year that ended in the first financial year  
20 for which the employer last chose to  
21 make returns using the estimated value  
22 method; and
  - 23 (ii) the total of the amounts of WA fringe  
24 benefits included in the returns for the  
25 assessment year.

26 **9BH. Changing method of valuing fringe benefits**

27 (1) An employer may commence using the estimated value  
28 method for an assessment year if the employer —

- 29 (a) is eligible to use the estimated value method;  
30 and
- 31 (b) gives the Commissioner notice of the intention  
32 to do so before the day on which the first or

- 1   only return for the assessment year is required  
2   to be lodged by the employer.
- 3   (2) An employer may cease using the estimated value  
4   method for an assessment year if the employer gives  
5   the Commissioner notice of the intention to do so  
6   before the day on which the first or only return for the  
7   assessment year is required to be lodged by the  
8   employer.
- 9   (3) A notice under subsection (1) or (2) must be in a form  
10   approved by the Commissioner.
- 11   (4) On the written application of an employer, the  
12   Commissioner may allow the employer to change the  
13   basis upon which to include the value of fringe benefits  
14   in returns during an assessment year if the  
15   Commissioner is satisfied that —
- 16   (a) there is a compelling reason for making the  
17   change; and
- 18   (b) where relevant — if the change were not made,  
19   the amount of pay-roll tax paid by the employer  
20   during the assessment year would be  
21   substantially greater than the amount payable  
22   for the assessment year on the actual value of  
23   the fringe benefits provided by the employer for  
24   the assessment year.
- 25   (5) If an employer ceases using the estimated value  
26   method during an assessment year, the value of the  
27   fringe benefits to be included in the last return lodged  
28   by the employer for the assessment year is the amount  
29   equal to the difference between —
- 30   (a) the sum of —
- 31   (i) the actual value of the WA fringe  
32   benefits provided by the employer for  
33   the FBT year ending on 31 March in the  
34   assessment year; and

- 1 (ii) the actual value of the WA fringe  
2 benefits provided by the employer in  
3 April, May and June of the assessment  
4 year (if any);  
5 and  
6 (b) the sum of —  
7 (i) one quarter of the actual value of the  
8 WA fringe benefits provided by the  
9 employer for the FBT year that ended in  
10 the first financial year in which the  
11 employer last chose to make returns  
12 using the estimated value method; and  
13 (ii) the total of the amounts of the WA  
14 fringe benefits included in the  
15 employer's returns for the assessment  
16 year.
- 17 (6) If an employer commences using the estimated value  
18 method during an assessment year, the value of the  
19 fringe benefits to be included in the last return lodged  
20 by the employer for the assessment year is the amount  
21 equal to the difference between —  
22 (a) the actual value of the WA fringe benefits  
23 provided by the employer for the FBT year  
24 ending on 31 March in the assessment year; and  
25 (b) the total of the amounts of the WA fringe  
26 benefits included in the employer's returns for  
27 the assessment year.

28 **9BI. Value of a specified taxable benefit**

29 The value of a specified taxable benefit is the  
30 prescribed value, or the value calculated in the  
31 prescribed manner (whichever is relevant).

1 **Subdivision 3 — Superannuation contributions**

2 **9CA. Terms used**

3 For the purposes of this Subdivision —

4 *employee* includes —

- 5 (a) any person to whom, because of paragraph (a),  
6 (b), (c), (d) or (e) of the definition of **wages** in  
7 section 9AA(1), an amount paid or payable in  
8 the circumstances referred to in that paragraph  
9 constitutes wages; and
- 10 (b) a director of a company to whom paragraph (a)  
11 does not apply;

12 *employer*, of a director referred to in the definition of  
13 **employee** paragraph (b), means the company;

14 *notional contribution* has the meaning given in  
15 section 9CD;

16 *superannuation contribution* has the meaning given in  
17 section 9CC.

18 **9CB. Wages include superannuation contributions and**  
19 **other similar amounts**

20 (1) The amount of each of the following is taken to be  
21 wages paid by the employer to the employee in the  
22 return period —

- 23 (a) a superannuation contribution made by an  
24 employer in respect of an employee in a return  
25 period of the employer;
- 26 (b) a notional contribution taken to have been made  
27 by an employer in respect of an employee in a  
28 return period of the employer;
- 29 (c) an individual superannuation guarantee  
30 shortfall that an employer has for an employee  
31 for a return period of the employer.

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- 1 (2) If a notional contribution is taken to have been made  
2 by an employer, in respect of an employee, to a  
3 superannuation fund in a return period, no contribution  
4 made to the fund by the employer, in respect of the  
5 employee, in the return period to make provision for  
6 the cost referred to in section 9CD(3) is taken to be  
7 wages under subsection (1).
- 8 (3) If —
- 9 (a) a superannuation contribution that was payable,  
10 but not paid, or was required to be credited as a  
11 contribution, but was not, by an employer in  
12 respect of an employee is taken to be wages  
13 paid by the employer to the employee in a  
14 return period under subsection (1); and
- 15 (b) an individual superannuation guarantee  
16 shortfall results wholly or in part from the  
17 employer's failure to pay or credit the  
18 contribution,
- 19 the amount of the individual superannuation guarantee  
20 shortfall is reduced (but not to below zero) by the  
21 amount of the superannuation contribution referred to  
22 in paragraph (a).
- 23 (4) Section 6D(5) applies to —
- 24 (a) a superannuation contribution that is payable  
25 but not paid or is or is required to be credited as  
26 a contribution; and
- 27 (b) a notional contribution; and
- 28 (c) an individual superannuation guarantee  
29 shortfall,
- 30 as if —
- 31 (d) it referred to contributions rather than wages;  
32 and

- 1                   (e) an amount that is or is required to be credited as  
2                   a contribution, a notional contribution and an  
3                   individual superannuation guarantee shortfall  
4                   were contributions payable.
- 5           (5) For the purposes of subsection (1)(c) —
- 6                   (a) the individual superannuation guarantee  
7                   shortfall referred to is reduced by any amount  
8                   of the shortfall arising under the  
9                   Superannuation Guarantee Act section 19  
10                  because of contributions not made in  
11                  compliance with the choice of fund  
12                  requirements; and
- 13                  (b) if an employer has an individual  
14                  superannuation guarantee shortfall for an  
15                  employee for a quarter (within the meaning  
16                  given in the Superannuation Guarantee Act  
17                  section 6), the shortfall is taken to be for the  
18                  last month of the quarter.

19           **9CC. Superannuation contributions**

- 20           (1) A superannuation contribution is made by an employer  
21           in respect of an employee if —
- 22                   (a) a contribution is paid or payable by an  
23                   employer to or as a superannuation fund in  
24                   respect of the employee; or
- 25                   (b) an amount, although not paid or payable, is or  
26                   is required to be credited under a  
27                   superannuation fund as an employer's  
28                   contribution in respect of an employee.
- 29           (2) Subsection (1)(b) applies only in respect of an  
30           Australian superannuation fund that does not provide  
31           for any defined superannuation benefits in respect of  
32           any person.

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1 (3) Setting aside any money or anything that is worth  
2 money as, or as part of, a superannuation fund is taken  
3 to be paying a contribution.

4 (4) Making a contribution of anything that is worth money  
5 is taken to be paying a contribution of the amount  
6 equal to its value, and its value is to be worked out in  
7 accordance with section 9HA as if that section referred  
8 to the contribution instead of to wages.

9 **9CD. Notional contributions**

10 (1) Notional contributions are taken to have been made by  
11 an employer in respect of an employee if —

12 (a) the employee is a member of an Australian  
13 superannuation fund; and

14 (b) the fund is a defined benefit fund.

15 (2) For each return period of the employer in which the  
16 employee accrues an entitlement to a defined  
17 superannuation benefit from the fund, a notional  
18 contribution is taken to have been made to the fund in  
19 the return period by the employer in respect of the  
20 employee.

21 (3) The amount of the notional contribution is the amount  
22 that an actuary determines would be sufficient to meet  
23 the expected long-term cost to the employer of that  
24 benefit.

25 (4) The regulations may include provisions about how an  
26 actuary is to determine an amount under subsection (3).

27 **Subdivision 4 — Shares and options**

28 **9DA. Wages include shares and options granted to**  
29 **employees**

30 (1) The value of a share or an option granted by an  
31 employer to an employee in respect of the appointment



- 1 of or services performed by the employee is taken to be  
2 wages paid by the employer to the employee unless the  
3 share or option is wages under a paragraph of  
4 section 9AA(1) other than paragraph (f).
- 5 (2) A share or an option is granted to a person in the  
6 following circumstances —
- 7 (a) in the case of a share — if the person acquires  
8 the share —
- 9 (i) in accordance with section 139G of the  
10 *Income Tax Assessment Act 1936*  
11 (Commonwealth); or
- 12 (ii) in circumstances prescribed for the  
13 purposes of this paragraph by the  
14 regulations;
- 15 (b) in the case of an option — if the person  
16 acquires a right to the share to which the option  
17 relates and the right is acquired —
- 18 (i) in accordance with section 139G of the  
19 *Income Tax Assessment Act 1936*  
20 (Commonwealth); or
- 21 (ii) in circumstances prescribed for the  
22 purposes of this paragraph by the  
23 regulations.
- 24 (3) Wages constituted by the value of a share or an option  
25 are taken to be paid on the relevant day.
- 26 (4) The **relevant day** is the day that the employer elects, in  
27 accordance with this Subdivision, to treat as the day on  
28 which the wages are paid.
- 29 (5) To avoid doubt, a share or an option is valuable  
30 consideration for the purposes of section 9HC.

- 1           **9DB. Relevant day — choice of**
- 2           (1) The employer may elect to treat as the relevant day
- 3           either the day on which the share or option is granted to
- 4           the employee or the vesting day.
- 5           (2) The *vesting day* in respect of a share is the day on
- 6           which the share vests in the employee, that is, when
- 7           any conditions applying to the grant of the share have
- 8           been met and the employee's legal or beneficial
- 9           interest in the share cannot be rescinded.
- 10          (3) The *vesting day* in respect of an option is the earlier of
- 11          the following days —
- 12               (a) the day on which the share to which the option
- 13               relates is granted to the employee;
- 14               (b) the day on which the employee exercises a right
- 15               under the option to have the share the subject of
- 16               the option transferred to, allotted to or vest in
- 17               him or her.
- 18          **9DC. Relevant day — special cases**
- 19          (1) If —
- 20               (a) an employer grants a share or an option to an
- 21               employee the value of which is taken to be
- 22               wages under this Subdivision; and
- 23               (b) the value of the share or option is not specified
- 24               as WA taxable wages in a return in the financial
- 25               year in which the share or option was granted,
- 26          the employer is taken to have elected to treat the wages
- 27          constituted by the value of that share or option as being
- 28          paid on the vesting day.

- 1           (2) If—
- 2                   (a) an employer grants a share or an option to an
- 3                           employee the value of which is taken to be
- 4                           wages under this Subdivision; and
- 5                   (b) either—
- 6                           (i) the value of the share or option is nil; or
- 7                           (ii) if the employer were to elect to treat the
- 8                                   day on which the share or option was
- 9                                   granted as the relevant day— the wages
- 10                                   constituted by the value of the share or
- 11                                   option would not be liable to pay-roll
- 12                                   tax,
- 13                   the employer is taken to have elected to treat the wages
- 14                           constituted by the value of the share or option as being
- 15                           paid or payable on the day on which the share or option
- 16                           was granted.

17           **9DD. Value of shares and options**

- 18           (1) In this section—
- 19                   ***Commonwealth income tax provisions*** means the
- 20                           provisions of Subdivision F of Division 13A of Part III
- 21                           of the *Income Tax Assessment Act 1936*
- 22                           (Commonwealth).
- 23           (2) The value of a share or an option taken to be wages
- 24                           under this Subdivision is the market value of the share
- 25                                   or option (expressed in Australian currency) on the
- 26                                   relevant day, less the consideration (if any) paid or
- 27                                   given by the employee in respect of the share or option
- 28                                   (other than consideration in the form of services
- 29                                   performed).
- 30           (3) The market value of a share or an option on the
- 31                           relevant day is to be determined in accordance with the
- 32                           Commonwealth income tax provisions.

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- 1 (4) For that purpose, the Commonwealth income tax  
2 provisions apply with the following modifications, and  
3 any other necessary modifications —
- 4 (a) the market value of an option is to be  
5 determined as if it were a right to acquire a  
6 share;
- 7 (b) a reference to a taxpayer is to be read as a  
8 reference to the employee;
- 9 (c) a reference to the Commissioner of Taxation is  
10 to be read as a reference to either that  
11 Commissioner or the Commissioner of State  
12 Revenue.

13 **9DE. Effect of rescission, cancellation etc. of share or**  
14 **option**

- 15 (1) If an employer grants a share or an option to an  
16 employee the value of which is taken to be wages  
17 under this Subdivision and the grant of the share or  
18 option is withdrawn, cancelled or exchanged before the  
19 vesting day for any valuable consideration (other than  
20 the grant of other shares or options) —
- 21 (a) the day of withdrawal, cancellation or exchange  
22 is taken to be the relevant day in relation to the  
23 share or option; and
- 24 (b) the market value of the share or option, on the  
25 relevant day, is taken to be the amount of the  
26 valuable consideration.
- 27 (2) If —
- 28 (a) an employer grants a share or an option to an  
29 employee the value of which is taken to be  
30 wages under this Subdivision; and
- 31 (b) the value of the share or option is specified as  
32 WA taxable wages in a return; and

- 1                   (c) the grant is rescinded because the conditions  
2                   attaching to the grant were not met,  
3                   the WA taxable wages of the employer, in the return  
4                   period in which the grant is rescinded, are to be  
5                   reduced by the value of the share or option as specified  
6                   in the earlier return.
- 7                   (3) Subsection (2) does not apply just because an  
8                   employee fails to exercise an option or to otherwise  
9                   exercise his or her rights in respect of a share or an  
10                  option.

11                  **9DF. Grant of share under exercise of option**

12                  The value of a share granted by an employer to an  
13                  employee is not to be taken to be wages under this  
14                  Subdivision if—

- 15                   (a) the employer is required to grant the share as a  
16                   consequence of the exercise of an option by a  
17                   person; and  
18                   (b) the value of the option granted to the person  
19                   was taken to be wages under this Subdivision.

20                  **9DG. Wages include certain shares and options granted to**  
21                  **directors**

- 22                  (1) If the value of a share or an option granted by a  
23                  company to a director of the company by way of  
24                  remuneration for the appointment or services of the  
25                  director would be taken to be wages under this  
26                  Subdivision if the director were an employee of the  
27                  company, the value of the share or option is taken to be  
28                  wages paid by the company (as an employer) to the  
29                  director.
- 30                  (2) For the purposes of subsection (1), the other provisions  
31                  of this Subdivision apply in respect of any such grant  
32                  as if a reference to the employer were a reference to the

- 1 company and a reference to the employee were a  
2 reference to the director of the company.
- 3 (3) In this section, a reference to a director of the company  
4 includes a reference to the following —
- 5 (a) a person who, under a contract or other  
6 arrangement, is to be appointed as a director of  
7 the company;
- 8 (b) a former director of the company.

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

- 11 (1) In this section —  
12 **local company** means —
- 13 (a) a company incorporated or taken to be  
14 incorporated under the Corporations Act that is  
15 taken to be registered in Western Australia for  
16 the purposes of that Act; or
- 17 (b) any other body corporate that is incorporated  
18 under a written law.
- 19 (2) Wages constituted by the value of a share or an option  
20 are taken to be paid in Western Australia if the share is  
21 a share in a local company or, in the case of an option,  
22 an option to acquire shares in a local company.
- 23 (3) In any other case, wages constituted by the value of a  
24 share or an option are taken to be paid outside Western  
25 Australia.

26 **Subdivision 5 — Termination payments**

27 **9EA. Wages include termination payments**

- 28 (1) The amount of a termination payment is taken to be  
29 wages paid or payable by the employer to the

- 1                   employee, or by the company (as an employer) to the  
2                   director.
- 3           (2) For the purposes of subsection (1) —
- 4                   ***employment termination payment*** means —
- 5                   (a) an employment termination payment within the  
6                   meaning of section 82-130 of the ITA Act; or
- 7                   (b) a payment that would be an employment  
8                   termination payment within the meaning of  
9                   section 82-130 of the ITA Act but for the fact  
10                  that it was received later than 12 months after  
11                  the termination of a person’s employment; or
- 12                  (c) a transitional termination payment within the  
13                  meaning of section 82-10 of the *Income Tax*  
14                  (*Transitional Provisions*) Act 1997  
15                  (Commonwealth);
- 16                  ***termination payment*** means —
- 17                  (a) a payment made in consequence of the  
18                  retirement from, or termination of, any office or  
19                  employment of an employee, being —
- 20                          (i) an unused annual leave payment; or
- 21                          (ii) an unused long service leave payment;  
22                          or
- 23                          (iii) so much of an employment termination  
24                          payment paid or payable by an  
25                          employer, whether or not paid to the  
26                          employee or to any other person or  
27                          body, that would be included in the  
28                          assessable income of an employee under  
29                          Part 2-40 of the ITA Act if the whole of  
30                          the employment termination payment  
31                          had been paid to the employee;
- 32                          or

- 1 (b) an amount paid or payable by a company as a  
2 consequence of the termination of the services  
3 or office of a director of the company, whether  
4 or not paid to the director or to any other person  
5 or body, that would be an employment  
6 termination payment if that amount had been  
7 paid or payable as a consequence of termination  
8 of employment;

9 *unused annual leave payment* has the meaning given  
10 in section 83-10 of the ITA Act;

11 *unused long service leave payment* has the meaning  
12 given in section 83-75 of the ITA Act.

13 **Subdivision 6 — Allowances**

14 **9FA. Motor vehicle allowances**

- 15 (1) For the purposes of section 9AA(1)(g), the exempt  
16 component (**E**) of a motor vehicle allowance paid or  
17 payable in respect of a financial year is calculated in  
18 accordance with the formula —

19 
$$E = K \times R$$

20 where —

21 **K** is the number of business kilometres travelled during  
22 the financial year under subsection (2);

23 **R** is the exempt rate under subsection (3).

- 24 (2) The number of business kilometres travelled during the  
25 financial year is to be determined —

- 26 (a) if paragraph (b) does not apply to the  
27 employer — in accordance with the applicable  
28 recording method in the regulations; or  
29 (b) if the Commissioner has, by order in writing,  
30 approved the use, by an employer or class of  
31 employer, of another method (including the use



1 of an estimate) of determining the number of  
2 business kilometres travelled during the  
3 financial year — in accordance with the method  
4 approved by the Commissioner.

- 5 (3) The exempt rate for the financial year concerned is —
- 6 (a) the rate prescribed by the regulations under  
7 section 28-25 of the ITA Act for calculating a  
8 deduction for car expenses for a large car using  
9 the “cents per kilometre method” in the  
10 financial year immediately preceding the  
11 financial year in which the allowance is paid or  
12 payable; or
- 13 (b) if no rate referred to in paragraph (a) is  
14 prescribed under that Act — the rate prescribed  
15 in the regulations.

16 **9FB. Accommodation allowances**

17 For the purposes of section 9AA(1)(h), the exempt rate  
18 for the financial year concerned is —

- 19 (a) the total reasonable amount for daily travel  
20 allowance expenses using the lowest capital  
21 city for the lowest salary band for the financial  
22 year determined by the Commissioner of  
23 Taxation of the Commonwealth; or
- 24 (b) if no determination referred to in paragraph (a)  
25 is in force — the rate prescribed in the  
26 regulations.

27 **Subdivision 7 — Employment agents**

28 **9GA. Wages include amounts paid by employment agents**

29 An amount in respect of services that is paid or payable  
30 by an employment agent (directly or indirectly) to a  
31 person who was engaged to perform the services for a  
32 client of the employment agent, or to some other

1 person, as a result of which engagement the  
2 employment agent receives payment (directly or  
3 indirectly, whether by way of a lump sum or an  
4 ongoing fee) in relation to the period during which the  
5 services are performed for the client by the person  
6 engaged to perform them is taken to be wages paid or  
7 payable by the agent (as an employer) to the person for  
8 or in relation to the services performed by the person.

9 **Subdivision 8 — Miscellaneous provisions**

10 **9HA. Value of wages paid in kind**

11 The value of wages (except fringe benefits or specified  
12 taxable benefits) that are paid or payable in kind is the  
13 greater of —

- 14 (a) the value agreed or the value attributed to the  
15 wages in, or the value ascertainable for the  
16 wages from, arrangements between the  
17 employer and the employee, whichever is the  
18 greater of the 3 amounts; and  
19 (b) if the regulations prescribe how the value of  
20 wages of that type is to be determined — the  
21 value determined in accordance with the  
22 regulations.

23 **9HB. GST excluded from wages**

- 24 (1) If wages paid or payable to a person relate to a supply  
25 on which the person is liable to pay GST, the amount  
26 or value of the wages is reduced by the amount of GST  
27 payable by the person in respect of the services to  
28 which the wages relate.  
29 (2) Subsection (1) does not apply in respect of the value of  
30 wages comprising a fringe benefit.

- 1           **9HC. Wages paid by or to third parties**
- 2           (1) If any of the following amounts of money or other
- 3           valuable consideration would, if paid or given directly
- 4           by an employer to an employee, be or be taken to be
- 5           wages paid or payable by the employer to the employee
- 6           for the purposes of this Act, they are taken to be wages
- 7           paid or payable by the employer to the employee —
- 8               (a) any money or other valuable consideration paid
- 9               or given, or to be paid or given, to an employee,
- 10              for the employee’s services as an employee of
- 11              an employer, by a person other than the
- 12              employer;
- 13              (b) any money or other valuable consideration paid
- 14              or given, or to be paid or given, by an
- 15              employer, for an employee’s services as the
- 16              employee of the employer, to a person other
- 17              than the employee;
- 18              (c) any money or other valuable consideration paid
- 19              or given, or to be paid or given, by a person
- 20              other than an employer, for an employee’s
- 21              services as an employee of the employer, to a
- 22              person other than the employee.
- 23           (2) If any of the following amounts of money or other
- 24           valuable consideration would, if paid or given directly
- 25           by a company to a director of the company, be or be
- 26           taken to be wages paid or payable by the company to
- 27           the director for the purposes of this Act, they are taken
- 28           to be wages paid or payable by the company to the
- 29           director —
- 30               (a) any money or other valuable consideration paid
- 31               or given, or to be paid or given, to a director of
- 32               a company, by way of remuneration for the
- 33               appointment or services of the director to the
- 34               company, by a person other than the company;

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- 1 (b) any money or other valuable consideration paid  
2 or given, or to be paid or given, by a company,  
3 by way of remuneration for the appointment or  
4 services of the director to the company, to a  
5 person other than the director;
- 6 (c) any money or other valuable consideration paid  
7 or given, or to be paid or given, by any person,  
8 by way of remuneration for the appointment or  
9 services of a director to the company, to a  
10 person other than the director.
- 11 (3) In this section, a reference to a director of a company  
12 includes a reference to —
- 13 (a) a person who, under a contract or other  
14 arrangement, is to be appointed as a director of  
15 the company; and
- 16 (b) a former director of the company.  
17

18 **8. Section 21 amended**

19 In section 21(1)(c) after “wages” insert:

20  
21 paid or payable for or in relation to the services  
22 performed by the worker  
23

24 **9. Section 26 amended**

25 Delete section 26(2) and insert:

- 26  
27 (2) A monthly return must be in the approved form.
- 28 (3) A monthly return must —
- 29 (a) for a month other than June — be lodged within  
30 7 days after the end of the month, or within any  
31 further time allowed by the Commissioner in a  
32 particular case; and

1                   (b) for June — be lodged within 21 days after the  
2                   end of the month, or within any further time  
3                   allowed by the Commissioner in a particular  
4                   case.

5                   Penalty: a fine of \$5 000.

6  
7   **10. Section 27 amended**

8                   In section 27(2)(c) delete “2 months” and insert:

9  
10                  21 days

11  
12   **11. Section 31 amended**

13                  In section 31(1) delete “carries out” and insert:

14  
15                  performs

16  
17   **12. Part 5 heading replaced**

18                  Delete the heading to Part 5 and insert:

19  
20                                   **Part 5 — Exempt wages**

21  
22   **13. Section 40 amended**

23                  (1) Delete section 40(1)(b).

24                  (2) After section 40(2)(o) insert:

25  
26                                  (p) subject to subsection (3), by an employer to or  
27                                  in relation to a person for a period when the  
28                                  person is —

29    (i) performing functions as a volunteer  
30    member of a FESA Unit, an SES Unit

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- 1 or a VMRS Group under the *Fire and*  
2 *Emergency Services Authority of*  
3 *Western Australia Act 1998*; or  
4 (ii) performing functions as a member of a  
5 volunteer fire brigade under the *Fire*  
6 *Brigades Act 1942*; or  
7 (iii) performing functions as a volunteer  
8 member of a bush fire brigade under the  
9 *Bush Fires Act 1954*;  
10 or  
11

12 (3) In section 40(2)(r) delete “carried out” and insert:  
13

14 performed  
15

16 (4) Delete section 40(3) and insert:  
17

18 (3) The exemption provided for by subsection (2)(p) does  
19 not apply to wages paid or payable as annual leave,  
20 long service leave, recreation leave or sick leave.  
21

22 (5) Delete section 40(5).

23 **14. Sections 41A and 41B inserted**

24 After section 40 insert:  
25

26 **41A. Exempt wages — parental and adoption leave**

27 (1) In this section —  
28 *adoption leave* means leave given to an employee in  
29 connection with the adoption of a child by the

- 1                   employee, other than annual leave, recreation leave,  
2                   sick leave or similar leave;
- 3                   *maternity leave* means leave given to a female  
4                   employee in connection with her pregnancy or the birth  
5                   of her child, other than annual leave, recreation leave,  
6                   sick leave or similar leave;
- 7                   *parental leave* means leave given to an employee in  
8                   connection with the pregnancy of a female carrying the  
9                   employee's unborn child or the birth of the employee's  
10                  child, other than annual leave, recreation leave, sick  
11                  leave or similar leave.
- 12                  (2) Wages paid or payable to or in relation to an employee  
13                  for maternity leave, parental leave or adoption leave  
14                  are exempt from pay-roll tax.
- 15                  (3) It is immaterial whether the leave is taken during or  
16                  after the pregnancy or before or after the adoption.
- 17                  (4) The exemption in subsection (2) is limited to wages  
18                  paid or payable for not more than 14 weeks' worth of  
19                  leave at the employee's normal rate of pay.
- 20                  (5) The exemption in subsection (2) does not apply to  
21                  wages comprising a fringe benefit under the FBTA  
22                  Act.
- 23                  **41B. Exempt wages — wages paid or payable for or in**  
24                  **relation to services performed in other countries**
- 25                  (1) Wages are exempt from pay-roll tax if they are paid or  
26                  payable for or in relation to services performed by a  
27                  person wholly in one or more other countries for a  
28                  continuous period of more than 6 months beginning on  
29                  the day on which wages were first paid or payable to  
30                  that person for the services so performed.

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- 1 (2) The Commissioner must make any reassessment  
2 necessary to give effect to this section.  
3

4 **15. Part 6 heading inserted**

5 Before section 41 insert:  
6

7 **Part 6 — Miscellaneous**  
8

9 **16. Section 45 amended**

10 In section 45(2)(g) delete “clause 2(1)(e) of the Glossary.” and  
11 insert:  
12

13 section 9AA(1)(c).  
14

15 **17. Section 46 and Schedule 1 inserted**

16 After section 45 insert:  
17

18 **46. Transitional provisions**

19 Schedule 1 contains transitional provisions relating to  
20 amendments made to this Act.

21 **Schedule 1 — Transitional provisions**

22 [s. 46]

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

25 **1. Liability to tax for the assessment years commencing on**  
26 **1 July 2009 and 1 July 2010**

27 A person’s liability to pay-roll tax under this Act for the  
28 assessment year commencing on 1 July 2009, and for the



1 assessment year commencing on 1 July 2010, is to be  
2 determined as if the *Pay-roll Tax Assessment Amendment*  
3 *Act 2010* (other than Part 2 Division 3) had come into  
4 operation on 1 July 2009.

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

- 8 (1) If—
- 9 (a) an employer granted a share or an option to a  
10 person —
    - 11 (i) on or after 1 July 2009; and
    - 12 (ii) before the *Pay-roll Tax Assessment*  
13 *Amendment Act 2010* received the Royal  
14 Assent;
  - 15 and
  - 16 (b) the amount equal to the value of the share or option  
17 was WA taxable wages; and
  - 18 (c) the value of the share or option is, under  
19 section 9DA or 9DG and clause 1, taken to be  
20 wages paid by the employer to the employee; and
  - 21 (d) the wages constituted by the value of that share or  
22 option are WA taxable wages under section 5(2)  
23 and clause 1,

24 the employer may, by notice given to the Commissioner,  
25 elect to treat those wages as being paid on the vesting day.

- 26 (2) A notice under subclause (1) must be given within the  
27 3 months after the day on which the *Pay-roll Tax*  
28 *Assessment Amendment Act 2010* received the Royal Assent.
- 29 (3) The Commissioner must, on application, make any  
30 reassessment necessary to give effect to this clause.

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- 1           **3.**       **Notices under the *Pay-roll Tax Assessment***  
2                    ***Regulations 2003* regulation 26(1) or (2)**
- 3                    A notice under the *Pay-roll Tax Assessment*  
4                    *Regulations 2003* regulation 26(1) or (2) in relation to the  
5                    assessment year commencing on 1 July 2009, or the  
6                    assessment year commencing on 1 July 2010, has effect as if  
7                    it were given under section 9BH(1) or (2), whichever is  
8                    relevant.  
9
- 10       **18.**       **Glossary amended**
- 11           (1)     In the Glossary clause 1 delete the definitions of:  
12                    *assessable income*  
13                    *Australian superannuation scheme*  
14                    *eligible termination payment*  
15                    ‘*otherwise deductible*’ rule  
16                    *participant*  
17                    *regulated superannuation fund*  
18                    *superannuation fund*  
19                    *superannuation guarantee charge*  
20                    *superannuation scheme*  
21                    *unfunded public sector superannuation scheme*  
22                    *WA taxable wages*  
23                    *work-related benefit*
- 24           (2)     In the Glossary clause 1 insert in alphabetical order:  
25
- 26                    *ABN* means the ABN (Australian Business Number) for an  
27                    entity within the meaning of the *A New Tax System*  
28                    (*Australian Business Number Act 1999* (Commonwealth));  
29                    *actual value*, of a fringe benefit, has the meaning given in  
30                    section 9BB(2);  
31                    *Australian jurisdiction* means a State or a Territory;

- 1                    **Australian superannuation fund** means a superannuation  
2 fund that —
- 3                    (a) was established in Australia, or has any asset  
4                    situated in Australia; and
- 5                    (b) has its central management and control in Australia;
- 6                    **defined benefit fund** has the meaning given to “defined  
7 benefit superannuation scheme” in section 6 of the  
8 Superannuation Guarantee Act;
- 9                    **director** of a company includes a member of the governing  
10 body of the company;
- 11                   **FBT year** means a year ending on 31 March;
- 12                   **ITA Act** means the *Income Tax Assessment Act 1997*  
13 (Commonwealth);
- 14                   **motor vehicle allowance** means an allowance paid by an  
15 employer to a person who provides or maintains a motor  
16 vehicle used for business journeys;
- 17                   **option** means an option or right, whether actual, prospective  
18 or contingent, of a person to acquire a share or to have a  
19 share transferred or allotted to the person;
- 20                   **paid**, in relation to wages, includes provided, conferred and  
21 assigned and **pay** and **payable** have corresponding  
22 meanings;
- 23                   **registered business address** means an address for service of  
24 notices under the *A New Tax System (Australian Business*  
25 *Number) Act 1999* (Commonwealth) on an entity that has an  
26 ABN, as shown in the Australian Business Register kept  
27 under that Act;
- 28                   **share** means a share in a company and includes a stapled  
29 security within the meaning of section 139GCD of the  
30 *Income Tax Assessment Act 1936* (Commonwealth);
- 31                   **superannuation fund** includes —
- 32                   (a) a superannuation fund within the meaning of the  
33 *Superannuation Industry (Supervision) Act 1993*  
34 (Commonwealth); and

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- 1 (b) any other form of superannuation, provident or  
2 retirement fund or scheme including —
- 3 (i) the Superannuation Holding Accounts  
4 Special Account within the meaning of the  
5 *Small Superannuation Accounts Act 1995*  
6 (Commonwealth); and
- 7 (ii) a retirement savings account within the  
8 meaning of the *Retirement Savings*  
9 *Accounts Act 1997* (Commonwealth);
- 10 ***Superannuation Guarantee Act*** means the *Superannuation*  
11 *Guarantee (Administration) Act 1992* (Commonwealth);
- 12 ***WA fringe benefits*** means fringe benefits that are WA  
13 taxable wages on which fringe benefits tax (imposed under  
14 the *Fringe Benefits Tax Act 1986* (Commonwealth)) is paid  
15 or payable;
- 16 ***WA taxable wages*** has the meaning given in section 5(2).  
17
- 18 (3) In the Glossary clause 1 in the definition of ***defined***  
19 ***superannuation benefit***:
- 20 (a) delete “scheme” and insert:  
21  
22 fund  
23
- 24 (b) delete “participant’s” (each occurrence) and insert:  
25  
26 member’s  
27
- 28 (4) In the Glossary clause 1 in the definition of ***employment agent***:  
29 (a) in paragraph (a) delete “carry out” and insert:  
30  
31 perform  
32

- 1                   (b) in paragraph (b) delete “provided” and insert:  
2  
3                   performed  
4
- 5           (5) In the Glossary clause 1 in the definition of *exempt* delete  
6           “section 40;” and insert:  
7  
8           Part 5;  
9
- 10           (6) In the Glossary clause 1 in the definition of *individual*  
11           *superannuation guarantee shortfall* delete “*Superannuation*  
12           *Guarantee (Administration) Act 1992* of the Commonwealth;” and  
13           insert:  
14  
15           Superannuation Guarantee Act;  
16
- 17           (7) In the Glossary clause 1 in the definition of *tax-reducing*  
18           *arrangement* paragraph (a) delete “carries out,” and insert:  
19  
20           performs,  
21
- 22           (8) In the Glossary clause 1 in the definition of *value*:  
23           (a) in paragraph (b) delete “clause 7;” and insert:  
24           section 9BB;  
25  
26           (b) in paragraph (c) delete “clause 6;” and insert:  
27           section 9BI;  
28  
29             
30

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1 (c) in paragraph (d) delete “clause 3;” and insert:  
2  
3 section 9HB;  
4

5 (d) in paragraph (e) delete “clause 6;” and insert:  
6  
7 section 9HA;  
8

9 (9) In the Glossary clause 1 in the definition of *wages* delete  
10 “definition given in clause 2;” and insert:  
11

12 meaning given in section 9AA;  
13

14 (10) Delete the Glossary clauses 2 to 12.

15 **19. Various penalties amended**

16 In the provisions listed in the Table after “Penalty:” insert:  
17

18 a fine of  
19

20

**Table**

s. 24(1)	s. 24(2)
s. 27(2)	s. 28(2)
s. 29(8)	s. 29(9)
s. 44(1)	s. 44(2)

1     **Division 3 — Amendments relating to grouping of employers**

2     **20.     Section 31 amended**

3             In section 31(4) delete the passage that begins with “section 38”  
4             and continues to the end of the subsection and insert:

5

6             section 38.

7

8     **21.     Section 32 amended**

9             Delete section 32(3) and (4) and insert:

10

11            (3)    The Commissioner may exclude a person from a group  
12            in accordance with section 38.

13

14    **22.     Section 33 amended**

15            In section 33(7) delete “related corporation” and insert:

16

17            related body corporate

18

19    **23.     Section 35 replaced**

20            Delete section 35 and insert:

21

22            **35A.   Groups arising from tracing of interests in**  
23            **corporations**

24            (1)    For the purposes of this section —

25            *associated person* means a person who is associated  
26            with another person in accordance with any of the  
27            following —

28            (a)    persons are associated persons if they are  
29            related persons;

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- 1 (b) individuals are associated persons if they are  
2 partners in a partnership;
- 3 (c) private companies are associated persons if  
4 common shareholders have a majority interest  
5 in each private company;
- 6 (d) trustees are associated persons if any person is  
7 a beneficiary common to the trusts (not  
8 including a public unit trust scheme) of which  
9 they are trustees;
- 10 (e) a private company and a trustee are associated  
11 persons if a related body corporate of the  
12 company is a beneficiary of the trust (not  
13 including a public unit trust scheme) of which  
14 the trustee is a trustee;
- 15 **entity** means —
- 16 (a) a person; or  
17 (b) 2 or more persons who are associated persons;
- 18 **private company** means a company that is not limited  
19 by shares, or whose shares are not quoted on the  
20 Australian Stock Exchange or any exchange of the  
21 World Federation of Exchanges;
- 22 **related person** means a person who is related to  
23 another person in accordance with any of the  
24 following —
- 25 (a) individuals are related persons if —  
26 (i) one is the spouse or de facto partner of  
27 the other; or  
28 (ii) the relationship between them is that of  
29 parent and child, brothers, sisters, or  
30 brother and sister;
- 31 (b) private companies are related persons if they  
32 are related bodies corporate;



- 1                   (c) an individual and a private company are related  
2                   persons if the individual is a majority  
3                   shareholder or director of the company or of  
4                   another private company that is a related body  
5                   corporate of the company;
- 6                   (d) an individual and a trustee are related persons if  
7                   the individual is a beneficiary of the trust (not  
8                   being a public unit trust scheme) of which the  
9                   trustee is a trustee;
- 10                  (e) a private company and a trustee are related  
11                  persons if the company, or a majority  
12                  shareholder or director of the company, is a  
13                  beneficiary of the trust (not being a public unit  
14                  trust scheme) of which the trustee is a trustee.
- 15                  (2) An entity and a corporation form part of a group if the  
16                  entity has a controlling interest in the corporation.
- 17                  (3) An entity has a controlling interest in a corporation if  
18                  the corporation has share capital and —
- 19                      (a) the entity has a direct interest in the corporation  
20                      the value of which exceeds 50%; or
- 21                      (b) the entity has an indirect interest in the  
22                      corporation the value of which exceeds 50%; or
- 23                      (c) the entity has an aggregate interest in the  
24                      corporation the value of which exceeds 50%.
- 25                  (4) The Commissioner may exclude an entity from a group  
26                  in accordance with section 38.

27                  **35B. Direct interests**

- 28                  (1) An entity has a *direct interest* in a corporation if —
- 29                      (a) in the case of an entity that is a person — the  
30                      person can, directly or indirectly, exercise,  
31                      control the exercise of, or substantially  
32                      influence the exercise of, the voting power

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- 1 attached to any voting shares issued by the  
2 corporation; or
- 3 (b) in the case of an entity that is 2 or more persons  
4 who are associated persons — each of the  
5 associated persons can, directly or indirectly,  
6 exercise, control the exercise of, or  
7 substantially influence the exercise of, the  
8 voting power attached to any voting shares  
9 issued by the corporation.
- 10 (2) The value of the direct interest of the entity in the  
11 corporation is the proportion (expressed as a  
12 percentage) of the voting power of all voting shares  
13 issued by the corporation that —
- 14 (a) in the case of an entity that is a person — the  
15 person can directly or indirectly exercise,  
16 control the exercise of, or substantially  
17 influence the exercise of; or
- 18 (b) in the case of an entity that is 2 or more persons  
19 who are associated persons — the associated  
20 persons can, if acting together, directly or  
21 indirectly exercise, control the exercise of, or  
22 substantially influence the exercise of.

23 **35C. Indirect interests**

- 24 (1) An entity has an *indirect interest* in a corporation if the  
25 corporation is linked to another corporation (the  
26 *directly controlled corporation*) in which the entity has  
27 a direct interest.
- 28 (2) A corporation is linked to a directly controlled  
29 corporation if the corporation is part of a chain of  
30 corporations —
- 31 (a) that starts with the directly controlled  
32 corporation; and

- 1                   (b) in which a link in the chain is formed if a  
2                   corporation has a direct interest in the next  
3                   corporation in the chain.
- 4           (3) The value of the indirect interest of an entity in a  
5           corporation (an *indirectly controlled corporation*) that  
6           is linked to a directly controlled corporation is  
7           calculated by multiplying together the following —
- 8                   (a) the value of the direct interest of the entity in  
9                   the directly controlled corporation;
- 10                   (b) the value of each direct interest that forms a  
11                   link in the chain of corporations by which the  
12                   indirectly controlled corporation is linked to the  
13                   directly controlled corporation.
- 14           (4) If an entity has more than one indirect interest in a  
15           corporation, the value of those interests is worked out  
16           under section 35D.

17           **35D. Aggregate interests**

- 18           (1) An entity has an *aggregate interest* in a corporation  
19           if —
- 20                   (a) the entity has a direct interest and one or more  
21                   indirect interests in the corporation; or
- 22                   (b) the entity has more than one indirect interest in  
23                   the corporation.
- 24           (2) The value of the aggregate interest of an entity in a  
25           corporation is the sum of the following —
- 26                   (a) the value of the direct interest (if any) of the  
27                   entity in the corporation;
- 28                   (b) the value of each indirect interest of the entity  
29                   in the corporation.
- 30

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1 **24. Section 36 amended**

2 (1) In section 36(3) delete the passage that begins with “Act  
3 except” and continues to the end of the subsection and insert:

4  
5 Act.

6  
7 (2) After section 36(3) insert:

8  
9 (4) The Commissioner may exclude a person from a group  
10 in accordance with section 38.  
11

12 **25. Section 38 amended**

13 Delete section 38(1) and insert:

14  
15 (1) The Commissioner may exclude a person from a group  
16 under section 31(4), 32(3), 35A(3) or 36(4) in relation  
17 to a business carried on by the person if satisfied that  
18 the business is carried on independently of, and is not  
19 connected with the carrying on of, a business carried  
20 on by any other member of the group, having regard  
21 to —

22 (a) the nature and degree of ownership and control  
23 of the businesses; and

24 (b) the nature of the businesses; and

25 (c) any other matters the Commissioner considers  
26 relevant.  
27

1   **26.    Schedule 1 amended**

2           After Schedule 1 clause 3 insert:

3

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

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

7                   If the Commissioner has excluded a person from a group  
8                   under section 31(4) or 32(3) (as in force before 1 July 2012)  
9                   and that exclusion was in force immediately before  
10                  1 July 2012, that exclusion has effect, according to its terms,  
11                  on and after 1 July 2012, as if it had been granted under  
12                  Part 4 (as in force on and after 1 July 2012).

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

14                  An exclusion of a person from a group under Part 4 (as in  
15                  force on and after 1 July 2012) cannot have effect before  
16                  1 July 2012 despite section 38(5).

17          **6.       Exclusion, from a group, having effect before**  
18                  **1 July 2012**

19                  The Commissioner may, on and after 1 July 2012, exclude a  
20                  person from a group for a period that is before 1 July 2012  
21                  but not on or after 1 July 2012, and may do so as if the  
22                  *Pay-roll Tax Assessment Amendment Act 2010* Part 2  
23                  Division 3 had not come into operation.

24

25   **27.    Glossary amended**

26           (1)   In the Glossary clause 1 delete the definition of *related*  
27           *corporation*.

28           (2)   In the Glossary clause 1 insert in alphabetical order:

29

30                   *related body corporate* has the meaning given in section 9  
31                   of the Corporations Act;

32

1 **Part 3 — Pay-roll Tax Assessment Regulations 2003**  
2 **amended**

3 **28. Regulations amended**

4 This Part amends the *Pay-roll Tax Assessment*  
5 *Regulations 2003*.

6 **29. Regulation 5 amended**

7 In regulation 5 delete “clause 2(1)(e) in the Glossary to” and  
8 insert:

9  
10 section 9AA(1)(c) of  
11

12 **30. Regulation 12 amended**

13 In regulation 12 delete “clause 6 in the Glossary to” and insert:

14  
15 section 9BI of  
16

17 **31. Regulation 14 amended**

18 In regulation 14 delete “clause 6 in the Glossary to” and insert:

19  
20 section 9BI of  
21

22 **32. Regulations 16 to 18 deleted**

23 Delete regulations 16, 17 and 18.

24 **33. Regulations 19 to 26 deleted**

25 Delete regulations 19, 20, 21, 22, 23, 24, 25 and 26.

1 **34. Part 3 heading replaced**

2 Delete the heading to Part 3 and insert:

3

4 **Part 3 — Allowances**

5

6 **35. Regulations 28 and 29 deleted**

7 Delete regulations 28 and 29.

8 **36. Regulation 30 amended**

9 In regulation 30 delete “The number” and insert:

10

11 For the purposes of section 9FA(2) of the Act, the number

12

13 **37. Regulation 31 deleted**

14 Delete regulation 31.

15 **38. Part 3 Division 2 deleted**

16 Delete Part 3 Division 2.

17 **39. Regulation 41 amended**

18 In regulation 41(1) delete “If an amount contributed to a  
19 superannuation scheme is taken by clause 8 in the Glossary to  
20 the Act to be paid” and insert:

21

22 If a superannuation contribution to a superannuation  
23 fund is taken by section 9CB of the Act to be wages  
24 paid

25

**s. 40**

---

1 **40. Regulation 42 amended**

2 (1) In regulation 42(1) delete “participant” and insert:

3

4 member of a fund

5

6 (2) In regulation 42(2) delete “participants in a scheme” and insert:

7

8 members

9

10 (3) In regulation 42(3) delete “participant” and insert:

11

12 member

13

14 (4) In regulation 42(4) delete “participants in a scheme” and insert:

15

16 members

17

18 Note: The heading to amended regulation 42 is to read:

19 **Categories of members**

20 **41. Regulation 43 deleted**

21 Delete regulation 43.

22 **42. Regulation 44 amended**

23 (1) In regulation 44(1):

24 (a) delete “participant,” and insert:

25

26 member,

27



- 1           (b) delete “participants,” and insert:  
2  
3           member,  
4
- 5       (2) In regulation 44(2):  
6           (a) delete “participant,” and insert:  
7  
8           member,  
9
- 10          (b) delete “participants,” and insert:  
11  
12          member,  
13
- 14       (3) In regulation 44(3):  
15           (a) delete “participant,” and insert:  
16  
17           member,  
18
- 19          (b) delete “participants,” and insert:  
20  
21          member,  
22
- 23       (4) In regulation 44(4)(b) delete “participant” and insert:  
24  
25          member  
26

**s. 43**

---

1   **43.     Regulation 46 amended**

2       (1) In regulation 46(1):

3           (a) delete “an employer is required to keep —” and insert:

4

5                   the following are prescribed —

6

7           (b) in paragraph (a) delete “subregulation (2); and” and  
8               insert:

9

10                   subregulation (2);

11

12           (c) in paragraph (b) delete “benefits.” and insert:

13

14                   benefits;

15

16           (d) after paragraph (b) insert:

17

18                   (c) other documents and records that the employer  
19                       is required by this regulation to keep.

20

21       (2) In regulation 46(2):

22           (a) delete paragraph (c) and insert:

23

24                   (c) the value of a share or option taken to be wages  
25                       under section 9DA or 9DG;

26

27           (b) delete paragraph (e) and insert:

28

29                   (e) a motor vehicle allowance;

30

- 1                   (c) in paragraph (f) delete “allowance, if any part of the  
2                   allowance is exempt under regulation 39;” and insert:  
3  
4                   allowance;  
5  
6                   (d) delete paragraphs (g) and (h) and insert:  
7  
8                   (g) an amount taken to be wages under  
9                   section 9CB of the Act.  
10
- 11           (3) After regulation 46(2) insert:  
12
- 13                   (3A) An employer who claims an exemption under  
14                   section 41A(2) of the Act must keep —  
15                   (a) for wages paid or payable for maternity  
16                   leave — a medical certificate for the employee  
17                   stating —  
18                               (i) that the employee is or was pregnant; or  
19                               (ii) that the employee has given birth and  
20                               the date of the birth;  
21                               or  
22                   (b) for wages paid or payable for parental leave —  
23                   a statutory declaration by the employee  
24                   stating —  
25                               (i) that a female is or was pregnant with the  
26                               employee’s unborn child; or  
27                               (ii) that the employee’s child has been born  
28                               and the date of the birth;  
29                               or

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- 1 (c) for wages paid or payable for adoption leave —  
2 a statutory declaration by the employee —  
3 (i) that a child has been placed in the  
4 custody of the employee pending the  
5 making of an adoption order; or  
6 (ii) that an adoption order has been made or  
7 recognised in favour of the employee  
8 and the date of the order or recognition.  
9

10 (4) In regulation 46(3) delete “Western Australia” and insert:  
11

12 WA  
13

14 **44. Glossary amended**

15 (1) In the Glossary clause 1 delete the definitions of:

- 16 *actual value method*  
17 *adjustment period*  
18 *contribution day*  
19 *employee share acquisition scheme*  
20 *estimated value method*  
21 *FBT year*  
22 *fringe benefits tax*  
23 *grossed-up value*  
24 *motor vehicle allowance*  
25 *qualified valuer*  
26 *recognised financial market*  
27 *unlisted public unit trust*  
28 *WA fringe benefits*

1       (2) In the Glossary clause 1 in the definition of *redundancy benefits*  
2       *scheme* delete “fund as defined in clause 1 in the Glossary to the  
3       Act)” and insert:

4  
5       fund)

6  
7       (3) In the Glossary clause 1 in the definition of *vehicle* delete  
8       “vehicle;” and insert:

9  
10       vehicle.  
11

12       **45. Power to amend or repeal regulations unaffected**

13       This Part does not prevent the *Pay-roll Tax Assessment*  
14       *Regulations 2003* from being amended or repealed under the  
15       *Pay-roll Tax Assessment Act 2002*.

16

