EXPLANATORY MEMORANDUM

REVENUE LAWS AMENDMENT BILL 2012

This Bill includes amendments to introduce the pay-roll tax exemption announced in the 2012-13 Budget for wages paid in the first two years of employment to new employees with a disability.

This exemption will apply to businesses that hire new employees with a disability on or after 1 July 2012 for whom they receive a wages subsidy under the Commonwealth Government's Disability Employment Services program, or where the employee is eligible for any form of support from the Western Australian Disability Services Commission.

Consistent with the Disability Employment Services Wages Subsidy, eligibility for the exemption will be restricted to new employees who have not previously been employed by the employer, or group of employers, and who are employed in accordance with a binding award or other industrial agreement.

To ensure that this measure does not displace existing workers, the Bill provides that an employer will not be entitled to the pay-roll tax exemption if it has dismissed or reduced the working hours of an existing employee in anticipation of, or as a consequence of, employing a new employee with a disability.

As this exemption is intended to operate from 1 July 2012 and it is unlikely to have been passed by the Parliament by that date, the Government intends to "pre-enact" the relevant exemption provisions using the powers contained in Part 10, Division 6 of the Taxation Administration Act 2003.

The Bill also seeks to make a number of minor amendments to the:

- Duties Act 2008;
- Pay-roll Tax Assessment Act 2002;
- Land Tax Assessment Act 2002; and
- First Home Owner Grant Act 2000.

The new Duties Act incorporated several conceptual changes as part of the new duties regime, including a shift in the transfer duty base from documents to transactions and the introduction of the landholder regime to tax indirect transfers of land. The transition from the Stamp Act 1921 to the Duties Act has occurred with no major problems or inadequacies arising.

However, a number of minor areas have been identified where the Act does not operate as intended, or slight wording nuances have been interpreted to provide unintended outcomes. The amendments in this Bill aim to rectify these issues.

To ensure that taxpayers are not disadvantaged by the non-availability of an exemption or concession, several of these changes have been made retrospective to 1 July 2008, being the date the Duties Act commenced.

This Bill also includes minor amendments to the grouping provisions of the Pay-roll Tax Assessment Act to further increase the level of consistency with the arrangements operating in other jurisdictions.
This builds on changes the Parliament enacted in 2010 to harmonise certain aspects of the grouping provisions with other jurisdictions with effect from 1 July 2012. While these amendments to the grouping provisions are minor, they may need to be referred to the Uniform Legislation and Statutes Review Committee as they deal with harmonised legislation.

The Bill also seeks to amend the Pay-roll Tax Assessment Act to allow for a regulation to apply retrospectively when the regulation will not adversely affect a person liable to pay pay-roll tax.

This power has been inserted as a mechanism to ensure proposed changes to the Commonwealth’s tax treatment of living away from home allowances can be accommodated in the pay-roll tax legislation from 1 July 2012 if it is necessary to do so. The nature of any required amendments will be determined when the Commonwealth releases the detail of its proposed amendments.

In the context of land tax, the Bill contains an amendment to the Land Tax Assessment Act to ensure the capping provisions for land values, which were introduced as part of the 2009-10 Budget, continue to apply to a new lot created when land is being compulsorily taken or resumed.

The Bill also contains amendments to the First Home Owner Grant Act to align the objection provisions with similar provisions contained in the Taxation Administration Act and alter the point at which applicants are required to be Australian citizens or permanent residents for the purposes of determining eligibility for a first home owner grant.

The proposed amendments in this Bill have an estimated cost of $5 million over the four years to 2015-16.

Part 1 – Preliminary

Clause 1: Short title

This clause provides that the short title of this Act is the Revenue Laws Amendment Act 2012.

Clause 2: Commencement

This clause provides the commencement dates for the Act.

Paragraph (a) provides that Part 1 comes into operation on the day that the Act receives the Royal Assent (assent day).

Paragraph (b) provides that Part 2, other than sections 5, 6, 7, 12, 15, 18, 22 and 25, is deemed to have come into operation on 1 July 2008.

Paragraph (c) provides that Part 4 is deemed to have come into operation on 1 July 2009.
Paragraph (d) provides that Part 5 –

(i) comes into operation on 1 July 2012, immediately after the Pay-roll Tax Assessment Amendment Act 2010 Part 2 Division 3 comes into operation, if assent day is not later than 1 July 2012; or

(ii) is deemed to have come into operation on 1 July 2012, immediately after the Pay-roll Tax Assessment Amendment Act 2010 Part 2 Division 3 comes into operation, if assent day is later than 1 July 2012.

Paragraph (e) provides that the rest of the Act comes into operation on the day after assent day.

The particular provisions the subject of paragraphs (b) and (c) will come into operation retrospectively as they are advantageous to taxpayers.

**Part 2 – Duties Act 2008 amended**

**Clause 3:**

**Act amended**

This clause provides that the amendments in this Part are to the Duties Act 2008.

**Clause 4:**

**Section 28 amended**

This clause amends section 28 to make cross-referencing changes as a consequence of the replacement of section 127 under clause 8.

**Clause 5:**

**Section 42 amended**

Section 42(2) provides that duty is not chargeable on a transfer of dutiable property to a transferee who is related, as referred to in section 43, to the purchaser under the relevant agreement for transfer of that property.

This provision may unintentionally extend specific exemptions and concessions elsewhere in the Act that are available to the purchaser, through to related transferees, where those related transferees would not otherwise qualify for the exemption or concession.

For example, a married couple separate and the wife agrees to transfer her interest in their property to the husband. The agreement is a matrimonial instrument under section 129 and is liable for nominal duty only. However, the husband can use section 42 in its current form to substitute his brother as transferee of the wife’s interest. The wife has transferred her interest in the property to her husband’s brother and only nominal duty has been charged. The exemption under section 129 would not apply nominal duty to this transaction.
The concession provided by section 42(2) in respect of related transferees is only intended to apply in circumstances where the purchaser under the agreement (i.e. the husband in the above example) has paid transfer duty at the general rate or a concessional rate. It was not to apply where an exemption applied or only nominal duty had been paid.

Subclause (1) deletes section 42(2)(b) (which provides simply that the agreement is duty endorsed) and substitutes new section 42(2)(b) and (c). Paragraph (b) specifically provides that the agreement must have been endorsed on the basis that duty was paid at the general or a concessional rate. Paragraph (c) then provides that the transfer must have been chargeable (but for this section) at the same rate of duty as was charged on the agreement.

Section 42(1) provides that duty is not chargeable on a transfer of dutiable property to a transferee in conformity with a duty endorsed agreement for the transfer of that property. This provision applies to the majority of transactions that are effected by a standard offer and acceptance agreement, and, the property is transferred to the purchaser named in the agreement.

Section 42(3) provides that if there is a difference in the parties liable to duty under the agreement and the transferees under the transfer, and the transferees are not related to the purchasers, then duty is not chargeable on the transfer except to the extent of the change between the agreement and the transfer. This provision is intended for situations where, for example, A and B are the purchasers under the agreement and they decide to transfer the property to themselves and another party C. The transfer will be rendered not chargeable with duty only to the extent of the share taken by A and B, while remaining chargeable with duty to the extent of C’s interest acquired under the transfer.

The parties to an agreement can agree that the property may be transferred to a third party, whether specified in the agreement or not, at the direction of the purchaser. The transfer would be "in conformity" with the agreement and not chargeable with duty under section 42(1), even though the ultimate transferee may not have been known at the time the agreement was made.

However, section 42(3) would also apply in these circumstances and would prevent the transfer from becoming not chargeable with duty.

The outcome provided by section 42(1), with the transfer being not chargeable with duty, could enable an avoidance opportunity in relation to nominee clauses contained in agreements for transfer. This is not consistent with the policy intent of the section.
Subsection (4A) has been inserted to provide that where subsections (1) and (3) would both apply to a transfer, then subsection (1) does not apply. This means that in cases where property is transferred to a third party, the transfer must be considered in accordance with section 42(3) and will remain chargeable with duty.

It should be noted that these amendments do not change the operation of agreements that utilise "agency arrangements", which may be endorsed with nominal duty under section 42(4).

### Clause 6:

**Section 42 amended**

Pursuant to section 42(2), duty is not chargeable on a transfer of dutiable property to a transferee who is related to the purchaser under the relevant agreement. However, under section 43(4), this concession is generally not available where the transferee intends to hold the property on trust for a beneficiary.

An exception to this prohibition exists where the beneficiary is also related to the purchaser. For example, a husband is the purchaser under the agreement, but the property is transferred to the wife, as trustee for their child. The transfer would be not chargeable with duty.

However, a different outcome would result if the husband, being the purchaser under the contract in his own right, were to take a transfer to himself as trustee for the child. The current related transferee provisions of section 42(2) do not apply in this case, nor would section 42(1), as the transfer is not "in conformity" with the agreement.

Subsection (4B) has been inserted to overcome this anomaly. It provides that duty is not chargeable on a transfer to a purchaser as a trustee, where the beneficiary and the purchaser are related. It also provides that duty is not chargeable on a transfer to a purchaser as a trustee of a unit trust scheme, where the purchaser is the sole unit holder or is related to all other unit holders.

The foregoing provision applies only where the purchaser, unit holders and beneficiaries are all individuals. The rationale for restricting the provision in this manner is outlined below in clause 7.

Subsection (4C) has been inserted to require that the interest of a unit holder or beneficiary referred to in subsection (4B) must be a beneficial interest (i.e. they cannot be acting as a trustee for another person or entity).
Clause 7: Section 43 amended

Section 43(4) provides that a transferee is not related for the purpose of section 42(2) where the transferee intends to hold the property on behalf of a beneficiary (i.e. as a trustee), as provided for in paragraph (c) "unless the beneficiary and the trustee are also related".

Section 43(4) is modelled on section 74(3g) of the Stamp Act. That section similarly provided that a transferee would not be related to a purchaser where the transferee intended to hold the property on behalf of a beneficiary, unless "the beneficiary is also related...to the purchaser".

It is open to conjecture as to whether the words “the beneficiary and the trustee are also related”, as used in the Duties Act, require the beneficiary to be related to the purchaser. As the policy intent is that the transferee, and the beneficiary, must always be persons who are related to the purchaser under the agreement, clarification is required to remove any ambiguity.

A further issue relates to the fact that the word “related” would be construed as meaning “within the meaning of section 43”. This means that the range of relationships extends beyond mere personal relationships and includes, for example, corporations. However, when this particular provision was enacted, it was envisaged that it would not have application beyond the type of personal circumstances described in the first example given in clause 6 above. The provision should therefore explicitly restrict the allowable relationships to natural persons only.

This clause amends section 43(4)(c) by requiring that the purchaser and the transferee must be related, as well as requiring that the purchaser and the beneficiary must be related. Furthermore, the relationships allowed are limited to those between individuals.

Clause 8: Section 127 replaced

Section 127 provides for nominal duty to be charged in respect of a transfer of, or an agreement for the transfer of, dutiable property from the trustee of a superannuation fund to a member of the fund, subject to certain conditions being satisfied.

Pursuant to section 62 of the Superannuation Industry (Supervision) Act 1993 (Cwth) ("the SISA"), a regulated superannuation fund is required to be maintained solely for specific purposes. One of these purposes is the provision of death benefits in respect of the members of a fund, if the benefits are provided to the member's legal representative and/or dependants.
Under section 59(1A) of the SISA, a member can make a binding nomination as to their beneficiaries in the event of the member's death. Alternatively, if no such nomination is made, the trustee of the fund can exercise a discretion as to whom the death benefit should be paid, pursuant to section 62 of the SISA.

Section 139 of the Duties Act provides for nominal duty to be charged in respect of certain dutiable transactions, including a transfer of, or an agreement for the transfer of, dutiable property, giving effect to a distribution in the estate of a deceased person.

An anomaly exists in the Duties Act whereby a transfer of, or an agreement for the transfer of, dutiable property from a trustee of a superannuation fund to a beneficiary upon a member's death is chargeable with transfer duty on the unencumbered value of the property. By way of contrast, a transfer of, or an agreement for the transfer of, personally held dutiable property from an executor or administrator of a deceased estate to a beneficiary is chargeable with nominal duty.

The amendments to section 127 allow for the treatment of transactions involving superannuation funds to be on the same footing as that provided for in section 139.

**Subsection (1) provides that the terms dependant and legal personal representative have the meanings given in section 10(1) of the SISA.**

Subsection (2) is similar to the original section 127, but additionally provides that nominal duty is chargeable on a transfer of, or agreement for the transfer of, dutiable property from the trustee of a superannuation fund to a dependent of, or legal personal representative of, a deceased member.

**Clause 9:**

Section 138 is amended to align it with the policy intent of section 73AB of the Stamp Act, upon which it was based.

Section 73AB provided that nominal duty is chargeable on a conveyance or transfer of property made solely for the purpose of correcting an error in respect of the contract or agreement for the sale of that property, or an error in respect of a previous conveyance or transfer of that or other property.

When the provision was rewritten for the Duties Act, the words "or other property" were not included, with the result that section 138 applies to charge nominal duty only in respect of correcting transactions relating to the same dutiable property. Transfer duty remains chargeable on necessary correcting transactions relating to other property.
For example, Vendor owns lots 1 and 2 and agrees to sell lot 1 to Purchaser. However, an error is made in preparing the transfer of land, with the result that lot 2 is transferred to Purchaser by mistake. Two transfers will be required to correct this error: (firstly) a retransfer of lot 2 back to Vendor; and (secondly) a transfer of lot 1 from Vendor to Purchaser in accordance with their original agreement.

The retransfer of lot 2 and the transfer of lot 1 would have both been charged with nominal duty under the Stamp Act, whereas under the Duties Act the concession is only available in respect of the retransfer of lot 2. Transfer duty would remain chargeable on the transfer of lot 1, as it is not the same property in respect of which the error occurred.

This clause amends section 138(1) by the addition of the words “or other” before “property” where appropriate.

Clause 10: Section 148 amended

Section 161 is situated in Chapter 3 of the Duties Act, being the landholder duty provisions. The section contains a definition of the term related person. As the term is referenced widely throughout Chapter 3, it is considered more appropriate that it be placed with the other definitions relating to landholder duty. These are located in section 148 at the beginning of Chapter 3.

This clause inserts the definition of related person into section 148.

Clause 11: Section 161 amended

This clause amends section 161 by the deletion of the definition of the term related person. The definition has been inserted into section 148 pursuant to clause 10.

Clause 12: Section 164 amended

This clause amends section 164, which defines relevant acquisitions where a significant interest in a landholder is already held, and a further interest is then acquired.

Section 164(a) requires that prior to the acquisition of the further interest by a person, either the person already has a significant interest, or the interest of the person aggregated with that of a related person amounts to a significant interest. However, it is arguable whether a nil interest is an interest in a landholder as defined in section 153. The following example demonstrates the limitations contained in the current provision if this interpretation was accepted.
Jack owns 51% of the shares in XYZ Pty Ltd a landholder. Jill, the wife of Jack, acquires the remaining 49% interest from an unrelated party. Because Jill did not have, either solely or jointly with a related person, a significant interest in XYZ Pty Ltd prior to the acquisition, that acquisition of the 49% interest by her is not a relevant acquisition of a further interest.

The policy intent when the landholder duty provisions were enacted was that duty should be charged on acquisitions in the circumstances set out in the foregoing example.

This clause amends section 164(a) to achieve the policy intent, by including a reference to a third qualifying circumstance, whereby the significant interest may be held solely by a related person prior to the acquisition of the further interest.

**Clause 13:**

**Section 166 amended**

This clause amends section 166 to update cross-referencing that is required as a consequence of the deletion of sections 189 to 192 inclusive and their replacement with new section 189, under clause 21.

**Clause 14:**

**Sections 167 and 168 replaced**

The Transfer Duty Chapter contains provisions whereby dutiable transactions in certain circumstances are chargeable with nominal transfer duty or are exempt.

Section 167 of the Landholder Duty Chapter mirrors the abovementioned provisions by providing that an acquisition is exempt from landholder duty if it would have resulted in nominal transfer duty being charged "if the acquisition had instead been a transfer to the person concerned of land...of the landholder".

Section 168 operates similarly in circumstances where the assumed transfer, had it occurred directly instead of indirectly under the landholder provisions, would not have been chargeable with duty.

The provisions were intended to operate as if the same parties to the transaction were involved, i.e. as if the land of the landholder (or a linked entity in respect of the landholder) were instead held by the person disposing of their interest in the landholder and that land was transferred directly to the person making the acquisition.
It has been identified that sections 167 and 168 as drafted make the assumed transfer of land being considered as one from the landholder or linked entity itself to the person making the acquisition.

This interpretation results in a significant curtailment of the availability of the concession in respect of acquisitions in landholders and is not reflective of the policy intent.

For example, a transfer of land from a husband to a wife as a consequence of a marriage break-up would attract nominal transfer duty pursuant to section 131 of the Transfer Duty Chapter. If, however, that land were held by a landholder in which the husband held a significant interest and the husband's interest were transferred to the wife, the exemption from landholder duty would not be available as section 131 only has application in the context of the parties to a marriage or de facto relationship.

Subsection (1) of new section 167 clarifies that an acquisition of an interest in a landholder by a person is exempt, if nominal duty would be chargeable on a transfer to that person, by the person from whom the interest was acquired, of the land of the landholder or linked entity as if that land were land of the person from whom the interest was acquired.

Subsection (1) of new section 168 operates similarly, but in circumstances where the assumed transfer would be exempt from duty.

Subsection (2) of each section provides that a reference to the person from whom the interest was acquired is to be read as a reference to the person whose interest is decreased because of the acquisition, or whose decrease in interest resulted in the acquisition. This accommodates circumstances where an acquisition has arisen other than by a direct transfer of an interest in the landholder from one person to another.

The manner in which the new sections will function is illustrated in the following example. Suppose company X Pty Ltd is a landholder with two shareholders, A the holder of the majority of the shares, with the other shareholder being B. X Pty Ltd then issues additional shares to B, such that B acquires a significant interest (50% or more in the case of an unlisted company). The interest of A is necessarily reduced and it is now the minority shareholder. For the purposes of sections 167 and 168, B is the acquiring person and A is the relinquishing person (its interest in X Pty Ltd having decreased because of the acquisition by B).
B's acquisition of a significant interest is chargeable with landholder duty, however, in applying section 167 or 168, it will be assumed that the land held by X Pty Ltd were in fact held by A, the relinquishing person. If a direct transfer of that land from A to B would have been exempt or chargeable with nominal duty under the Transfer Duty Chapter, then B's acquisition of a significant interest in X Pty Ltd is in turn exempt from landholder duty.

**Clause 15: Section 176 amended**

The point in time at which an acquisition of an interest in a landholder is deemed to have occurred is determined in accordance with the provisions of section 176.

Section 176(2) provides that the acquisition occurs when the agreement for the making of the acquisition is made, unless subsection (3) applies.

Section 176(3) provides that if the entity is not a landholder when the agreement is made, but is a landholder when the agreement is completed, then the acquisition occurs when the agreement is completed.

The way in which section 176 operates has highlighted a duty avoidance issue, as the following example illustrates.

Y Pty Ltd enters into an agreement ("Agreement 1") to acquire the shares in X Pty Ltd, which owns land. This acquisition is chargeable with landholder duty. In accordance with section 176, the acquisition is deemed to have occurred when Agreement 1 was made. Z Pty Ltd then enters into an agreement ("Agreement 2") to acquire the shares in Y Pty Ltd.

Agreement 1 was to have been completed prior to the completion of Agreement 2, however, the parties to Agreement 1 agree to postpone completion until after Agreement 2 is completed. The effect of this is that Y Pty Ltd is not a landholder at either the making of Agreement 2 or at its completion. Duty therefore cannot be charged with respect to Agreement 2.

Although section 176 has deemed Y Pty Ltd's acquisition of X Pty Ltd to have occurred on the date of Agreement 1, that is a different acquisition from the second one the subject of Agreement 2. The section as currently drafted does not allow regard to be had to any acquisition other than the one being considered.

**Subsection (4A) is inserted to provide that an entity referred to in subsection (3) may be a landholder as a result of another application of subsection (2).**
The effect of this amendment in the above example is that when considering whether Y Pty Ltd is a landholder when Agreement 2 was made, regard can be had to Y Pty Ltd’s acquisition of X Pty Ltd. As that acquisition is deemed to have occurred when Agreement 1 was made, Y Pty Ltd will be a landholder when Agreement 2 is made and duty will be chargeable.

Clause 16: Section 179 amended

This clause amends section 179 to update cross-referencing that is required as a consequence of the deletion of sections 189 to 192 inclusive and their replacement with new section 189, under clause 21.

Clause 17: Section 184 amended

This clause amends section 184 to update cross-referencing that is required as a consequence of the deletion of sections 189 to 192 inclusive and their replacement with new section 189, under clause 21.

Clause 18: Section 186 amended

Section 186 defines the value of a landholder for the purposes of calculating duty on a relevant acquisition, however, several anomalies have been identified in this section.

Under the section, the value of the landholder is taken to be the sum of (firstly) the value of land and chattels in WA to which the landholder is entitled, and (secondly) the same percentage of the value of land and chattels in WA to which a linked entity is entitled, as the percentage of the landholder’s interest in the linked entity that is taken into account under section 157.

Section 157 provides a mechanism for calculating the value of a landholder’s entitlement to land where the land is held by an entity linked to the landholder. It is necessary to determine this value, as a corporation or unit trust scheme will not be a landholder unless the value of all such entitlements is above a certain threshold.

Section 157 therefore requires regard to be had to all linked entities that either own land, or are situated in an ownership chain between the landholder and another linked entity that owns land. A linked entity that only owns chattels and is situated below the last land-owning linked entity in an ownership chain, will not require consideration under the section.
Section 186(1)(a) and (b) refers to the value of the "land and chattels" to which a landholder or linked entity is entitled. This can be interpreted as a reference to land only, or to both land and chattels, but there is doubt as to whether a landholder or linked entity that only owns chattels is included.

A further issue has been identified in section 186(1)(b), which refers to the landholder's interest in the linked entity "taken into account under section 157". As section 157 may or may not take into account linked entities that only own chattels, depending upon where they are situated in an ownership chain, some chattel-owning linked entities will not be included in the calculation of the value of a landholder.

The policy intent of the landholder duty provisions was to mirror the transfer duty provisions of the Duties Act. If a dutiable transaction relates to land and chattels, the value of the chattels forms part of the dutiable value for the transaction, regardless of whether those chattels have any connection with the land.

Similarly for landholder duty, it should not matter whether the chattels are held by the entity holding the land, or another linked entity that holds chattels only.

Subclause (1) of this clause amends section 186(1)(a) and (b) by deleting "land and chattels" where it appears in each paragraph and inserting "land, chattels or land and chattels (whichever is relevant)". This ensures that entities that only hold chattels will be caught by this provision.

Subsection (2A) is inserted by subclause (2) and provides that where a linked entity is not entitled to land, the percentage of the landholder's interest in that entity is to be calculated as if section 157 were to be used to determine the value of the linked entity's entitlement to chattels. This ensures that all chattel-owning linked entities will be included, regardless of where they are situated in an ownership chain.

**Clause 19:**

**Section 187 amended**

This clause amends section 187 to update cross-referencing that is required as a consequence of the deletion of sections 189 to 192 inclusive and their replacement with new section 189, under clause 21.

**Clause 20:**

**Section 188 amended**

This clause amends section 188 to update cross-referencing that is required as a consequence of the deletion of sections 189 to 192 inclusive and their replacement with new section 189, under clause 21.
This clause further amends section 188(1) by replacing the reference to a "deduction" with a reference to a "reduction", to ensure that the language is consistent with that actually used in the section being referred to.

Clause 21: Sections 189 to 192 replaced

Several anomalies have been identified in the landholder duty provisions, relating to the calculation of excluded interests when significant interests or further interests are acquired.

Where a significant interest is acquired, currently, sections 189 and 190 provide that the duty calculated in respect of the total interest held after the acquisition is to be reduced in respect of certain pre-existing interests (if any) that may have been held in the landholder. Similarly, where a further interest is acquired, sections 191 and 192 set out the equivalent provisions.

Importantly, sections 191 and 192 provide that any interest acquired within the period of 3 years before the relevant acquisition, and upon which landholder duty was charged, is an excluded interest, whereas sections 189 and 190 do not. In certain circumstances, this can result in inequitable duty outcomes.

For example, a person acquires a 55% interest in a landholder. As this is a significant interest landholder duty is charged on the 55% interest acquired. The person then sells 10% of their interest to an unrelated party, with the result that they no longer hold a significant interest. If the person subsequently acquires another 10% interest, they will have acquired a fresh significant interest and will be charged duty on the entire 55% interest again.

By way of contrast, if the person in the above example simply acquires a 10% further interest within 3 years of the original acquisition, without having sold off any part of their interest in the interim period, then a reduction would be allowed in respect of the 55% interest upon which landholder duty has already been paid. Duty would be charged only with respect to the 10% now acquired.

The amendments in this clause ensure that the manner in which excluded interests are dealt with in respect of acquisitions of significant interests, is consistent with that currently available for acquisitions of further interests.

Another issue specifically relates to the amount of the reduction to be allowed where there has been a sell down of a person's interest in a landholder followed by another acquisition.
For example, a person acquires a 75% interest in a landholder and pays duty. A year later, the person sells down their interest by 20%. Another year later, the person acquires another 30% interest, bringing their total holding to 85%. The excluded interest will be the 75% that was acquired within the last 3 years, with the result that duty will be charged only in respect of a 10% interest, notwithstanding that the current acquisition is of a 30% interest.

The policy underlying the landholder duty provisions is that they should generally lead to the same duty outcome as if there were a direct acquisition of the landholder’s land.

For example, a person purchases a 75% undivided share in certain land and pays transfer duty. The person then sells a 25% share, leaving them with a 50% share. If the person then repurchases a 25% share, they will be charged duty on that purchase, notwithstanding that their total holding of 75% is no more than they originally had.

The amendments dealing with this issue reflect that any reduction relating to pre-existing interests should only be allowed in respect of the interest held immediately before the current acquisition, rather than the historical peak interest held during the previous 3 years.

The final issue relates to the correct method of calculation where there are multiple excluded interests. The Commissioner’s practice is to aggregate the percentages of all excluded interests and then perform one calculation of the amount of duty to be deducted. Aggregation increases the amount of the reduction due to the sliding duty scale. If separate calculations were to be made in respect of each excluded interest, this would result in a greater amount of duty being payable by the taxpayer.

The relevant sections 189(2) and 191(2), as currently drafted, are silent as to the method of calculation to be used. For the avoidance of doubt, an explicit requirement to perform a single reduction in respect of the aggregate of all excluded interests is included in the amendments.

This clause deletes section 189 to 192 and inserts new section 189. This amalgamation avoids the duplication inherent in the deleted sections. The new section serves the same purpose, however, with the following differences.

Subsection (1) provides for a reduction in the duty payable on an acquisition if there are any excluded interests. It is essentially unchanged from the replaced sections 189(2) and 191(2) upon which it is based, however, it now provides that where there are multiple excluded interests, the duty that is to be deducted from the duty payable is to be calculated on the sum of the values of the excluded interests.
Subsection (2) describes excluded interests, more particularly paragraph (b) refers to an interest that was acquired in the period of 3 years prior to the acquisition, provided landholder duty was paid in respect of that interest. Paragraph (b) is based on replaced section 192(b), however, that section applied only to acquisitions of further interests. As a result of the amalgamation of sections, the provision now also applies to acquisitions of significant interests.

A further difference between section 189(2)(b) and the previous provision is that it now provides that the earlier interest will only be excluded to the extent to which it is held immediately before the acquisition.

Subsection (5) explains the term “prescribed period” in respect of an earlier acquisition. It is essentially unchanged from the replaced section 190(3) upon which it is based, however, a minor amendment has been made to clarify the reference to the day upon which the prescribed period ends.

Clause 22:

Section 189 amended

Further issues relating to excluded interests have been identified, specifically in relation to certain transitional provisions that were enacted when the Duties Act was introduced to replace the Stamp Act as from 1 July 2008. The relevant provisions are clause 13 of the Transitional Provisions in Schedule 3 to the Duties Act, and regulation 9 of the Duties Regulations 2008.

The landholder duty provisions also treat as excluded interests any interests that were acquired more than 3 years before the current acquisition. However, these provisions were modified by transitional clause 13 to the effect that an earlier acquisition that had previously been made under the equivalent Part IIIBA of the Stamp Act, or more than 3 years before the current acquisition (whichever is the later), would be an excluded interest in respect of the current acquisition under the Duties Act. The transitional provision was limited to circumstances where the current acquisition was made prior to 1 July 2011, as for any acquisitions occurring after that date the provision would have no practical effect.

It was then realised that the application of certain Duties Act provisions, relating to the “prescribed period” in respect of an earlier acquisition, could in fact result in a situation whereby an earlier acquisition that had been made prior to 1 July 2008 under the Stamp Act would not be excluded. By way of explanation, where an acquisition occurs pursuant to an arrangement that was entered into during the prescribed period for an earlier acquisition, the earlier acquisition will not be excluded, notwithstanding that it may have occurred more than 3 years before the current acquisition.
In order to ameliorate these far-reaching consequences, transitional clause 13 was modified through regulation 9. The modified clause 13 provided in effect that if the date that an acquisition was made was prior to 1 July 2011, then notwithstanding that the acquisition may have been made pursuant to an arrangement entered into during the prescribed period for an earlier acquisition made under the Stamp Act prior to 1 July 2008, the earlier acquisition would continue to be excluded unless, in the opinion of the Commissioner, the arrangement was entered into for a purpose of avoiding or reducing the amount of duty payable.

As stated above, these provisions have no application to acquisitions now being made more than 3 years after the commencement of the Duties Act, i.e. on or after 1 July 2011. However, it is still possible for a situation to arise where an earlier acquisition made prior to 1 July 2008 is not excluded, even in respect of acquisitions being made now.

For example, on 1 July 2007, a person acquired a 30% interest in a landholder ("earlier acquisition"). This is not a significant interest. On 1 July 2009, the person enters into an agreement with the holder of the balance of the shares that he will purchase a further 30% interest in 3 years time. When the acquisition of the further 30% interest on 1 July 2012 is considered, regard must be had as to whether the earlier acquisition should be excluded or not. If the earlier acquisition is not excluded, then a 60% significant interest will have been acquired and landholder duty will be payable. The prescribed period in respect of the earlier acquisition is from 1 July 2004 to 1 July 2010. As the arrangement was entered into within this period, the earlier acquisition is not excluded, even though it was made prior to 1 July 2008.

If an acquisition is made pursuant to an arrangement that was entered into prior to 1 July 2011, the possibility remains that this may result in an earlier acquisition made prior to 1 July 2008 not being excluded, as it will be within the prescribed period. It is unlikely that the Commissioner would have knowledge of any such arrangements until the subsequent acquisition occurs.

As interests acquired prior to 1 July 2008 may still not be excluded in respect of further interests acquired on or after 1 July 2011, the need for the limiting qualification relating to arrangements entered into for a purpose of avoiding or reducing the amount of duty payable is ongoing.

Subsection (6) is inserted to provide that an interest held before 1 July 2008 is an excluded interest, unless the current acquisition was made pursuant to an arrangement entered into during the prescribed period for the earlier acquisition and in the opinion of the Commissioner, was for a purpose of avoiding or reducing the amount of duty payable.
Clause 23: Section 204 amended

This clause amends section 204 to update cross-referencing that is required as a consequence of the deletion of sections 189 to 192 inclusive and their replacement with new section 189, under clause 21.

Clause 24: Section 250 amended

Sections 29, 114, 115, 116 and 119 of the Transfer Duty Chapter provide for nominal transfer duty to be charged on certain dutiable transactions relating to trusts and the winding up of corporations or unit trust schemes. Section 250(2)(a) in the Vehicle Licence Duty Chapter mirrors those provisions and allows for nominal duty to be charged on the transfer of a vehicle licence where, if the transfer of the vehicle had been treated as a dutiable transaction, nominal duty would have applied under the aforementioned provisions.

Section 117 of the Transfer Duty Chapter provides for nominal duty to be charged where dutiable property is transferred from an apparent purchaser to the real purchaser, where the real purchaser provided the purchase monies. However, this section is not one of those referred to in section 250(2)(a) in the Vehicle Licence Duty Chapter, which may result in vehicle licence duty having to be paid twice.

For example, a parent may have purchased and licensed a vehicle in their name (and paid vehicle licence duty) on behalf of an adult child who provided the funds. If the parent later transfers the vehicle licence to the child, full vehicle licence duty will again be payable. By way of contrast, a transfer of dutiable property in similar circumstances would have attracted nominal transfer duty under section 117.

An issue has also been identified in the interaction between section 116 and section 250(2)(a). Section 116 provides for nominal duty to be charged on a transfer of dutiable property from a trustee to a beneficiary, where the relevant declaration of trust is duty endorsed or is an exempt transaction. The problem with the interaction, is that a licensed vehicle is not dutiable property under the Duties Act and there is therefore no requirement under the Duties Act for a declaration of trust to be made and duty endorsed.

Subclause (1) amends section 250(2)(a) to include a reference to section 117.

Subsection (3A) is inserted by subclause (2) and provides that for the purposes of subsection (2), instead of the requirement in section 116(2)(a) for there to be a declaration of trust that is either duty endorsed or exempt, there is a requirement that vehicle licence duty was paid or was not chargeable when the licence was transferred to the trustee.
Clause 25: Schedule 3 clause 13 deleted

This relates to the matters explained in clause 22 above. Transitional clause 13 is spent and will be superseded by the insertion of section 189(6).

Part 3 – First Home Owner Grant Act 2000 amended

Clause 26: Act amended

This clause provides that the amendments in this Part are to the First Home Owner Grant Act 2000.

Clause 27: Section 7A amended

Section 7A currently requires that an applicant for a first home owner grant must be an Australian citizen on the commencement date of the transaction to which the application relates, i.e. at the time the contract to purchase or build a home is entered into. This has caused difficulties for some applicants, who may have experienced time delays in obtaining citizenship.

The majority of other jurisdictions in Australia ascertain whether the citizenship criterion is satisfied either on the date of making an application or on the completion date of the transaction.

Making the date of application the relevant date at which a grant applicant must be an Australian citizen will provide more flexibility to applicants, as they will have the option to delay making an application until such time as their citizenship has been granted (subject to other applicable time limits). Under current arrangements, the applicant must delay entering into the contract to buy or build their home.

This clause amends section 7A by deleting the reference to the “commencement date of the transaction to which the application relates” as being the date an applicant must be an Australian citizen. This has the effect of making the date of application the relevant date, due to the interaction of the section with section 10 of the First Home Owner Grant Act.

Subsection (2) is also inserted as a transitional provision which provides that these amendments do not have effect in relation to a transaction with a commencement date prior to the day the amendments come into operation.

Clause 28: Section 7B amended

This section exists for a similar purpose to section 7A, except that it relates to permanent residency rather than Australian citizenship. The same issue exists as is explained in the foregoing clause 27.
This clause amends section 7B by deleting the reference to the "commencement date of the transaction to which the application relates" as being the date an applicant must be a permanent resident. This has the effect of making the date of application the relevant date, due to the interaction of the section with section 10 of the First Home Owner Grant Act.

Subsection (2) is also inserted as a transitional provision which provides that these amendments do not have effect in relation to a transaction with a commencement date prior to the day the amendments come into operation.

Clause 29: Section 28 amended

Section 28 sets out the time limits for lodging an objection to a decision on an application for a first home owner grant. Under subsection (3), the Commissioner may, upon application, also extend the time for lodging an objection.

Section 28 imposes no time limit within which an application for an extension of time may be made. This may be contrasted with the equivalent section 36 of the Taxation Administration Act, which requires that such an application must be made within 12 months after the date by which an objection must be lodged.

As the first home owner grant and the first home owner concessional rate of duty under the Duties Act are linked, it is desirable to have consistent provisions relating to objections. For this reason, a time limit is to be imposed on applications for extensions of time to lodge objections to decisions in relation to first home owner grant applications.

Subclause (1) amends subsection (2) by deleting "objector" and inserting "applicant". A person is not an objector in the context of an application for an extension of time in which to lodge an objection.

Subclause (2) deletes subsection (3) of section 28 and inserts a new subsection which provides that an application for an extension of time to lodge an objection must be made within 12 months after the date on which an objection was to have been lodged under subsection (1).

Clause 30: Section 29A inserted

Where a first home owner grant is paid, subject to the value limits specified in section 142(1)(b) of the Duties Act, the transfer or agreement for the transfer of the relevant property is chargeable with duty at the first home owner concessional rate. However, duty ceases to be chargeable at this concessional rate if the first home owner grant is required to be repaid. This then requires a reassessment to be made in respect of the concessional duties transaction.
One consequence of this is that where an adverse determination regarding a first home owner grant is made by the Commissioner, and that determination results in a reassessment of a concessional transaction at other than the first home owner rate of duty, a person objecting under the First Home Owner Grant Act to the first home owner grant determination often does not make a separate objection under the Taxation Administration Act to the duties reassessment.

Furthermore, it is desired to align as much as possible the various time limits under the First Home Owner Grant Act and the Taxation Administration Act, such that the actual dates by which objections, or requests for extensions of time, or determinations etc. that are to be made in respect of a particular property are the same.

This clause inserts new section 29A. Note that references are being made to provisions concerning various time limits applicable to objections under the First Home Owner Grant Act. These provisions relate to new section 30A of that Act that is being inserted by clause 31 following.

Subsection (1) provides that if the Commissioner reassesses the transfer of the dutiable property because it is no longer chargeable at the concessional rate of duty, and the reassessment notice is issued on a day that is after the day the notice of the decision under the First Home Owner Grant Act is given, then the 60 day period for lodging an objection and the 12 month period for applying for an extension of time for lodging an objection, under the First Home Owner Grant Act, are extended by the number of days between the giving of the notice of decision and the issuing of the notice of reassessment.

The effect of this provision is that the 60 day period in which to lodge an objection to a decision on an application under the First Home Owner Grant Act, and the 12 month period in which to apply for an extension of time to object under that Act, are extended so as to end on the same days as the equivalent periods under the Taxation Administration Act in respect of an objection or extension application relating to the reassessment of the concessional transaction.

Subsection (2) provides that if an objection has been made to the decision under the First Home Owner Grant Act, and as a result the Commissioner reassesses the duty chargeable on the relevant transfer on the basis that it is no longer chargeable at a concessional rate of duty, the applicant is taken to have lodged an objection under the Taxation Administration Act to the reassessment.

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Subsection (3) provides that if an applicant is, by subsection (2), taken to have lodged an objection under the Taxation Administration Act, the objection is taken to have complied with the requirements of sections 35 and 36 of the Taxation Administration Act relating to the form of the objection and the time limits for lodging an objection.

The subsection also provides that the objection is taken to have been lodged on the later of the day the applicant lodged the objection to the decision under the First Home Owner Grant Act, and the day that the notice of reassessment in relation to the transfer is issued. The effect of this provision is to align the lodgement dates of the two objections, such that the periods allowed for determining the respective objections under the First Home Owner Grant Act and the Taxation Administration Act, will both expire on the same day.

Subsection (4) provides that if an applicant has applied for an extension of time to lodge an objection to a decision under the First Home Owner Grant Act, and the decision means that the relevant transfer is not chargeable at a concessional rate of duty, then if the extension of time is granted and the applicant makes an objection, the applicant is taken to have also lodged an objection to the reassessment under the Taxation Administration Act, notwithstanding that an application for an extension of time to lodge an objection to the reassessment has not been made.

Subsection (5) provides that if an applicant has made an objection to a decision under the First Home Owner Grant Act, and the Commissioner reassesses the duty chargeable on the relevant transfer on the basis that it is no longer chargeable at a concessional rate, and notice of the reassessment is issued on a day that is after the day the applicant makes the objection to the decision, then the 90 day and 120 day periods referred to in section 30A are extended by the number of days between the day the objection to the decision was lodged and the day the reassessment notice was issued.

The effect of this provision is to extend the periods allowed to determine the objection to the decision under the First Home Owner Grant Act to align with the equivalent periods under the Taxation Administration Act in respect of the objection that is taken to be made to the subsequent reassessment.

Subsection (6) provides that if an applicant does in fact make an objection to both the decision under the First Home Owner Grant Act and the reassessment under the Taxation Administration Act, the objection under the Taxation Administration Act is taken to have been lodged on the day determined under subsection (3), i.e. as if that objection had been taken to be lodged by operation of this section and the applicant had not independently done so.
Subsection (7) provides that any term that has a meaning in the Duties Act or the Taxation Administration Act will have the same meaning in this section unless the contrary intention appears.

Subsection (8) provides that references in this section to a transfer of dutiable property include references to an agreement for the transfer of that property.

Clause 31: Section 30A inserted

The Taxation Administration Act provides that objections must be determined by the Commissioner within certain time limits, whereas the First Home Owner Grant Act does not.

As the first home owner grant and the first home owner concessional rate of duty under the Duties Act are linked, it is desirable to have consistent provisions relating to objections. This includes imposing similar time limits within which objections in respect of decisions on first home owner grant applications must be determined by the Commissioner.

The relevant time limits applicable to the Duties Act are set out in the equivalent section 38 of the Taxation Administration Act. This section provides that an objection is to be determined within an initial period of 90 days after lodgement. The section further provides that if an objection is not determined within 120 days of lodgement, a taxpayer may by written notice require the Commissioner to apply to the State Administrative Tribunal for directions.

This clause inserts section 30A. Apart from minor differences relating to terminology, the section is identical to section 38 of the Taxation Administration Act.

Clause 32: Section 31 amended

Section 31 provides that an objector who is dissatisfied with the Commissioner's decision on an objection may apply to the State Administrative Tribunal for a review of the decision.

As a time limit is now to be imposed on applications for extensions of time in which to lodge objections, a right of review also needs to be provided in respect of the Commissioner's decisions on such applications. This will be consistent with the equivalent section 40 of the Taxation Administration Act.

Subclause (1) amends section 31(1) by including a reference to a right of review in respect of the Commissioner's decision on an application for an extension of time for lodging an objection. A further amendment is to replace the term "an objector" with "a person", as a person is not an objector in the context of an application for an extension of time.
Subclause (2) amends section 31(2) by deleting a reference to the decision “on the objection” (as it may relate to an application for an extension of time) and again replaces “the objector” with “the person”.

**Part 4 – Land Tax Assessment Act 2002 amended**

**Clause 33:**

**Act amended**

This clause provides that the amendments in this Part are to the Land Tax Assessment Act 2002.

**Clause 34:**

**Glossary clause 6 amended**

The Land Tax Assessment Act was amended with effect from the financial year commencing 1 July 2009 to provide for a cap on the annual increase on the taxable value of land for land tax assessment purposes. This amendment was introduced to reduce volatility and unpredictability in the growth of land values.

The capped value of land is the prescribed percentage (currently 150%) of the value of the land at 30 June of the previous financial year. The taxable value of land for a financial year is the lesser of the capped value and the unimproved value of the land.

An exception to this provision is where land has been subdivided since the previous 30 June, in which case the capped value cannot be used in respect of the financial year after subdivision. The rationale behind this exception is that newly subdivided land is either new land or will receive the concession for newly subdivided land under section 43A of the Land Tax Assessment Act.

The exception to eligibility for capping in respect of newly subdivided land has had certain unintended consequences. This was highlighted by a recent case where the 50% cap on the increase in taxable value was removed because a small portion of the land had been acquired by a government instrumentality for road widening purposes. This led to a substantial increase in the taxpayer’s liability, because the land could not be assessed using a capped value.

It is considered that this outcome does not reflect the policy intent of capping and that subdivisions carried out solely for the purpose of giving effect to the taking of land by a government instrumentality (whether by agreement or compulsorily), should remain eligible for capping.

Clause 6(3) of the Glossary currently provides that the capped value of land cannot be used if the land is a lot that was created when land was subdivided in the previous financial year.
Subclause (1) amends clause 6(3) by providing an exception whereby capping can still be used, being where the subdivision or subdivisions were carried out solely for the purpose of defining an area of land to be compulsorily taken or resumed.

Clause 6(4A) of the Glossary is inserted by subclause (2). It defines the compulsory taking or resumption of land as a reference to the taking or resumption of land under an enactment relating to the compulsory acquisition of land, regardless of whether the owner agreed to the taking or resumption.

Clause 6(5) of the Glossary is inserted by subclause (3) to provide a mechanism for determining the capped value of subdivided land that remains eligible for capping. It provides that the taxable value of the land for the previous financial year (which would otherwise be used as the basis for determining the capped value), is to be reduced to the same proportion that the area of the subdivided lot represents of the area of the land at the beginning of the previous financial year.

Part 5 – Pay-roll Tax Assessment Act 2002 amended

Clause 35: Act amended

This clause provides that the amendments in this Part are to the Pay-roll Tax Assessment Act 2002. From 1 July 2012, provisions contained in the Pay-roll Tax Assessment Amendment Act 2010 to harmonise certain aspects of the grouping provisions with other jurisdictions will commence operation. The amendments in clauses 36 to 40, and 43, rectify inconsistencies with the harmonised provisions that were not previously identified. The amendments also have effect from 1 July 2012.

Clause 36: Section 30 amended

Section 30 currently provides that two corporations constitute a group if they are related to each other within the meaning of section 50 of the Corporations Act 2001 (Cwth). Harmonised jurisdictions have adopted an equivalent provision which makes no reference to the number of corporations required to constitute a group. This amendment adopts the harmonised approach and also incorporates the definition of "related body corporate" which is to be inserted in the Pay-roll Tax Assessment Act on 1 July 2012 by the Pay-roll Tax Assessment Amendment Act 2010.

Clause 37: Section 32 amended

Section 32(1) currently operates to clarify when a group is formed in situations where the same person or the same
group of people together, has a controlling interest in each of two businesses. It specifically clarifies that two businesses owned by a trustee or trustees of a trust should not be grouped on the basis that one trustee may operate a large number of businesses. Other jurisdictions do not have an equivalent provision to section 32(1).

From 1 July 2012, the harmonised grouping provisions will replace the limited power to exclude currently found in section 32(3) with a significantly broader general exclusion power found in the amended section 38. The amendments introduce a single new test that applies in all relevant cases, and requires the Commissioner to be satisfied that the business conducted by a member is independent of, and not connected with, the business conducted by any other member of the group. From that date, the Commissioner will be able to consider excluding a business from a group irrespective of the business structure used to carry on the business, except where corporations which are grouped are related corporations. Consequently, the Commissioner will have a discretionary power to exclude a business controlled by a trustee. The necessity for the specific clarification in section 32(1) is no longer necessary and is deleted.

**Clause 38:**

**Section 33 amended**

Subclause (1) inserts new subsection (2A). An amendment to section 33 which sets out the criteria to establish a controlling interest in a business for the purpose of grouping commonly controlled businesses is contained in Revenue Laws Amendment Bill 2011 which is currently before the Parliament.

Subsection (2A) includes a further criterion for the purpose of harmonising the provision which relates to the board of management of a body corporate or unincorporate that carries on a business. It provides that a person or persons have a controlling interest in a business carried on by a body if the person or persons constitute more than 50% of the board of management or control the composition of the board.

Subclause (2) amends subsection (4) which relates to a controlling interest in a business of the beneficiaries under a trust. The provision currently uses the term "business carried on by a trust" which has been changed by the amendment to the term "business carried on under a trust", consistent with the wording in all other jurisdictions.

Subclause (3) replaces subsection (7). Currently, for the purpose of establishing common control of a business of a corporation and a related corporation, each corporation must have a controlling interest in a separate business before the provision has effect. The amendment adopts the equivalent
provision of the harmonised jurisdictions which requires only one of the corporations to have a controlling interest in a business for the related corporation to also have a controlling interest in that business.

**Clause 39:**

**Section 34 amended**

Currently, subsections (1) and (2) provide that a person or two or more persons who may benefit under a discretionary trust as a result of the exercise of a power or discretion by a trustee and/or another person are taken to have a beneficial interest of more than 50% of the value of the interests in the trust. Clause 39 amends the subsections to ensure the same outcome is achieved even if a trustee and/or another person fails to exercise a power or discretion.

**Clause 40:**

**Section 38 amended**

Subclause (1) paragraph (a) amends section 38(1) to provide that the Commissioner of State Revenue may serve a notice to determine that a person is not a member of a group.

Subclause (1) paragraph (b) corrects a cross-reference to section 35A(3) instead of section 35A(4).

Subclause (2) replaces subsection (2) to make the language of the subsection consistent with proposed section 33(7) and to incorporate the definition of “related body corporate” which is to be inserted in the Pay-roll Tax Assessment Act on 1 July 2012 by the Pay-roll Tax Assessment Amendment Act 2010.

**Clause 41:**

**Section 41C inserted**

This clause inserts new section 41C to provide an exemption from pay-roll tax on wages paid to new employees with a disability for a 24 month period commencing from the date of first employment with an employer.

Subsection (1) provides the definitions of the various terms used in this Bill.

The term “Disability Services Commission” is defined and is the WA Government agency that provides services for people with disabilities.

The term “disability wages subsidy” is defined in paragraph (a) to mean a wages subsidy whereby the Commonwealth pays a wages subsidy to employers who employ persons with a disability under the Wages Subsidy Scheme carried on in accordance with the Deed entitled “Disability Employment Services Deed 2010 - 2012. Disability wages subsidies currently being paid to employers in accordance with the Deed are known as the Wage Subsidy...
Scheme, Wage Connect, and Connecting People with Jobs
Wage Subsidy and are administered by the Commonwealth
Department of Education, Employment and Workplace
Relations. The Deed sets out the terms that apply if a
provider is appointed by the Department to deliver its
program services, which includes a disability wages subsidy.

Paragraph (b) of the definition provides a power to prescribe
wages subsidies for the purpose of the definition.
Subsection (5) provides a power for the prescription of a
"disability wages subsidy" to have effect for the whole
assessment year in which the regulation is made and
published.

The term "DSC disability support" refers to a disability
service, as defined in section 3(a) of the Disability Services
Act 1993, provided by or on behalf of the Disability Services
Commission. A disability service is defined in that section to
mean "a service provided specifically for people with
disabilities, whether by carers or others".

Subsection (2) provides that wages paid or payable to new
employees with a disability in the 24 month period from the
first date of employment with an employer are exempt from
pay-roll tax if certain conditions are satisfied. The meaning of
a "new employee" is contained in subsection (4).

Paragraph (a) provides that wages are exempt if the
employer has received, or was entitled to receive, a disability
wages subsidy relating to the new employee from the date of
commencement of employment with the employer.

Paragraph (b) provides that the wages are exempt if the
employee was eligible for DSC disability support on the day
on which they first commenced employment with an
employer. This criterion covers those employees with a
disability that are not eligible for a Commonwealth disability
wages subsidy as they are not able to work the minimum
eight hours per week required. Employers will be required to
sight and retain evidence provided by the Disability Services
Commission verifying that the new employee is eligible for
DSC disability support. Certain safeguards are built
into Commonwealth disability wages subsidies to protect
employees with a disability which are also required to be
satisfied in relation to the employment of employees eligible
for DSC disability support.

Subparagraph (i) requires that the employee is above the
minimum age necessary to engage in the employment. In
Western Australia the employment of children is governed by
the Children and Community Services Act 2004 and the
School Education Act 1999.
Subparagraph (ii) ensures that the employee is being employed and remunerated in accordance with minimum standards established under industrial law.

Subsection (3) provides that if the Commissioner is satisfied that an employer has or will retrench or reduce the working hours of other employees in order to employ a new employee with a disability, the exemption provided in subsection (2) will not apply to the wages paid to the new employee and, if an exemption has already been granted, a reassessment of the pay-roll tax liability will be made.

Subsection (4) provides the meaning of a “new employee”. For an employee to be a “new employee”, they cannot have been previously employed by the employer or any other employer in a group of which the employer is a member and must have commenced employment on or after 1 July 2012.

Subsection (5) provides a power for the prescription of a “disability wages subsidy” to have effect for the whole assessment year in which the regulation is made and published.

No other subsidy is intended to be prescribed at this time, however, should a decision be made to do so, the structure of the definition will allow rebates to be paid if the Commonwealth makes changes to these subsidies in the future.

Clause 42:

Section 45 amended

This clause inserts subsection (4) which authorises that regulations made in favour of a taxpayer that apply to wages which are paid or payable may commence retrospectively.

The insertion of the retrospective regulation making power has been prompted by the Commonwealth Government’s announcement to reform the fringe benefits tax treatment of living away from home allowances. As a consequence of the proposed reforms, fringe benefits that are currently not taxable (or partially taxable) for pay-roll tax purposes would become fully taxable as allowances paid to employees. The Commonwealth reforms are intended (in part) to apply from 1 July 2012. However, due to the delay in the availability of the draft Commonwealth legislation, it is not possible to make any necessary consequential amendments to the pay-roll tax legislation prior to 1 July 2012.

The proposed amendment which authorises regulations that are made in favour of the taxpayer to commence retrospectively will enable amendments to be made by regulation when the Commonwealth legislation is available, and where necessary, backdated to operate from 1 July 2012 to ensure that taxpayers will not be disadvantaged by the
Commonwealth changes. This power will continue to be available for future amendments to the regulations in favour of the taxpayer.

**Clause 43:**

**Glossary clause 1 amended**

Clause 43 replaces the definition of “business” to harmonise the definition with that used in all other jurisdictions.