

Western Australia

Pay-roll Tax Assessment Regulations 2003

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Pay-roll Tax Assessment Regulations 2003

CONTENTS

Part 1 — Preliminary matters

1.	Citation	1
2.	Commencement	1
3.	Meaning of terms used in these regulations	1

Part 2 — Various exemptions and inclusions

Division 1 — Miscellaneous

4.	Exempt expenditure by departments and others	2
5.	Contracts prescribed for the definition of “wages”	2
6.	Excluded contracts	2

Division 2 — Remote location benefits

7.	Remote location wages prescribed	3
8.	Education costs	3
9.	Fringe benefits provided in remote locations	3
10.	Remote area housing benefits	4

Division 3 — Specified taxable benefits

11.	Contributions to redundancy benefits schemes	4
12.	Value of redundancy benefits scheme contributions	5
13.	Portable paid long service leave	5
14.	Value of portable long service leave fund contributions	5
15.	Wages exemptions related to specified taxable benefits	5
16.	Employee share acquisition schemes	5

Contents

17.	Value of contributions to share acquisition schemes	6
18.	Market value of shares, units and rights	6
	Division 4 — Fringe benefits	
19.	Excluded fringe benefits	8
20.	Methods for calculating the value of taxable fringe benefits	8
21.	Returns using the actual value method	8
22.	Eligibility to use estimated value method	9
23.	Monthly returns using the estimated value method	9
24.	Annual returns using the estimated value method	9
25.	Final returns using the estimated value method	10
26.	Changing method of valuing fringe benefits	10
27.	Notice of amended FBT Act assessment	12
	Part 3 — Specified exempt allowances	
	Division 1 — Motor vehicle allowances	
28.	Exempt motor vehicle allowances	13
29.	Extent of exemption for motor vehicle allowance	13
30.	Business kilometres travelled in a return period	14
31.	Rate allowed for business kilometres	14
32.	Choosing a method for calculating business kilometres	14
33.	Changing the method of calculating business kilometres	16
34.	The continuous recording method	16
35.	The averaging method	17
36.	Selecting a continuous recording period	18
37.	Replacing one motor vehicle with another	19
38.	Replacement or recalibration of odometer	19
	Division 2 — Accommodation allowances	
39.	Exemptions for accommodation allowances	20
40.	Adjustments for unused allowances	20
	Part 4 — Superannuation contributions	
41.	Actuarial determinations for some superannuation contributions	22

42.	Categories of participants	22
43.	Rate of earnings	23
44.	Scope of actuarial determinations	23
45.	Duration of actuarial determination	24
	Part 5 — Keeping books and accounts	
46.	Prescribed records (section 44)	25
	Part 6 — Returns	
47.	Manner of lodging and paying in certain circumstances	27
	Schedule 1 — Exempt departments and other organisations	
	Glossary	
1.	Definitions	31
	Notes	
	Compilation table	35

Western Australia

Pay-roll Tax Assessment Act 2002

Pay-roll Tax Assessment Regulations 2003

Part 1 — Preliminary matters

1. Citation

These regulations may be cited as the *Pay-roll Tax Assessment Regulations 2003*¹.

2. Commencement

These regulations come into operation on the day on which the *Pay-roll Tax Assessment Act 2002* comes into operation¹.

3. Meaning of terms used in these regulations

The Glossary at the end of these regulations defines or affects the meaning of some of the words and expressions used in these regulations, and also affects the operation of other provisions.

Part 2 — Various exemptions and inclusions

Division 1 — Miscellaneous

4. Exempt expenditure by departments and others

The departments and other organisations listed in Schedule 1 are prescribed for the purposes of section 40(2)(q) of the Act.

5. Contracts prescribed for the definition of “wages”

An amount is wages for the purposes of clause 2(1)(e) in the Glossary to the Act if the amount is paid or payable under a contract made between a ship or boat builder and another party for the procurement of the services of persons to provide solely or mainly labour for all or any of the design, construction, fit-out or maintenance of a ship or boat.

6. Excluded contracts

A contract is excluded from a class referred to in regulation 5 if —

- (a) it is a contract to produce a given result for a fixed fee;
- (b) it is a contract covered by an industrial award;
- (c) it is a workplace agreement in force under the *Workplace Agreements Act 1993*;
- (d) it is an employer-employee agreement under Part VID of the *Industrial Relations Act 1979*; or
- (e) an employer who is registered under section 25 of the Act is a party to the contract and is liable under the Act to pay pay-roll tax on amounts paid or payable by the employer to a person who engages in labour under the contract.

Division 2 — Remote location benefits

7. Remote location wages prescribed

Wages of a kind referred to in this Division are prescribed for the purposes of section 40(2)(r) of the Act to the extent specified in this Division.

8. Education costs

- (1) An expense payment fringe benefit, a property fringe benefit or a residual fringe benefit that is provided to an employee who is employed in a remote location in relation to the education costs of a dependant of the employee is exempt if 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.
- (2) A subsidy that is provided to an employee who is employed in a remote location in relation to the education costs of a dependant of the employee is exempt to the extent that the costs are actually incurred because 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.

9. Fringe benefits provided in remote locations

- (1) An expense payment fringe benefit, a property fringe benefit or a residual fringe benefit provided in relation to the supply, use or cost of water for use for the domestic purposes of an employee who is employed in a remote location is exempt where, if the benefit related to residential fuel under the FBTA Act, the taxable value of the benefit would be reduced under section 59 of that Act.
- (2) An expense payment fringe benefit, a property fringe benefit, or a residual fringe benefit is exempt if —
 - (a) it relates to residential fuel; and

- (b) its taxable value is reduced under section 59 of the FBTA Act.

10. Remote area housing benefits

- (1) A remote area housing fringe benefit is exempt.
- (2) A subsidy provided for the cost of electricity, gas or water supplied to the residence of an employee living in a remote area is exempt to the extent of the costs actually incurred by the employee for the supply.
- (3) A loan fringe benefit, an expense payment fringe benefit, or a property fringe benefit is exempt if —
 - (a) the benefit 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 as provided in the FBTA Act; and
 - (b) the taxable value of the benefit is reduced under section 60 of that Act.
- (4) An expense payment fringe benefit, a property fringe benefit or a residual fringe benefit is exempt if —
 - (a) it relates to remote area holiday transport as provided in the FBTA Act; and
 - (b) its taxable value is reduced under section 61 of that Act.
- (5) If the taxable value of a remote area holiday transport fringe benefit is reduced under section 60A of the FBTA Act, the benefit is exempt to the extent of an amount equal to twice the amount of the reduction.

Division 3 — Specified taxable benefits

11. Contributions to redundancy benefits schemes

A contribution to a redundancy benefits scheme is a specified taxable benefit for the purposes of section 45(2)(b) of the Act

and the definition of “specified taxable benefits” in the Glossary to the Act.

12. Value of redundancy benefits scheme contributions

For the purposes of clause 6 in the Glossary to the Act, the value of a contribution to a redundancy benefits scheme is the amount equal to the amount of the contribution.

13. Portable paid long service leave

A contribution to a portable long service leave fund is a specified taxable benefit for the purposes of section 45(2)(b) of the Act and the definition of “specified taxable benefits” in the Glossary to the Act.

14. Value of portable long service leave fund contributions

For the purposes of clause 6 in the Glossary to the Act, the value of a contribution to a portable long service leave fund is the amount equal to the amount of the contribution.

15. Wages exemptions related to specified taxable benefits

If an employer makes a contribution to a redundancy benefits scheme or a portable long service leave fund in relation to an employee, then wages provided or payable by the employer to the employee are exempt wages for the purposes of section 40(4) of the Act to the extent of the amount that the employer is entitled to recover from the scheme or fund.

16. Employee share acquisition schemes

A contribution to an employee share acquisition scheme (except anything that is otherwise wages under the Act) is a specified taxable benefit for the purposes of section 45(2)(b) of the Act and the definition of “specified taxable benefits” in the Glossary to the Act.

17. Value of contributions to share acquisition schemes

For the purposes of clause 6 in the Glossary to the Act, the value of a contribution to an employee share acquisition scheme is —

- (a) if the contribution is a share, a unit or a right to acquire a share or unit — the market value on the contribution day of the share, unit or right as calculated under regulation 18, minus any consideration provided or given for the acquisition of the share, unit or right by the employee for whom the contribution is made;
- (b) if the contribution is money — the amount equal to the amount of the contribution; and
- (c) if the contribution is property that is worth money — (except a share, a unit, a right to acquire a share or unit, or money) the amount equal to the amount that the property is worth at the time the contribution is made.

18. Market value of shares, units and rights

- (1) The market value of a share, unit or right quoted on a recognised financial market on the contribution day is —
 - (a) if there was at least one transaction on the recognised financial market in shares, units or rights of that class during the one week period up to and including the contribution day — the weighted average of the prices at which those shares, units or rights were traded on the recognised financial market during that week; or
 - (b) if during that week there were no transactions on the recognised financial market in such shares, units or rights — the last price at which an offer was made on the recognised financial market during that week to buy such a share, unit or right.
- (2) The market value of a share or unit (except a unit in an unlisted public unit trust) that is not quoted on a recognised financial

market on the contribution 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 qualified valuer; 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 up to and including the contribution day.
- (4) The market value of a right not quoted on a recognised financial market on the contribution day is the market value on that day of the share or unit that could be acquired by exercising the right, minus the lowest amount that must be paid to exercise the right to acquire the share or unit.
- (5) For the purpose of 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 could be acquired by exercising 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 on any day a share, unit or right is quoted on 2 or more recognised financial markets, the price on that day is the price on whichever of those recognised financial markets is nominated by the employer, but if one or more of the recognised financial markets on which the share, unit or right is quoted is an Australian recognised financial market, the employer must nominate an Australian recognised financial market.

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

[Regulation 18 amended in Gazette 5 Nov 2004 p. 4986-7.]

Division 4 — Fringe benefits

19. Excluded fringe benefits

A living-away-from-home allowance within the meaning of the FBTA Act is not a fringe benefit for the purposes of the definition of “fringe benefit” in clause 1 in the Glossary to the Act.

20. Methods for calculating the value of taxable fringe benefits

- (1) An employer may use the actual value method for calculating the value of the fringe benefits provided by the employer for any return period.
- (2) An employer may use the estimated value method as set out in regulation 23 instead of the actual value method if the employer is eligible to do so under regulation 22.
- (3) The employer must use the same method for all monthly returns for an assessment year unless the Commissioner allows a change under regulation 26(4).

21. Returns using the actual value method

An employer who uses the actual value method to calculate the value of fringe benefits provided by the employer in an assessment year must include, in each return lodged by the employer for the year, the grossed-up value of the fringe benefits provided by the employer for the return period.

22. Eligibility to use estimated value method

An employer is eligible to use the estimated value method to calculate the value of fringe benefits provided by the employer in an assessment year if the employer —

- (a) has provided WA fringe benefits for at least the 15 months ending immediately before the beginning of the assessment year; and
- (b) lodges monthly returns for the assessment year.

23. Monthly returns using the estimated value method

- (1) If an employer who lodges monthly returns uses the estimated value method for an assessment year, the value of the fringe benefits to be included in each monthly return for the year except the last monthly return is the amount equal to $1/12^{\text{th}}$ of the grossed-up value of the fringe benefits provided by the employer in relation to the FBT year ending on 31 March in the financial year immediately before the assessment year.
- (2) The value of the fringe benefits to be included in the employer's last monthly return for the assessment year is the amount equal to the difference between —
 - (a) the grossed-up value of the WA fringe benefits provided by the employer during the FBT year that ended on 31 March in the assessment year; and
 - (b) the sum of the amounts included in the returns for each of the previous months of the assessment year under subregulation (1).

24. Annual returns using the estimated value method

If an employer who lodges an annual return uses the estimated value method for an assessment year, the value of the fringe benefits to be included in the return is the amount equal to the grossed-up value of the WA fringe benefits provided by the employer for the FBT year that ended on 31 March in the assessment year.

25. Final returns using the estimated value method

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

- (a) the amount equal to the sum of —
 - (i) the WA fringe benefits provided by the employer for the FBT year that ended on 31 March in the assessment year; and
 - (ii) the WA fringe benefits provided by the employer for April, May and June in the assessment year (if any);

and

- (b) the amount equal to the sum of —
 - (i) one quarter of the WA fringe benefits provided by the employer for the FBT year that ended in the first financial year for which the employer last chose to make returns using the estimated value method; and
 - (ii) the total of the amounts of WA fringe benefits included in the monthly returns for the assessment year.

26. Changing method of valuing fringe benefits

- (1) An employer who has been using the actual value method may change to using the estimated value method for an assessment year if the employer —
 - (a) is eligible to use the estimated value method under regulation 22; and
 - (b) gives the Commissioner notice of the intended change before the day on which the first or only return for the assessment year is required to be lodged by the employer.

- (2) An employer who has been using the estimated value method may change to using the actual value method for an assessment year if the employer gives the Commissioner notice of the intended change before the day on which the first or only return for the assessment year is required to be lodged by the employer.
- (3) A notice under subregulation (1) or (2) must be in a form approved by the Commissioner.
- (4) On the written application of an employer, the Commissioner may allow the employer to change the method for calculating the value of fringe benefits during an assessment year if the Commissioner is satisfied that —
 - (a) there is a compelling reason for making the change; and
 - (b) if the change is not allowed, the amount of pay-roll tax paid by the employer during the assessment year would be substantially greater than the amount payable for the assessment year on the grossed-up value of the fringe benefits provided by the employer for the whole assessment year.
- (5) If an employer changes from the estimated value method to the actual value method during an assessment year, the value of the fringe benefits to be included in the last return lodged by the employer for the assessment year is the amount equal to the difference between —
 - (a) the amount equal to the sum of —
 - (i) the grossed-up value of the WA fringe benefits provided by the employer for the FBT year ending on 31 March in the assessment year; and
 - (ii) the grossed-up value of the WA fringe benefits provided by the employer in April, May and June of the assessment year (if any);and

Pay-roll Tax Assessment Regulations 2003

Part 2 Various exemptions and inclusions

Division 4 Fringe benefits

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- (b) the amount equal to the sum of —
 - (i) one quarter of the grossed-up value of the WA fringe benefits provided by the employer for the FBT year that ended in the first financial year in which the employer last chose to make returns using the estimated value method; and
 - (ii) the total of the amounts of the WA fringe benefits included in the employer's returns for the assessment year.
- (6) If an employer changes from the actual value method to the estimated value method during an assessment year, the value of the fringe benefits to be included in the last return lodged by the employer for the assessment year is the amount equal to the difference between —
 - (a) the grossed-up value of the WA fringe benefits provided by the employer for the FBT year ending on 31 March in the assessment year; and
 - (b) the total of the amounts of the WA fringe benefits included in the employer's returns for the assessment year.

27. Notice of amended FBT Act assessment

An employer who receives an amended assessment under the FBTA Act must give a copy of the amended assessment to the Commissioner within 30 days of receiving it.

Penalty: \$5 000.

Part 3 — Specified exempt allowances

Division 1 — Motor vehicle allowances

28. Exempt motor vehicle allowances

- (1) An employer who pays a motor vehicle allowance to a person for business kilometres travelled in a motor vehicle provided or maintained by the person may choose to treat the allowance as exempt wages, to the extent provided in regulation 29, for the purposes of section 40(1)(d) of the Act and the definition of “specified exempt allowances” in clause 1 in the Glossary to the Act.
- (2) If the employer does not choose to treat any part of the motor vehicle allowance as exempt wages, the allowance is not exempt to any extent.

29. Extent of exemption for motor vehicle allowance

If an employer chooses to treat a motor vehicle allowance as exempt wages, the allowance is exempt for a return period to the extent that it does not exceed the allowed amount calculated in accordance with the following formula —

$$A = BK \times R$$

where —

- A is the allowed amount;
- BK is the number of business kilometres travelled by the vehicle in the return period as determined under regulation 30;
- R is the rate allowed under regulation 31 for each business kilometre.

[Regulation 29 amended in Gazette 28 Nov 2003 p. 4778.]

30. Business kilometres travelled in a return period

The number of business kilometres travelled in a return period is —

- (a) if the employer is using the continuous recording method — the number of business kilometres travelled by the vehicle during the return period as calculated under regulation 34(c);
- (b) if the employer is using the averaging method — the average number of business kilometres travelled by the vehicle in the return period as calculated under regulation 35(3); or
- (c) if the employer is unable to use either of those methods — the number of business kilometres travelled by the vehicle in the return period as calculated under regulation 32(4).

31. Rate allowed for business kilometres

The rate allowed for the purposes of regulation 29 is —

- (a) if the allowance is paid under an industrial award that specifies a rate to be allowed for each business kilometre travelled by a vehicle during the return period — the rate specified in the award; or
- (b) in any other case — 75c.

[Regulation 31 amended in Gazette 18 Jul 2003 p. 2844; 25 Jun 2004 p. 2247; 19 Apr 2005 p. 1304; 27 Jun 2006 p. 2307; 15 May 2007 p. 2096; 19 Jun 2009 p. 2252.]

32. Choosing a method for calculating business kilometres

- (1) The employer may use the continuous recording method to calculate the number of business kilometres travelled by the vehicle during any period.

- (2) The employer must use the continuous recording method to calculate the number of business kilometres travelled in the vehicle during a period if the employer —
- (a) has not previously paid a vehicle allowance for the vehicle;
 - (b) has been using only the averaging method for the vehicle for 5 years and has not completed a further continuous recording period; or
 - (c) the Commissioner gives the employer a direction under regulation 36.
- (3) The employer may use the averaging method to calculate the number of business kilometres travelled in the vehicle during a return period if —
- (a) the employer has used the continuous recording method for the vehicle for at least 12 consecutive weeks immediately before changing to the averaging method;
 - (b) the employer has kept a record of the vehicle's odometer readings at the beginning and end of the continuous recording period;
 - (c) the frequency and length of the business journeys made in the vehicle during the continuous recording period can reasonably be expected to be the same as the business journeys made during any similar period within the next 5 years; and
 - (d) a BK percentage calculated under regulation 35(2) is in force for the vehicle.
- (4) If the employer is unable to use the continuous recording method or the averaging method for a period, the number of business kilometres travelled by the vehicle during the period is taken to be —
- (a) if the Commissioner allows the employer to estimate the number of business kilometres travelled by the vehicle 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 vehicle during that period — the number specified; or
 - (c) otherwise — zero.
- (5) An employer who pays motor vehicle allowances to more than one person may use different methods of calculation for each person.
- (6) When an employer chooses to use a particular method of calculation the employer must make a record of the choice before the end of the return period during which the choice takes effect.

33. Changing the method of calculating business kilometres

- (1) An employer may change from using the averaging method to using the continuous recording method with effect from the beginning of any return period.
- (2) An employer may change from using the continuous recording method to using the averaging method with effect from the beginning of any return period if the employer meets the criteria set out in regulation 32(3).

34. The continuous recording method

If an employer chooses to use the continuous recording method to calculate the number of business kilometres travelled by a motor vehicle, the employer must —

- (a) keep records of the odometer readings at the beginning and end of each business journey travelled by the vehicle;
- (b) keep records of the purpose of each of the business journeys; and

- (c) at the end of each return period, calculate the number of business kilometres travelled by the vehicle during the return period using the odometer readings referred to in paragraph (a).

35. The averaging method

- (1) To use the averaging method to calculate the number of business kilometres travelled by a vehicle, an employer must first establish the BK percentage for the vehicle in accordance with subregulation (2).
- (2) To establish the BK percentage, the employer must —
 - (a) select a recording period of at least 12 consecutive weeks under regulation 36;
 - (b) determine the number of business kilometres travelled by the vehicle during the recording period using the records of the odometer readings made during the recording period; and
 - (c) calculate the percentage of the kilometres travelled during the recording period that were business kilometres in accordance with the following formula —

$$\text{BK percentage} = \frac{\text{BK} \times 100 \%}{\text{TK}}$$

where —

BK is the number of business kilometres travelled by the vehicle in the recording period; and

TK is the total number of kilometres travelled by the vehicle in the recording period.

- (3) When the BK percentage has been established, the average number of business kilometres travelled by the vehicle during a return period is calculated using the following formula —

$$\text{Average BK} = \frac{\text{BK \%} \times 100}{\text{TK}}$$

where —

Average BK is the average number of business kilometres travelled by the vehicle in the recording period;

BK% is the BK percentage established under subregulation (2); and

TK is the total number of kilometres travelled by the vehicle in the return period based on records of the vehicle's odometer readings made by the employer at the beginning and end of the return period.

- (4) The employer may continue to use the BK percentage established for a vehicle for the purposes of the averaging method for 5 years from the end of a continuous recording period, unless within those 5 years —
- (a) the vehicle is not used for business journeys during a period of 12 consecutive weeks; or
 - (b) the Commissioner directs the employer in writing to use the continuous recording method.

36. Selecting a continuous recording period

- (1) A continuous recording period is a period of at least 12 consecutive weeks nominated by the employer during which —
- (a) the vehicle is or will be used for business journeys of the frequency and length that can reasonably be expected to be made by the vehicle during any similar period within the next 5 years; and
 - (b) the employer uses the continuous recording method to determine the number of business kilometres travelled by the vehicle.
- (2) If an employer is directed by the Commissioner to select another recording period, the period must be selected from the current period in which the employer has been using the continuous recording method.

37. Replacing one motor vehicle with another

- (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) if the employer is using the averaging method, the employer may continue to do so until the employer would have been required to revert to the continuous recording method under another provision of these regulations even if the original vehicle had not been replaced; 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 return period in which the replacement occurred.
- (3) The employer must record the nomination in writing during the return 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.

38. Replacement or recalibration of odometer

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.

Division 2 — Accommodation allowances

39. Exemptions for accommodation allowances

- (1) An accommodation allowance paid or payable by an employer to a person is exempt, to the extent provided in subregulation (2), for the purposes of section 40(1)(d) of the Act and the definition of “specified exempt allowances” in clause 1 in the Glossary to the Act.
- (2) An accommodation allowance is exempt to the extent that it does not exceed the amount calculated by multiplying —
 - (a) the rate allowed under subregulation (3); and
 - (b) the number of business nights for which the allowance is paid or payable.
- (3) The rate for the purposes of subregulation (2)(a) is —
 - (a) if the allowance is paid under an industrial award which specifies a rate of accommodation allowance for a business night — the rate specified in the award; or
 - (b) otherwise, the rate per business night is —
 - (i) for accommodation in Western Australia — \$110;
 - (ii) for accommodation elsewhere in Australia — \$145;
 - (iii) for accommodation in another country — \$200.

40. Adjustments for unused allowances

- (1) This regulation applies if —
 - (a) an accommodation allowance is paid to an employee in advance of an expected business night;

- (b) the amount of the allowance is not treated as wages in the return period during which it is paid; and
 - (c) the employee is in fact not absent as expected on that night or stays in accommodation provided by the employer.
- (2) An adjustment is to be made under subregulation (3) unless the employee —
 - (a) is absent on another business night during the relevant period and is not paid another accommodation allowance for that night; or
 - (b) repays the unused allowance to the employer during the adjustment period.
- (3) If an adjustment is to be made for the purposes of subregulation (2) then, at the end of the adjustment period, the employer must add an amount equal to the amount of the unused accommodation allowance to the amount shown in the return as the amount of wages paid or payable by the employer to the employee for the last return period in the adjustment period.
- (4) For the purposes of this regulation, the *adjustment period* is the period consisting of —
 - (a) the return period during which the employee's absence was initially expected to occur;
 - (b) the following return period; and
 - (c) any subsequent return periods that the Commissioner in writing allows to be included.

Part 4 — Superannuation contributions

41. Actuarial determinations for some superannuation contributions

- (1) If an amount contributed to a superannuation scheme is taken by clause 8 in the Glossary to the Act to be paid by an employer to an employee during a return period, then the employer must ensure that an actuarial determination is in force for that return period in respect of the contribution and the employee.
- (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.

42. Categories of participants

- (1) An actuarial determination required by regulation 41 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 categorise participants in a scheme according to their occupations, their salaries, the types of benefits to which they are or will become entitled, or on such other basis as the actuary considers appropriate.

43. Rate of earnings

The earnings referred to in clause 10(3) in the Glossary 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.

44. Scope of actuarial determinations

- (1) An actuarial determination must specify the amount of contributions to be made for each participant, or category of participants, for each return period during the 3 years after the day on which the determination is made.
- (2) If a determination is required under regulation 41(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 41(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).

45. Duration of actuarial determination

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

Part 5 — Keeping books and accounts

46. Prescribed records (section 44)

- (1) For the purposes of section 44(1)(a) of the Act, an employer is required to keep —
 - (a) documents and records that evidence the provision by the employer of wages or benefits listed in subregulation (2); and
 - (b) documents and records used in the calculation of the value of, or that support the calculation of the value of, the wages or benefits.
- (2) The following wages and benefits are listed for the purposes of subregulation (1) —
 - (a) a contribution to a redundancy benefits scheme;
 - (b) a contribution to a portable long service leave fund;
 - (c) a contribution to an employee share acquisition scheme;
 - (d) a WA fringe benefit;
 - (e) a record, odometer reading or calculation kept or made in relation to a motor vehicle allowance under or for the purposes of Part 3 Division 1 if all or part of the allowance is exempt under Part 3 Division 1;
 - (f) an accommodation allowance, if any part of the allowance is exempt under regulation 39;
 - (g) a superannuation contribution that is taken to be wages under clause 2(1)(d) in the Glossary to the Act;
 - (h) an actuarial determination made in relation to a superannuation contribution referred to in paragraph (g).
- (3) An employer who uses the estimated value method for calculating the value of fringe benefits must keep a record of the value of Western Australia fringe benefits paid or payable for the FBTA year ending in the first assessment year in which the employer last changed from using the actual value method.

r. 46

- (4) The employer must retain records kept under subregulation (3) for at least —
- (a) 5 years after the employer changed from the actual value method; or
 - (b) 5 years after the employer lodges a final return,
- whichever comes first.

Part 6 — Returns

[Heading inserted in Gazette 2 May 2006 p. 1711.]

47. Manner of lodging and paying in certain circumstances

- (1) For the purposes of section 28A(1) of the Act —
 - (a) the manner of lodging a return is by using the electronic online system provided for that purpose by the Commissioner; and
 - (b) the manner of paying any pay-roll tax that is due is by using the electronic online system provided for that purpose by the Commissioner or any other approved method of electronic funds transfer.
- (2) The Commissioner may, in writing, approve of a particular employer not complying with subregulation (1) if satisfied that it is impracticable for the employer to do so.
- (3) An approval under subregulation (2) remains in force until the end of the first 30 June following the day on which the approval was given.
- (4) If the Commissioner approves of an employer not complying with subregulation (1), the following apply for the purposes of section 28A(1) of the Act —
 - (a) the manner of lodging a return is by delivering it in person, or posting it, to the Commissioner or faxing a copy of it to an appropriate fax number;
 - (b) the manner of paying any pay-roll tax that is due is by cheque or money order or, if the Commissioner approves, a method referred to in subregulation (1)(b).

[Regulation 47 inserted in Gazette 2 May 2006 p. 1711.]

**Schedule 1 — Exempt departments and
other organisations**

[r. 4]

The Commissioner for Equal Opportunity
The Commissioner of Main Roads
The Commissioner of Workplace Agreements
The Corruption and Crime Commission of Western Australia
The Curriculum Council
The Department of Agriculture and Food
The Department of the Attorney General
The Department for Community Development
The Department of Consumer and Employment Protection
The Department of Corrective Services
The Department of Culture and the Arts
The Department of Education and Training
The Department of Education Services
The Department of Environment and Conservation
The Department of Fisheries
The Department of Health
The Department of Indigenous Affairs
The Department of Local Government and Regional Development
The Department of Industry and Resources
The Department for Planning and Infrastructure
The Department of the Premier and Cabinet
The Department of Racing, Gaming and Liquor
The Department of the Registrar, Western Australian Industrial
Relations Commission
The Department of Sport and Recreation

The Department of Treasury and Finance
The Department of Water
The Disability Services Commission
The Electorate Offices of Members of Parliament
The Gascoyne Development Commission
The Goldfields Esperance Development Commission
The Governor's Establishment
The Great Southern Development Commission
The Kimberley Development Commission
The Mid West Development Commission
The Office of Energy
The Office of the Auditor General
The Office of the Director of Public Prosecutions
The Office of the Information Commissioner
The Office of the Inspector of Custodial Services
The Office of the Public Sector Standards Commissioner
The Office of Water Regulation
The Parliament
The Parliamentary Commissioner for Administrative Investigations
The Peel Development Commission
The Pilbara Development Commission
The Recreation Camps and Reserves Board
The South West Development Commission
The State Supply Commission
The Water and Rivers Commission
The Western Australian Building Management Authority
The Western Australian Electoral Commission

The Western Australia Police Service and the Police Force within the meaning of the *Police Act 1892*

The Wheatbelt Development Commission

[Schedule 1 amended in Gazette 7 Sep 2004 p. 3884; 5 Nov 2004 p. 4987; 2 May 2006 p. 1709-10; 11 Jul 2006 p. 2546; 22 Aug 2006 p. 3469; 22 Dec 2006 p. 5807.]

Glossary

[r. 3]

1. Definitions

In this Glossary, unless the contrary intention appears —

actual value method, in relation to calculating the value of a fringe benefit, means the method set out in regulation 21;

actuarial determination means a determination by an actuary made in accordance with regulation 44;

adjustment period, in relation to unused accommodation allowance, has the meaning given in regulation 40(4);

allowance period, in relation to a motor vehicle allowance, means the period during which the vehicle travelled the business kilometres to which the allowance relates;

averaging method, in relation to a motor vehicle allowance paid or payable in relation to a vehicle for a return period, means the method described in regulations 32, 33 and 35 for calculating the number of business kilometres travelled by the vehicle in the return period;

BK percentage, in relation to a vehicle, means the percentage of business kilometres travelled by the vehicle in a given period as calculated under regulation 35(2);

business journey, in relation to a vehicle for which a motor vehicle allowance is paid by an employer, means a journey made in the vehicle by an employee in the course of his or her employment;

business kilometre, in relation to a motor vehicle allowance, means a kilometre and any remainder of part of a kilometre, travelled by a person in the course of a business journey;

business night, in relation to an accommodation allowance paid or payable to a person, means a night during which the person, in the course of his or her employment —

- (a) is absent from the person's usual place of residence; and
- (b) stays in accommodation other than accommodation provided by the employer;

continuous recording method, in relation to a motor vehicle allowance paid or payable in relation to a vehicle for a return period,

means the method described in regulation 34 for calculating the number of business kilometres travelled by the vehicle in the return period;

continuous recording period has the meaning given in regulation 36(1);

contribution day, in relation to a contribution of a share, unit or right, means the day on which the contribution is made;

dependant, in relation to a person, means a child of the person who is wholly dependent upon the person's earnings and who is either —

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

education costs —

- (a) include school fees and reasonable expenses incurred for travel, accommodation and meals;
- (b) do not include any fee required to be paid for tertiary education;

employee means a person to whom wages are paid or payable;

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 carried out by the employee;

estimated value method, in relation to calculating the value of fringe benefits, means the method set out in regulation 23;

expense payment fringe benefit has the same meaning as in the FBTA Act;

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

FBT year means a year ending on 31 March;

grossed-up value, in relation to a fringe benefit, means the value of the benefit worked out in accordance with clause 7(2) in the Glossary to the Act;

industrial 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;

loan fringe benefit has the same meaning as in the FBTA Act;

motor vehicle allowance means an allowance paid by an employer to a person who provides or maintains a motor vehicle used for business journeys;

portable long service leave fund means a fund established to provide paid long service leave for employees in a particular industry who are employed from time to time by different employers in the industry;

property fringe benefit has the same meaning as in the FBTA Act;

qualified valuer, in relation to valuing a share in a company or a unit in a unit trust, means a person who is registered as a company auditor under a law in force in a State or Territory but 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
- (d) a partner or employee of a person referred to in paragraph (c);

recognised financial market has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

redundancy benefits scheme means a scheme or trust (except a superannuation fund as defined in clause 1 in the Glossary to the Act) that operates to provide benefits for persons working within an industry who —

- (a) are made redundant;
- (b) leave the industry; or
- (c) retire;

remote area housing fringe benefit has the same meaning as in section 58ZC of the FBTA Act;

remote area housing loan has the same meaning as in section 58ZC of the FBTA Act;

remote area housing rent has the same meaning as in section 58ZC of the FBTA Act;

remote area residential property has the same meaning as in section 58ZC of the FBTA Act;

remote area residential property option fee has the same meaning as in section 58ZC of the FBTA Act;

remote area residential property repurchase consideration has the same meaning as in section 58ZC of the FBTA Act;

remote area holiday transport has the same meaning as in section 58ZC of the FBTA Act;

residential fuel has the same meaning as in the FBTA Act;

residual fringe benefit has the same meaning as in the FBTA Act;

unlisted public unit trust means a unit trust that is not quoted on a recognised financial market but which satisfies one of the following conditions —

- (a) one or more of the units in the unit trust were offered to the public;
- (b) at all times during the previous 12 months, at least 50 unitholders held the units in the unit trust;

vehicle, in relation to a vehicle allowance, means a motor vehicle that is provided and maintained by a person to whom an employer pays a vehicle allowance for business kilometres travelled by the vehicle;

WA fringe benefits means fringe benefits that are —

- (a) taxable wages on which fringe benefits tax is paid or payable;
or
- (b) taxable wages on which fringe benefits tax would be payable if the otherwise deductible rule were not applied to them.

Notes

¹ This is a compilation of the *Pay-roll Tax Assessment Regulations 2003* and includes the amendments made by the other written laws referred to in the following table ^{2,3}. The table also contains information about any reprint.

Compilation table

Citation	Gazettal	Commencement
<i>Pay-roll Tax Assessment Regulations 2003</i>	27 Jun 2003 p. 2341-80	1 Jul 2003 (see r. 2 and <i>Gazette</i> 27 Jun 2003 p. 2383)
<i>Pay-roll Tax Assessment Amendment (2003) Regulations 2003</i>	18 Jul 2003 p. 2844	18 Jul 2003
<i>Pay-roll Tax Assessment Amendment (2003) Regulations (No. 2) 2003</i>	28 Nov 2003 p. 4778	28 Nov 2003
<i>Pay-roll Tax Assessment Amendment Regulations 2004</i>	25 Jun 2004 p. 2246-7	1 Jul 2004 (see r. 2)
<i>Pay-roll Tax Assessment Amendment Regulations (No. 2) 2004</i>	7 Sep 2004 p. 3883-4	7 Sep 2004
<i>Pay-roll Tax Assessment Amendment Regulations (No. 3) 2004</i>	5 Nov 2004 p. 4986-7	5 Nov 2004
<i>Pay-roll Tax Assessment Amendment Regulations 2005</i>	19 Apr 2005 p. 1303-4	1 Jul 2005 (see r. 2)
<i>Pay-roll Tax Assessment Amendment Regulations (No. 2) 2006</i>	2 May 2006 p. 1709-10	2 May 2006
<i>Pay-roll Tax Assessment Amendment Regulations 2006</i>	2 May 2006 p. 1710-11	1 Jul 2006 (see r. 2)
<i>Pay-roll Tax Assessment Amendment Regulations (No. 4) 2006</i>	27 Jun 2006 p. 2306-7	1 Jul 2006 (see r. 2)
<i>Pay-roll Tax Assessment Amendment Regulations (No. 3) 2006</i>	11 Jul 2006 p. 2546	11 Jul 2006
<i>Pay-roll Tax Assessment Amendment Regulations (No. 5) 2006</i>	22 Aug 2006 p. 3468-9	22 Aug 2006
Reprint 1: The <i>Pay-roll Tax Assessment Regulations 2003</i> as at 13 Oct 2006 (includes amendments listed above)		
<i>Pay-roll Tax Assessment Amendment Regulations (No. 6) 2006</i>	22 Dec 2006 p. 5806-7	1 Jan 2007 (see r. 2 and <i>Gazette</i> 8 Dec 2006 p. 5369)
<i>Pay-roll Tax Assessment Amendment Regulations 2007</i>	15 May 2007 p. 2096	1 Jul 2007 (see r. 2)
<i>Pay-roll Tax Assessment Amendment</i>	19 Jun 2009	r. 1 and 2: 19 Jun 2009

Citation	Gazettal	Commencement
<i>Regulations 2009</i>	p. 2252	(see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2009 (see r. 2(b))

² Under the *Commonwealth Places (Mirror Taxes Administration) Act 1999* s. 7 these regulations are to be read and construed with any modifications referred to in subsection (1) of that section and, in particular, with the modifications set out in the *Commonwealth Places (Mirror Taxes Administration) Regulations 2007*. r. 1-4 and Pt. 5 Div. 3 of those regulations read as follows:

“

1. Citation

These regulations are the *Commonwealth Places (Mirror Taxes Administration) Regulations 2007*.

2. Commencement

These regulations come into operation on the day on which the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007* comes into operation.

3. When certain modifications have effect

- (1) The modifications prescribed in Part 2, Part 3, Part 5, Part 6 Division 2 and Part 7 have effect on and from 1 July 2003.
- (2) The modifications prescribed in Part 4 have effect on and from 9 April 2006 and prevail over the modifications in the *Commonwealth Places (Mirror Taxes Administration) Regulations 2002* Part 5 to the extent of any inconsistency.

Note: Modifications prescribed for the purposes of section 7(2) of the Act may be expressed to take effect from a date that is earlier than the date on which the modifications are published in the Gazette, see section 7(3) of the Act.

4. Modification of State taxing laws

- (1) For the purposes of section 7(2) of the Act, each State taxing law is taken to be modified to the extent necessary to give effect to subregulation (2).
- (2) If —
 - (a) a State taxing law applies, or could apply, to any extent, to or in relation to an event, state of affairs or transaction, and the corresponding applied law also applies, or could apply, to any extent, to or in relation to the same event, state of affairs or transaction; and
 - (b) a person is required or permitted, or could be required or permitted, to take an action under both the State taxing

law and the corresponding applied law in relation to the event, state of affairs or transaction; and

- (c) the person has taken the action in accordance with the corresponding applied law; and
- (d) the Commissioner of State Revenue has sufficient information about the event, state of affairs or transaction to carry out his or her functions in relation to it under the State taxing law or the corresponding applied law or both, as the case requires,

then —

- (e) the person is not required to take the action under the State taxing law; and
 - (f) the Commissioner may carry out his or her functions in relation to the event, state of affairs or transaction as if the person had taken whatever action is required or permitted under the State taxing law in relation to the event, state of affairs or transaction.
- (3) The particular modifications set out in these regulations of certain State taxing laws have effect for the purposes of section 7(2) of the Act.

Part 5 — Pay-roll tax

Division 3 — The *Pay-roll Tax Assessment Regulations 2003*

35. Modification of the *Pay-roll Tax Assessment Regulations 2003*

This Division sets out modifications of the *Pay-roll Tax Assessment Regulations 2003* in their application as a law of Western Australia.

36. Regulation 3A inserted

After regulation 3 the following regulation is inserted —

“

3A. Application of regulations in non-Commonwealth places

- (1) In this regulation —

applied Pay-roll Tax Assessment Regulations means the *Pay-roll Tax Assessment Regulations 2003* of Western Australia in their application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Act.

- (2) In these regulations, unless the contrary intention appears —
- (a) a reference to these regulations is to be read as a reference to these regulations in their application as a law of Western Australia; and
 - (b) a reference to the Act or the *Pay-roll Tax Assessment Act 2002* is to be read as a reference to that Act in its application as a law of Western Australia.
- (3) These regulations are to be read with the applied Pay-roll Tax Assessment Regulations as a single body of law.

³ Under the *Commonwealth Places (Mirror Taxes) Act 1998* s. 8(2) of the Commonwealth, these regulations are to be read and construed with any modifications referred to in subsection (1) of that section and, in particular, with the modifications set out in the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007*. r. 1-5 and Pt. 5 Div. 3 of that notice read as follows:

“

1. Citation

This notice is the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007*.

2. Commencement

This notice comes into operation on the day after the day on which it is registered under the *Legislative Instruments Act 2003* of the Commonwealth.

3. When certain modifications have effect

- (1) The modifications prescribed in Part 2, Part 3, Part 5, Part 6 Division 2 and Part 7 have effect on and from 1 July 2003.
- (2) The modifications prescribed in Part 4 have effect on and from 9 April 2006 and prevail over the modifications in the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2002* Part 5 to the extent of any inconsistency.

Note: Modifications prescribed in a notice under section 8 of the Act may be expressed to take effect from a date that is earlier than the date on which the modifications are published in the *Commonwealth of Australia Gazette*, see section 8(5) of the Act.

4. Definitions

In this notice —

applied WA law means the provisions of a State taxing law of Western Australia that apply or are taken to have applied in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;

Commissioner of State Revenue means the Commissioner of State Revenue of Western Australia appointed in accordance with the *Taxation Administration Act 2003* section 6 of Western Australia;

Commonwealth Mirror Taxes Act means the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth.

5. Modification of applied WA laws

- (1) For the purposes of the Commonwealth Mirror Taxes Act section 8, each applied WA law is taken to be modified to the extent necessary to give effect to subclause (2).
- (2) If —
 - (a) an applied WA law applies, or could apply, to any extent, to or in relation to an event, state of affairs or transaction, and the corresponding State taxing law also applies, or could apply, to any extent, to or in relation to the same event, state of affairs or transaction; and
 - (b) a person is required or permitted, or could be required or permitted, to take an action under both the applied WA law and the corresponding State taxing law in relation to the event, state of affairs or transaction; and
 - (c) the person has taken the action in accordance with the corresponding State taxing law; and
 - (d) the Commissioner of State Revenue has sufficient information about the event, state of affairs or transaction to carry out his or her functions in relation to it under the applied WA law or the corresponding State taxing law or both, as the case requires,then —
 - (e) the person is not required to take the action under the applied WA law; and
 - (f) the Commissioner may carry out his or her functions in relation to the event, state of affairs or transaction as if the person had taken whatever action is required or permitted under the applied WA law in relation to the event, state of affairs or transaction.
- (3) The particular modifications set out in this notice of certain applied WA laws have effect for the purposes of the Commonwealth Mirror Taxes Act section 8.

Part 5 — Pay-roll tax

Division 3 — The applied Pay-roll Tax Assessment Regulations 2003

36. Modification of the applied Pay-roll Tax Assessment Regulations 2003

This Division sets out modifications of the *Pay-roll Tax Assessment Regulations 2003* of Western Australia in their application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia.

37. Regulation 3A inserted

After regulation 3 the following regulation is inserted —

“

3A. Application of regulations in Commonwealth places

(1) In this regulation —

corresponding Pay-roll Tax Assessment Regulations means the *Pay-roll Tax Assessment Regulations 2003* of Western Australia in their application as a law of Western Australia.

(2) In these regulations —

(a) a reference to these regulations is to be read as a reference to these regulations in their application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act; and

(b) a reference to the Act or the *Pay-roll Tax Assessment Act 2002* is to be read as a reference to the *Pay-roll Tax Assessment Act 2002* of Western Australia in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act.

(3) These regulations are to be read with the corresponding Pay-roll Tax Assessment Regulations as a single body of law.

(4) In addition to being modified as prescribed by the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007*, these regulations are deemed to be further modified to any extent that is necessary or convenient to enable these regulations to operate effectively as a law of the Commonwealth.

”

38. Glossary modified

The Glossary clause 1 is modified in paragraph (c) of the definition of “industrial award” by deleting “another State” and inserting instead —

“ a State other than Western Australia ”.

”.