

SX303

PAY-ROLL TAX ASSESSMENT ACT 1971

PAY-ROLL TAX AMENDMENT REGULATIONS 1997

Made by the Lieutenant-Governor and deputy of the Governor in Executive Council.

Citation

1. These regulations may be cited as the *Pay-roll Tax Amendment Regulations 1997*.

Commencement

2. These regulations are deemed, under section 16 (2) of the *Revenue Laws Amendment (Assessment) Act 1997*, to have come into operation on 1 July 1997.

Principal regulations

3. In these regulations the *Pay-roll Tax Regulations** are referred to as the principal regulations.

[* *Published in Gazette 15 October 1971, pp. 4057-59.*
For amendments to 10 July 1997 see 1996 Index to Legislation of Western Australia, Table 4, p. 203.]

Part heading inserted

4. The principal regulations are amended by inserting before regulation 1 the following Part heading —

“ **PART 1 — GENERAL** ”.

Regulation 1 amended

5. Regulation 1 of the principal regulations is amended by deleting “Pay-roll Tax Regulations” and substituting the following —

“ *Pay-roll Tax Assessment Regulations 1971* ”.

Regulation 3B repealed

6. Regulation 3B of the principal regulations is repealed.

Parts 2, 3 and 4 inserted

7. After regulation 12 of the principal regulations the following Parts are inserted —

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PART 2 — FRINGE BENEFITS AND PRESCRIBED BENEFITS***Division 1 — General*****Interpretation in Part 2**

13. In this Part —

“**dependant**”, in relation to a person, means a child of that person who is wholly dependent upon that person’s earnings and is a child —

- (a) who is less than 18 years old; or
- (b) who is 18 years old or older but less than 25 years old, and who is receiving full-time education at a primary, secondary or tertiary institution;

“**educational costs**” —

- (a) include school fees and reasonable travel, accommodation and meal expenses, of a dependant incurred by reason of the dependant attending a primary, secondary or tertiary institution; and
- (b) do not include any fee required to be paid for tertiary education;

“**employee share acquisition scheme**” means a scheme by which an employer provides shares, rights to acquire shares, units in a unit trust or rights to acquire units in a unit trust, whether directly or indirectly, to or in relation to an employee in respect of services performed or rendered by the employee;

“**fringe benefits tax**” means the tax imposed under the *Fringe Benefits Tax Act 1986* of the Commonwealth on fringe benefits;

“**last year of tax**”, in relation to a financial year, means the year of tax ending on 31 March in the financial year;

“**otherwise deductible rule**” has the same meaning as in section 3C of the Act;

“**previous year of tax**”, in relation to a financial year, means the year of tax ending on 31 March before the start of the financial year;

“record” means retrievable record, however compiled, recorded or stored;

“return” means a return required to be furnished under section 13 of the Act;

“WA fringe benefits” means fringe benefits —

- (a) that are taxable wages, or would have been taxable wages if Part 3 of the *Revenue Laws Amendment (Assessment) Act 1997* and the *Pay-roll Tax Amendment Regulations 1997* had come into operation on 1 April 1996; and
- (b) on which either —
 - (i) fringe benefits tax is paid or payable; or
 - (ii) fringe benefits tax would be payable if the otherwise deductible rule were not applied to the fringe benefits;

“year of tax” has the same meaning as it has in the FBT Act.

Remote area wages that are not taxable wages

14. (1) Wages described in the Table to this subregulation are wages to which section 10 (1) (n) of the Act applies.

TABLE

<i>Item</i>	<i>Wages</i>
1.	An expense payment fringe benefit, a property fringe benefit or a residual fringe benefit under the FBT Act provided to a person in relation to the educational costs of a dependant of the person where the dependant is required to live away from home in order to attend, on a full-time basis, a primary, secondary or tertiary institution that is not within a reasonable distance of the remote location at which the person performs or renders services.
2.	To the extent that it is paid in respect of costs that are actually incurred, a subsidy paid to a person who is usually resident in a remote area for educational costs of a dependant of the person where the dependant is required to live away from home in order to attend, on a full-time basis, a primary, secondary or tertiary institution that is not within a reasonable distance of the remote location at which the person performs or renders services.
3.	An expense payment fringe benefit, a property fringe benefit, or a residual fringe benefit, under the FBT Act provided to a person in relation to the supply, use or cost of water for use for the domestic purposes of the person where, if the benefit related to residential fuel under the FBT Act, the taxable value of the benefit would be reduced under section 59 of that Act.
4.	A remote area housing fringe benefit under section 29 of the FBT Act.
5.	An expense payment fringe benefit, a property fringe benefit, or a residual fringe benefit, under the FBT Act — <ul style="list-style-type: none"> (a) that under that Act relates to residential fuel; and (b) the taxable value of which is reduced under section 59 of that Act.

6. To the extent that it is paid in respect of costs that are actually incurred in respect of a residence in a remote area, a subsidy paid for the cost of —

- (a) electricity;
- (b) gas; or
- (c) water,

supplied to the person receiving that subsidy.

7. A loan fringe benefit, an expense payment fringe benefit, or a property fringe benefit, under the FBTA Act —

- (a) that under that Act relates to a remote area housing loan, remote area housing rent, remote area residential property, a remote area residential property option fee or remote area residential property repurchase consideration; and
- (b) the taxable value of which is reduced under section 60 of that Act.

8. An expense payment fringe benefit, a property fringe benefit or a residual fringe benefit, under the FBTA Act —

- (a) that under that Act relates to remote area holiday transport; and
- (b) the taxable value of which is reduced under section 61 of that Act.

(2) If the taxable value of a remote area holiday transport fringe benefit under the FBTA Act is reduced under section 60A of that Act, that amount of the fringe benefit that equals twice the amount of the reduction is wages to which section 10 (1) (n) of the Act applies.

Division 2 — Prescribed benefits

Prescribed benefits

15. For the purposes of the definition of “**prescribed benefit**” in section 3 (1) of the Act a benefit described in the Table to this regulation is prescribed to be a benefit.

TABLE

<i>Item</i>	<i>Prescribed benefit</i>
1.	A contribution to a scheme or trust (other than a superannuation fund as defined in item 1 of Schedule 2 to the Act) that operates to provide redundancy benefits for persons working within an industry on one of those persons — <ul style="list-style-type: none"> (a) being made redundant; (b) leaving that industry; or (c) retiring.
2.	A contribution to a fund established to provide portable paid long service leave.
3.	A contribution (other than anything that is otherwise wages under the Act) to an employee share acquisition scheme.

Exempt wages on prescribed benefit

16. (1) Subject to subregulation (2), where a person makes a contribution referred to in item 1 or item 2 of the Table to regulation 15 in relation to an employee, wages paid or payable by the person to that employee are prescribed to be exempt wages under section 10 (6) of the Act to the extent of the amount that the person is entitled to recover from the scheme, trust or fund, as the case requires.

(2) Subregulation (1) only applies in relation to wages paid or payable in respect of services performed or rendered after 30 June 1997.

Value of redundancy and portable long service leave benefits

17. (1) The value of a prescribed benefit referred to in item 1 of the Table to regulation 15 is the amount of the contribution.

(2) The value of the prescribed benefit referred to in item 2 of the Table to regulation 15 is the amount of the contribution.

Value of employee share acquisition benefit

18. The value of the prescribed benefit referred to in item 3 of the Table to regulation 15 is —

- (a) where the contribution is a share, unit or a right to acquire a share or unit, the market value (determined in accordance with regulation 19) at the time the share, unit or right, as the case requires, is contributed, less any consideration paid or given by the relevant employee as consideration for the acquisition of the share, unit or right acquired by the employee;
- (b) where the contribution is money, the amount of money provided; or
- (c) where the contribution is property (other than property referred to in paragraph (a) or money) that is worth money, the amount of money that it is worth at the time the property is contributed.

Market value of a share, unit or right

19. (1) The market value of a share, unit or right quoted on an approved stock exchange on the relevant day is —

- (a) if there was at least one transaction on that stock exchange in shares, units or rights of that class during the one week period before that day — the weighted average of the prices at which those shares, units or rights were traded on that stock exchange during the one week period before that day; or
- (b) if there were no transactions on that stock exchange in that one week period in such shares, units or rights — the last price at which an offer was made on that stock exchange in that period to buy such a share, unit or right.

(2) The market value of a share or unit (other than a unit in an unlisted public unit trust) not quoted on an approved stock exchange on the relevant day is the arm's length value of the share or unit —

- (a) as specified in a written report, in a form approved by the Commissioner, given to the employer by a person who is a qualified person in relation to valuing the share or unit; or
- (b) as calculated in accordance with any other method approved in writing by the Commissioner as a reasonable method of calculating the arm's length value of unlisted shares or units.

(3) The market value of a unit in an unlisted public unit trust is the weighted average of the issue prices for the units during the one week period before the relevant day.

(4) The market value of a right not quoted on an approved stock exchange on the relevant day is the market value on that day of the share or unit that may be acquired by exercising the right, less the lowest amount that must be paid to exercise the right to acquire the share or unit.

(5) In determining the market value of a share, unit or right under subregulation (2), (3) or (4) the share, unit or right, and any share or unit that may be acquired as a consequence of the exercise or operation of the right, is taken not to be subject to any conditions or restrictions.

(6) If the lowest amount that must be paid to exercise a right to acquire a share or unit is nil or cannot be determined, the market value of the right on a particular day is the same as the market value of the share or unit on that day.

(7) If a share, unit or right is quoted on a day on 2 or more approved stock exchanges, the price on that day is the price on whichever of those stock exchanges is nominated by the employer, but if one or more of the stock exchanges on which the share, unit or right is quoted is an Australian stock exchange, the employer must nominate an Australian stock exchange.

(8) The market value of a share, unit or right wherever determined shall be expressed in terms of Australian currency.

(9) In this regulation —

“approved stock exchange” means an approved stock exchange within the meaning of Part XI of the *Income Tax Assessment Act 1936* of the Commonwealth;

“qualified person” in relation to valuing a share in a company or a unit in a unit trust, means a person registered as a company auditor under a law in force in a State or Territory who is not —

- (a) a trustee of the unit trust;
- (b) a director, secretary or employee of the company or of a trustee of the unit trust;
- (c) a partner, employer or employee of a person referred to in paragraph (a) or (b); or
- (c) a partner or employee of a person so referred to;

“relevant day” means, in relation to the contribution of a share, unit or right, the day the share, unit or right is contributed;

“unlisted public unit trust” means a unit trust which is not quoted on an approved stock exchange and in respect of which either of the following conditions is satisfied —

- (a) any of the units in the unit trust were offered to the public; and
- (b) at all times during the previous 12 months, the units in the unit trust were held by not fewer than 50 unitholders.

Records to be made and preserved

20. (1) For the purposes of section 44 of the Act the following documents are prescribed to be made and preserved by an employer —

- (a) documents and records which evidence the provision of a prescribed benefit; and

- (b) documents and records used in the calculation of the value of, or which support the calculation of the value of, the prescribed benefit.

Division 3 — Fringe benefits — Requirements

Benefits that are not fringe benefits

21. For the purposes of the definition of “fringe benefit” in section 3 (1) of the Act a living-away-from-home allowance fringe benefit under the FBT Act is prescribed not to be a fringe benefit.

Changing basis of calculating value of fringe benefits

22. (1) An employer may, before the first or only return is required to be furnished for a financial year, change the basis for calculating the value of fringe benefits —

- (a) if the employer has paid WA fringe benefits for at least 15 months immediately before the start of the financial year — from the actual value basis to the estimated value basis; or
- (b) from the estimated value basis to the actual value basis.

(2) An employer who makes a change under subregulation (1) shall notify the Commissioner in an approved form before the day on which the first or only return is required to be furnished for the financial year.

Penalty: \$500.

(3) All monthly returns for a financial year shall be made on the same basis unless the employer is allowed to change the basis during the financial year under subregulation (4).

(4) The Commissioner, on the application in writing of an employer, may allow the employer to change the basis of calculating the value of fringe benefits during a financial year if the Commissioner is satisfied that —

- (a) there is a compelling reason for making that change; and
- (b) the employer would, if the Commissioner does not allow the change, pay substantially more pay-roll tax during the financial year than the employer would otherwise have to pay on an actual value basis for the financial year.

(5) If an employer changes from the estimated value basis, the amount calculated under subregulation (6) must be included —

- (a) if the change is made under subregulation (1), in the last monthly return for the last financial year; or
- (b) if the change is made under subregulation (4), in the last monthly return for the financial year.

(6) The amount to be included in a return under subregulation (5) is the difference between —

- (a) the total of —
 - (i) the WA fringe benefits for the last year of tax; and
 - (ii) the WA fringe benefits paid or payable by the employer in April, May and June of the financial year (if any);

and

- (b) the total of —
 - (i) one quarter of the WA fringe benefits for the year of tax ending in the first financial year in which the employer last elected to make returns on an estimated value basis; and
 - (ii) the total of the amounts of WA fringe benefits included in the returns for the financial year.

(7) If an employer changes to the estimated value basis during a financial year, the last return for the financial year shall include the difference between —

- (a) the WA fringe benefits for the last year of tax; and
- (b) the total of the amounts of WA fringe benefits included in the returns for the last financial year.

Monthly returns on estimated value basis

23. A monthly return made on the estimated value basis shall include as the value of the fringe benefits an amount that is —

- (a) in a return for each of the first 11 months of a financial year, one-twelfth of the WA fringe benefits for the previous year of tax; and
- (b) in the return for the last month of the financial year, the difference between —
 - (i) the WA fringe benefits for the last year of tax; and
 - (ii) the total of the amounts of WA fringe benefits included in the returns for each of the previous months of the financial year.

Annual returns on estimated value basis

24. An annual return made on an estimated value basis shall include as the value of the fringe benefits the WA fringe benefits for the last year of tax.

Final returns by employers using estimated value basis

25. (1) This regulation applies only to an employer that is making returns on an estimated value basis.

(2) When an employer furnishes a final return, the value of the fringe benefits to be included in the final return is an amount that is the difference between —

- (a) the total of —
 - (i) the WA fringe benefits for the last year of tax; and
 - (ii) the WA fringe benefits paid or payable by the employer in April, May and June of the financial year (if any);and
- (b) the total of —
 - (i) one quarter of the WA fringe benefits for the year of tax ending in the first financial year in which the employer last elected to make returns on an estimated value basis; and
 - (ii) the total of the amounts of WA fringe benefits included in the monthly returns for the financial year.

Amended assessments under FBTA Act

26. An employer shall, within 30 days of receiving an amended assessment under the FBTA Act, give a copy of the amended assessment to the Commissioner.

Penalty: \$500.

Records to be made and preserved

27. (1) For the purposes of section 44 of the Act —

- (a) the following documents are prescribed to be made and preserved by an employer —
 - (i) documents and records which evidence the provision of a WA fringe benefit; and
 - (ii) documents and records used in the calculation of the value of, or which support the calculation of the value of, the WA fringe benefit; and
- (b) an employer who has elected to include in a return an amount for fringe benefits based on an estimated value basis shall make a record of the value of WA fringe benefits paid or payable in the year of tax ending in the first financial year in which the employer last made such an election.

(2) An employer who makes a record under subregulation (1) (b) shall retain the record until the expiry of a period of 5 years —

- (a) after the employer changes from the estimated value basis;
or
- (b) the employer makes a final return,

whichever is the soonest.

PART 3 — ALLOWANCES***Division 1 — Motor vehicle allowances*****Interpretation in Division 1 of Part 3**

28. In this Division —

“allowance period” means the period during which the travel to which the allowance related occurred;

“averaging method” means the method described in regulations 32 to 35 for calculating the number of business kilometres travelled by a person;

“award” means —

- (a) an award, order or industrial agreement within the meaning of the *Industrial Relations Act 1979*;
- (b) an award, order or determination made by the Coal Industry Tribunal of Western Australia under the *Coal Industry Tribunal of Western Australia Act 1992*; or
- (c) an award, order or industrial agreement under a similar law of another State or of the Commonwealth;

“business journey” means a journey made on or after 1 July 1997 by a person —

- (a) in the course of the person’s employment; and

- (b) in a motor vehicle provided or maintained by that person;

"business kilometre" means a kilometre, or part of a kilometre, travelled by a person in the course of a business journey;

"continuous recording method" means the method described in regulation 31 for calculating the number of business kilometres travelled by a person;

"motor vehicle allowance" means an allowance paid to a person in respect of business journeys made by the person during the return period in which the allowance was paid or during a previous return period;

"recording period" means a period selected under regulation 32.

Motor vehicle allowances prescribed

29. (1) An employer who pays a motor vehicle allowance to a person may choose to claim an exclusion under section 3 (1a) of the Act for that allowance.

(2) If an employer does not choose to claim an exclusion for a motor vehicle allowance, none of that allowance is excluded from being wages under section 3 (1a) of the Act.

(3) If an employer chooses to claim an exclusion for a motor vehicle allowance, the allowance (however calculated) is excluded from being wages under section 3 (1a) of the Act to the extent that it does not exceed the amount calculated by multiplying —

- (a) the rate determined under subregulation (4); by
- (b) the number of business kilometres which the person —
 - (i) is calculated, under regulation 31(2), as having travelled;
 - (ii) is deemed, under regulation 35(2), to have travelled; or
 - (iii) is deemed, under subregulation (5), to have travelled, during the allowance period.
- (4) The rate to be applied under subregulation (3) (a) is —
 - (a) if the allowance is paid under an award which specifies motor vehicle allowances as a rate for each business kilometre travelled, the rate specified in the award; or
 - (b) otherwise, the rate for each business kilometre travelled as set out in the Table to this subregulation for the financial year during which the allowance was paid.

TABLE

Financial year	Rate
1997/1998 and all subsequent years	50 cents

(5) If an employer who has chosen to claim an exclusion for a motor vehicle allowance is unable to comply with regulation 31 or regulations 32 to 35, as the case requires, in relation to an allowance period, then for the purposes of subregulation (3) (b), the number of business kilometres travelled by the person during that period is deemed to be —

- (a) if the Commissioner allows the employer to estimate the number of business kilometres travelled by the person

during that period and considers the employer's estimate to be reasonable, the employer's estimate of that number;

- (b) if the Commissioner specifies a number which is deemed to be the number of business kilometres travelled by the person during that period, the number specified; or
- (c) otherwise, zero.

Methods for calculating number of business kilometres

30. (1) An employer who has chosen to claim an exclusion for a motor vehicle allowance must record and calculate the number of business kilometres travelled by the person during the allowance period using the continuous recording method unless the employer has chosen to use the averaging method and has calculated a percentage under regulation 34(1)(c) which is still in force.

(2) An employer may choose to use the averaging method if —

- (a) a motor vehicle is, or will be, provided or maintained by the person for more than 12 weeks; and
- (b) the allowance is, or will be, paid regularly in respect of business journeys made during recurring periods of the same, or about the same, length (*e.g. weekly, fortnightly, monthly*).

(3) Subject to subregulation (2), an employer may change the employer's chosen method of calculation with effect from the beginning of any return period but an employer who changes from the averaging method to the continuous recording method may not change back to the averaging method until the employer has, on that occasion, used the continuous recording method for at least 12 weeks.

(4) Subject to subregulation (2), an employer who pays motor vehicle allowances to more than one person may use different methods of calculation for each person.

(5) When an employer chooses to use a particular method of calculation the employer must record that choice in writing before the end of the return period during which the choice takes effect.

(6) An employer must retain a record made under subregulation (5) for 5 years from when the employer ceases to use that method of calculation.

Continuous recording method

31. (1) An employer who uses the continuous recording method in respect of a person must keep records of —

- (a) the odometer readings at the beginning and end of each business journey made by that person; and
- (b) the purpose of each such journey,

and retain them for 5 years from the end of the return period during which any allowance relating to those journeys is paid.

(2) At the end of each return period the employer must calculate the number of business kilometres travelled by the person during the allowance period using the odometer readings referred to in subregulation (1) (a).

(3) The employer must retain calculations made under subregulation (2) for 5 years from the end of the return period during which the allowance is paid.

Averaging method — selecting a recording period

32. (1) When an employer chooses to use the averaging method for a person the employer must, in writing, select a recording period.

(2) A recording period must be a continuous period of at least 12 weeks during which the person made, or is reasonably expected to make, business journeys with the frequency and of the length that can reasonably be expected to be made by the person during any similar period within the next 5 years.

(3) An employer must select another recording period if —

- (a) the employer has been using the averaging method for a person for 5 years since the end of the last recording period and wishes to continue using the averaging method;
- (b) the person makes business journeys in a motor vehicle which was not used during the last recording period (other than a replacement vehicle nominated under regulation 36);
- (c) the employer changed from using the averaging method to using the continuous recording method and then chooses to change back to using the averaging method; or
- (d) directed in writing to do so by the Commissioner.

(4) An employer may select another recording period at any time before being required to do so under subregulation (3).

(5) When an employer is required under subregulation (3) (c) to select a new recording period, the selected period must be during the current period in which the employer used the continuous recording method.

(6) An employer must retain —

- (a) a written selection made under subregulation (1) for 5 years from the end of the last return period during which the percentage, calculated under regulation 34(1)(c), for the selected recording period is in force; and
- (b) any direction given under subregulation (3) (d) for 5 years from the date it is given.

Averaging method — keeping records

33. (1) During a recording period an employer who uses the averaging method must keep a record, for each vehicle used by the person for business journeys during the recording period, of —

- (a) the odometer readings at the beginning and end of —
 - (i) each business journey; and
 - (ii) the recording period;and
- (b) the specific purpose of each business journey.

(2) At all times while the employer uses the averaging method, the employer must keep a record, for each vehicle used by the person for business journeys, of the odometer readings at the beginning and end of each allowance period.

(3) The employer must retain —

- (a) all records made under subregulation (1) for 5 years from the end of the last return period during which the percentage calculated under regulation 34(1)(c) from those records is in force; and

- (b) all records made under subregulation (2) for 5 years from the end of the return period during which any allowance relating to journeys made during the allowance period is paid.

Averaging method — calculating the average

34. (1) After making the records required under regulation 33 for a recording period an employer must calculate for each vehicle used by the person for business journeys during the recording period —

- (a) the number of business kilometres travelled in that vehicle during the recording period, based on the odometer readings referred to in regulation 33(1)(a)(i);
- (b) the total number of kilometres travelled in that vehicle during the recording period, based on the odometer readings referred to in regulation 33(1)(a)(ii); and
- (c) the percentage of the total number of kilometres travelled during the recording period which were business kilometres (*i.e. (a) divided by (b), multiplied by 100*).

(2) A percentage calculated under subregulation (1) (c) remains in force until the end of the next recording period selected under regulation 32.

(3) The employer must retain all calculations made under this regulation for 5 years from the end of the last return period during which the percentage which those calculations were used to calculate is in force.

Averaging method — calculating deemed distance

35. (1) For each return period during which an employer uses the averaging method the employer must calculate, for each vehicle used by the person for business journeys during the allowance period —

- (a) the total number of kilometres travelled in that vehicle during the allowance period, based on the odometer readings referred to in regulation 33(2); and
- (b) the number of business kilometres which the person is to be deemed to have travelled in that vehicle during the allowance period, by multiplying —
 - (i) the total number of kilometres calculated under paragraph (a); by
 - (ii) the percentage calculated for that vehicle under regulation 34(1)(c) for the last recording period.

(2) A person is deemed to have travelled, during an allowance period, the number of business kilometres calculated by adding together the figures calculated under subregulation (1) (b) for each of the vehicles used by the person for business journeys during that allowance period.

(3) The employer must retain all calculations made under this regulation for 5 years from the end of the return period during which any allowance relating to journeys made during the allowance period is paid.

Replacing one motor vehicle with another

36. (1) If a person who is paid a motor vehicle allowance ceases to use a motor vehicle for business journeys and commences using another motor vehicle in its place, the employer may nominate the second motor vehicle as a replacement for the first.

- (2) When a nomination has been made under subregulation (1) —
- (a) the replacement motor vehicle is to be treated as the original motor vehicle;
 - (b) subject to regulation 32(3), if the employer is using the averaging method, the employer need not repeat for the replacement vehicle the steps already taken under regulations 32 to 35 for the original motor vehicle; and
 - (c) the employer must —
 - (i) record the odometer readings of both vehicles at the time of the replacement; and
 - (ii) take those readings into account when calculating the number of kilometres travelled during the allowance period when the replacement occurred.

(3) The employer must record the nomination in writing during the allowance period in which the replacement occurs.

(4) The employer must retain all records made under this regulation for 5 years from the end of the last return period during which any allowance relating to journeys made before the replacement is paid.

Replacement or recalibration of odometer

37. (1) If the odometer of a motor vehicle which is used for business journeys is replaced or recalibrated the employer must —

- (a) record the odometer readings immediately before and after the replacement or recalibration; and
- (b) take those readings into account when calculating the number of kilometres travelled in the vehicle during the allowance period in which the replacement or recalibration occurred.

(2) The employer must retain all records and calculations made under this regulation for 5 years from the end of the last return period during which any allowance relating to journeys made before the replacement or recalibration is paid.

Division 2 — Accommodation allowances

Interpretation in Division 2 of Part 3

38. In this Division —

“award” means —

- (i) an award, order or industrial agreement within the meaning of the *Industrial Relations Act 1979*;
- (b) an award, order or determination made by the Coal Industry Tribunal of Western Australia under the *Coal Industry Tribunal of Western Australia Act 1992*; or
- (c) an award, order or industrial agreement under a similar law of another State or of the Commonwealth;

“business night” means a night on or after 1 July 1997 when the person —

- (i) is, or is expected to be, absent from the person's usual place of residence in the course of the person's employment; and

- (ii) stays, or is expected to stay, in accommodation other than accommodation provided by the employer;

“relevant period” means the period consisting of —

- (a) the return period during which the absence was initially expected to occur;
- (b) the following return period; and
- (c) any subsequent return periods which the Commissioner in writing allows to be included.

Accommodation allowances prescribed

39. (1) An accommodation allowance (however calculated) paid to a person during a return period is excluded under section 3 (1a) of the Act to the extent that it does not exceed the amount calculated by multiplying —

- (a) the rate determined under subregulation (2); by
 - (b) the number of business nights in respect of which the allowance was paid.
- (2) The rate to be applied under subregulation (1) (a) is —
- (a) if the allowance is paid under an award which specifies accommodation allowances as a rate for each business night, the rate specified in the award; or
 - (b) otherwise, the applicable rate for each business night set out in the Table to this subregulation according to where the person stayed, or is expected to stay, and the financial year during which the accommodation was, or is expected to be, provided.

TABLE

Financial year	Rate per night for accommodation —		
	in Western Australia	elsewhere in Australia	in another country
1997/1998 and all subsequent years	\$110	\$145	\$200

Reinstatement of unused allowances

- 40.** (1) This regulation applies if —
- (a) an accommodation allowance is paid in advance in respect of an expected business night;
 - (b) the allowance is excluded from being wages in the return period during which it is paid; and
 - (c) the person is in fact not absent as expected on that night or stays in accommodation provided by the employer.
- (2) Where this regulation applies an adjustment is to be made under subregulation (3) unless —
- (a) the person —
 - (i) is absent on another night during the relevant period; and
 - (ii) is not paid another accommodation allowance in respect of that night; or

- (b) the allowance is repaid by the person to the employer during the relevant period.

(3) Where an adjustment is required under subregulation (2) the exclusion of the allowance for that night from being wages under section 3 (1a) of the Act is to be reversed at the end of the relevant period by adding to the wages paid to the person during the last return period in the relevant period an amount equal to so much of the allowance which was excluded from being wages as relates to that night.

Record keeping

41. If an employer pays an accommodation allowance and any part of it is excluded from being wages under section 3 (1a) of the Act the employer must keep sufficient written records to substantiate the calculation of that exclusion and retain them for 5 years from —

- (a) the night in respect of which the allowance is paid; or
- (b) the end of the return period during which the allowance is paid,

whichever is later.

PART 4 — CERTAIN SUPERANNUATION CONTRIBUTIONS

Employer to obtain actuarial determination

42. (1) An employer who is deemed to have made a contribution to a superannuation scheme of a type described in item 2 (1) of Schedule 2 to the Act, in a return period, in respect of a participant, must ensure that an actuarial determination, made in accordance with this Part, is in force in respect of contributions to that scheme, in that return period, in respect of that participant.

(2) An employer must ensure that a new actuarial determination is made as soon as practicable after the occurrence of an event which could reasonably be expected to significantly affect the accuracy of the current determination.

(3) If the Commissioner considers that as a result of a significant change of circumstances an actuarial determination is no longer accurate, the Commissioner may direct the employer to ensure that a new actuarial determination is made and the employer is to comply with that direction.

(4) A determination made under subregulation (3) has effect in respect of each return period which commences after the date on which the direction is given.

Categories of participants

43. (1) An actuarial determination required by regulation 42 must be made in relation to each participant either separately or in accordance with this regulation.

(2) An actuary may, if the actuary considers it reasonable to do so, divide the participants in a scheme into categories and make a determination in respect of a notional average member of each category.

(3) If a determination is made under subregulation (2) for a category, that determination applies in respect of each participant who is a member of that category, including any person who subsequently becomes a member of that category.

(4) An actuary may categorize participants in a scheme according to their occupations, their salaries, the type of benefits to which they are or will become entitled, or on such other basis as the actuary considers appropriate.

Deemed rate of earnings

44. The earnings referred to in item 2 (3) of Schedule 2 to the Act are to be calculated at a rate equal to the yield rate, on the day on which the determination is made, for 10 year treasury bonds issued by the Commonwealth.

Determination for 3 years

45. (1) An actuarial determination must specify the amount of contributions for each participant, or category of participants, for each return period for the 3 years from the date on which the determination is made.

(2) If a determination is required under regulation 42(2) the determination must also specify the amount of contributions for each participant, or category of participants, for each return period from the date the significant event occurred to the date on which the determination was made.

(3) If a determination is required under regulation 42(3) the determination must also specify the amount of contributions for each participant, or category of participants, for each return period from the date of the Commissioner's direction to the date on which the determination was made.

(4) The contribution may be expressed —

- (a) as a dollar amount (which need not be the same for each return period); or
- (b) by reference to a variable which is, or a number of variables which are, readily ascertainable for each participant for each return period (*e.g. as a percentage of salary*).

Duration of actuarial determination

46. An actuarial determination made under this Part remains in force for 3 years from when it is made unless before then another actuarial determination is made to replace it.

Retention of superannuation records

47. If an employer has, or is deemed to have, made a superannuation contribution in respect of a person which is deemed by section 3A of the Act to be wages the following documents are prescribed to be preserved by that employer —

all documents and records used to ascertain the amount of the contribution including, if item 2 (3) of Schedule 2 to the Act applies, the actuarial determination relating to that contribution.

Transitional provision

8. Despite regulation 6, regulation 3B of the principal regulations as in force before the commencement of these regulations continues to apply to wages paid or payable before 1 July 1997.

By Command of the Lieutenant-Governor and deputy of the Governor in Executive Council.

J. PRITCHARD, Clerk of the Executive Council.