EXPLANATORY MEMORANDUM
REVENUE LAWS AMENDMENT BILL 2008

This Bill implements the taxation measures announced in the 2008-09 Budget that relate to the land tax, metropolitan region improvement tax, duties and rates and charges legislation.

Complementary amendments necessary to implement the taxation administration measures that were announced in the 2008-09 Budget are contained in the Revenue Laws Amendment Bill (No. 2) 2008.

The amendments arising from the major multilateral project with other States and Territories to make eight areas of pay-roll administration more consistent, as also announced in the Budget, are included in the Pay-roll Tax Assessment Amendment Bill 2008.

The measures in this Bill focus on lowering the transfer duty barrier to housing purchases and ameliorating the impact of higher land values on land tax on rental and business properties.

Families and businesses planning to purchase mid-priced motor vehicles in the near term will also benefit.

In addition, the Bill includes amendments to implement two recommendations of the State Tax Review.

The first involves the introduction of land tax and rates and charges relief measures that assist disabled persons to live in independent accommodation.

The second implements a land tax exemption for property owned by an executor or administrator when a will gives a beneficiary a future right of ownership of a property and it is used as the beneficiary's principal place of residence.

Further amendments are included to address recent judicial decisions and make a number of minor changes to improve the administrative efficiency of the taxation legislation.

Part 7 of the Bill provides for the introduction of a new concessional transfer duty scale for residential property purchases, from 1 July 2008.

This concessional scale will apply to principal places of residence, rental homes and land on which the building of a residence is subsequently commenced within a specified time limit.

The Bill also provides for the existing concession for principal places of residence and small businesses to continue until its scheduled abolition on 1 July 2010.

A specific provision has been added to ensure that where a taxpayer may be better off under the residential scale or the principal place of residence scale, the application can be treated as being made under the most beneficial arrangement providing the taxpayer's consent has been obtained.

This Part of the Bill also includes two minor amendments to the Duties Act. The first is to rectify an incorrect section reference that would otherwise result in a taxpayer paying more duty on the vesting of a discretionary trust than if the corresponding transaction had occurred under the Stamp Act.

The second clarifies that the trustee of a unit trust scheme or discretionary trust cannot use the exemption that applies to a transfer to or from a trustee under section 118 of the Duties Act. This section was always intended to apply only to bare trusts, and this amendment confirms the original policy intent.

Part 2 of the Bill includes changes to the 2007-08 Budget initiative to increase motor vehicle duty thresholds by $10,000 in two tranches. These were an initial $5,000 increase on 1 July 2007 and a second $5,000 increase on 1 January 2009.

As announced in the 2008-09 Budget, the second of the $5,000 increases will be brought forward by six months to 1 July 2008.

Parts 3 and 5 of the Bill contain the proposed new land tax and metropolitan region improvement tax scales for 2008-09.

The Valuer General has provided preliminary advice that unimproved land values for the 2008-09 land tax assessment year will increase by an average of around 30% on 2007-08 values for properties above the current land tax exemption threshold of $250,000.

With no change to the scales, the resulting estimated increase in land tax and metropolitan region improvement tax revenues in 2008-09 would be over 50%.

The 2008-09 land tax and metropolitan region improvement tax scales will, on average, offset the incidence of this bracket creep through a combination of an increase in the land value thresholds of up to 20%, a 33% reduction in the two lowest marginal land tax rates and a reduction in the metropolitan region improvement tax rate from 0.18% to 0.15%.

As a result, the increase in total land tax and metropolitan region improvement tax revenue in 2008-09 will be broadly the same as the average increase in land values.

The proposed 20% increase in the land value exemption threshold to $300,000 will reduce the number of taxpayers by about 26,600, compared to if the threshold remained unchanged at $250,000.

Parts 4 and 6 of the Bill include amendments to implement State Tax Review recommendations, take account of recent judicial decisions, and make a number of minor changes to improve the administrative efficiency of the taxation legislation.

These include amendments to implement recommendation 2.4.5 of the State Tax Review, which will assist disabled persons to live independently.

The amendments remove the requirement for no rent or other income to be derived from a property in order to access the land tax exemption and rates rebates for a property that is independently occupied by a disabled person but is owned by a relative.

Providing for rent to be charged by the relative will enable the disabled person to continue to receive rent assistance from the Commonwealth.

The definition of a disabled person for the purposes of the land tax exemption and for the local government rates and charges concession has also been linked to the Commonwealth's criteria, which is based on eligibility for a disability support pension.

This will remove the current inconsistency whereby applicants are required to meet different criteria for a disability support pension from the Commonwealth and for the land tax and local government rates and charges concession from the State government.

The other State Tax Review recommendation to be implemented as part of this Bill is recommendation 2.4.4, which enables property owned by an executor or administrator of a will to receive an exemption if an individual beneficiary who has received a future right to property resides in that property as his or her principal place of residence.

Part 4 also includes amendments to the land tax legislation, where recent judicial decisions have highlighted that the law is not achieving the Government's desired policy intent.

The first of these amendments clarifies the operation of section 36 of the Land Tax Assessment Act which applies to land that is used for the purposes of a zoo, an agricultural, pastoral or horticultural show, a historical society, a public museum or for other public purposes.

The amendment clarifies that the use of the words "other public purposes" is limited to other similar public purposes to those already specified in the section.

The second amendment deals with the land tax exemption that applies to two or more lots of land that are treated as a single private residence.

A land tax exemption is provided for private residential property owned by an individual who uses it as his or her primary residence.

However, for the purpose of determining the use of a lot or parcel of private residential property, two or more lots of land are not to be treated as a single private residential property unless the Commissioner is satisfied that the lot or lots on which the private residence is constructed and each other lot are established, and used by the individual who resides there, as one integrated area that constitutes the place of residence.

A recent decision of the Western Australian Court of Appeal has identified possible deficiencies in the legislation where two lots were physically separated but the taxpayer received a land tax exemption for both lots.

The intention of the legislation is that an exemption is provided for private residential property only where the residence is constructed upon each lot or, if the residence is constructed solely on one lot, the second or other lots have been established so that they form an integral part of the private residential property.

It is considered that if the exemption is not governed by appropriate controls, it becomes far too easy for taxpayers to avoid the payment of land tax on what may effectively be an investment property that happens to be in close proximity to their principal place of residence.

As a result of these concerns, the land tax legislation is to be amended to make it clear that the intent of the taxpayer in relation to the use of the lots that do not include the residence is irrelevant for the purposes of determining whether the exemption applies.

In addition, guiding factors have been inserted into the legislation for the Commissioner of State Revenue to have regard to when determining whether two or more lots of land are used as a single private residential property.

The Government recognises that situations genuinely exist where a private residence is established over two or more lots of land and considers that these amendments should clarify the law to ensure that the exemption is not exploited.

The third amendment updates the definition of “lot” to include strata survey plans that are approved by the Western Australian Planning Commission, or in the case of strata plans exempt from approval by the Western Australian Planning Commission, strata plans approved by a local government.

The fourth amendment adjusts the 50% land tax concession that was introduced from 1 July 2005 for land used for caravan park, park home park, or camping ground purposes.

The concession applies to an owner of the land where that person makes an application to the Commissioner for a determination that the land is, or was, used as dwelling park land.

Where the Commissioner, as a result of an application made by an owner of land, has made a determination that land is dwelling park land, then for the purposes of a concessional assessment, that determination remains valid for future assessment years, unless the land, or part of it, is no longer dwelling park land, or is no longer owned by the same person.

However, the legislation operates to prevent a concession being granted for a previous year if the owner of the land is otherwise eligible for a concession but did not apply for it in that year.

It is proposed to amend the Land Tax Assessment Act to clarify that the reassessment provisions of the Taxation Administration Act apply to grant this concession for up to five previous years where the owner of the land was eligible.

The reassessment arrangements would not be available for periods prior to the introduction of the concession on 1 July 2005.

Part 8 of the Bill amends the *Stamp Act 1921* to make changes as a result of a stamp duty decision in the State Administrative Tribunal.

These amendments are proposed to apply retrospectively from 6 February 2008, the date of an announcement made by the Acting Treasurer, the Hon John Kobelke.

The proposed amendments clarify the treatment of fixtures for the purposes of the land-rich provisions of the Stamp Act.

Amendments have already been incorporated into the *Duties Act 2008* which applies from 1 July 2008, however, corresponding changes must be made to the Stamp Act to ensure that any transactions that occur between 6 February 2008 and 30 June 2008 are included in the duty base.

This amendment ensures that it will not be possible to structure a transaction involving the transfer of an interest in a fixture in a manner that would avoid the payment of duty.

Part 1 – Preliminary

Clause 1: **Short title**

This clause provides that the short title of this Act is the *Revenue Laws Amendment Act 2008*.

Clause 2: **Commencement**

This clause provides the commencement dates for the various Parts of the Act.

Subclause (1) sets out when Parts 1 through 8 of the Act come into operation.

Paragraph (a) provides that Part 1 comes into operation on the day the Act receives the Royal Assent. Part 1 includes the short title and commencement provisions of the Act.

Paragraph (b) provides that Part 2 comes into operation subject to and in accordance with subsections (2) and (3).

Part 2 includes the amendments relating to vehicle licence duty. The nature of the amendments which are to take effect vary depending on whether the Act receives the Royal Assent before or after 1 July 2008.

Paragraph (c) provides that Parts 3, 4, 5, 6 and 7 –

(i) come into operation on 1 July 2008 if the Royal Assent is received on or before 1 July 2008; or

(ii) are deemed to have come into operation on 1 July 2008 if the Royal Assent is received after 1 July 2008.

Part 3 amends the *Land Tax Act 2002* to provide a new land tax rate scale for the 2008-09 assessment year.

Part 4 amends the *Land Tax Assessment Act 2002* to provide a new definition of "disabled person", a new definition of "lot" and an exemption from land tax for beneficiaries under a will who have a future interest in a property and reside in that property as their principal place of residence.

Part 5 amends the *Metropolitan Region Improvement Tax Act 1959* to provide a new rate scale for the 2008-09 assessment year.

Part 6 amends the *Rates and Charges (Rebates and Deferments) Act 1992* to ensure the definition of a "disabled person" is consistent with the amended definition in the *Land Tax Assessment Act 2002.*

Part 7 amends the *Duties Act 2008* to provide a concessional rate of duty to apply to dutiable transactions that are transfers of residential property.

Paragraph (d) specifies that Part 8 is deemed to have come into operation on 6 February 2008. Part 8 amends the *Stamp Act 1921* to make changes as a result of the State Administrative Tribunal decision in *Origin Energy Power Limited and Commissioner of State Revenue* [2007] WASAT 302.

Subclause (2) provides that if the Royal Assent is received on or before 1 July 2008, then the amendments in subclause (2) apply.

Subclause (3) provides that if the Royal Assent is received after 1 July 2008, then the amendments in subclause (3) apply.

Part 2 – Amendments relating to vehicle licence duty

Division 1 – Amendments if assent day not later than 1 July 2008

Clause 3: ***Duties Legislation Amendment Act 2008*** **amended**

Subclause (1) provides that the amendments in this clause are amendments to the *Duties Legislation Amendment Act 2008*

Subclause (2) amends section 2(b) by deleting "1 January 2009;" and inserting instead "1 July 2008;".

Section 2 of the Duties Legislation Amendment Act contains the commencement provisions for that Act. Section 2(b) applies to Part 2 Division 2 Subdivision 2 that is to come into operation

on 1 January 2009. Part 2 Division 2 Subdivision 2 contains the amendments to motor vehicle duty originally announced to commence from 1 January 2009.

Subclause (3) amends the heading to Part 2 Division 3 by deleting "1 January 2009" and inserting instead "1 July 2008".

This Subdivision contains the amendments to motor vehicle duty originally announced to commence on 1 January 2009, which the current heading refers to. These amendments are proposed to commence from 1 July 2008.

Clause 4: ***Duties Act 2008*** **amended**

Subclause (1) provides that the amendments in this clause are to the *Duties Act 2008*.

Subclause (2) repeals Schedule 3 Division 2.

Schedule 3 Division 2 of the Duties Act contains the transitional provisions for the vehicle licence duty rate change from 1 January 2009. As the changes to vehicle licence duty rates are now to commence from 1 July 2008, these transitional provisions are not required.

Division 2 – Amendments if assent day after 1 July 2008

Clause 5: ***Duties Legislation Amendment Act 2008*** **amended**

Subclause (1) provides that the amendments in this clause are to the *Duties Legislation Amendment Act 2008*.

Subclause (2) amends section 2(b) by deleting "1 January 2009;" and inserting instead "the day on which the *Revenue Laws Amendment (Taxation) Act 2008* receives the Royal Assent."

Section 2(b) of the Duties Legislation Amendment Act applies to Part 2 Division 2 Subdivision 2 and was previously announced to come into operation on 1 January 2009. The amendment recognises that this Bill may not receive the Royal Assent prior to 1 July 2008 and accordingly makes amendment to section 2(b) to amend the commencement date.

Subclause (3) amends the heading to Part 2 Division 2 Subdivision 2 by deleting "commencing on 1 January 2009" and inserting instead "to vehicle licence duty".

Clause 6: ***Duties Act 2008*** **amended**

Subclause (1) provides that the amendments in this clause are to the *Duties Act 2008*.

Subclause (2) provides that the transitional provisions in clause 29 are to be amended to refer to the grant or transfer of a licence for which the application was made on or after 1 July 2008, following the change to the commencement date from 1 January 2009.

Subclause (2) provides that the current motor vehicle duty rate scale will continue to apply to the grant or transfer of a licence where an application for the grant or transfer was made prior to January 2009. As the commencement date for these provisions is to be 1 July 2008, the new rate included in the Duties Act will apply to applications for the grant or transfer of a licence on or after 1 July 2008.

Accordingly, subclause (2) of clause 29 is no longer applicable and is repealed. In addition, the Commissioner is required to make any reassessment necessary to apply these amendments, subject to the five year limit imposed by section 17 of the *Taxation Administration Act 2003.*

Division 3 – Amendments to other Acts

Clause 7: ***Revenue Laws Amendment (Taxation) Act 2007*** **amended**

Subclause (1) provides that the amendments in this clause are to the *Revenue Laws Amendment (Taxation) Act 2007.*

Subclause (2) amends section 2 by making punctuation changes and deleting paragraph (e).

Paragraph (e) provided that section 13(2) comes into operation on 1 January 2009. Section 13(2) provided increased thresholds at which the various rates of stamp duty apply on the grant or transfer of a motor vehicle licence with effect from 1 January 2009.

Clause 8: ***Stamp Act 1921*** **amended**

Subclause (1) provides that the amendments in this section are to the *Stamp Act 1921*.

Subclause (2) repeals Schedule 4 Division 2 clause 3.

Schedule 4 Division 2 clause 3 of the Stamp Act contains the provisions that refer to the application of the Act in relation to motor vehicles on and from 1 January 2009. As these provisions will now commence from 1 July 2008, this clause is no longer necessary.

Part 3 – *Land Tax Act 2002* amended

Clause 9: **The Act Amended**

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

Clause 10: **Section 5 amended**

This clause amends the Land Tax Act to insert new land tax rates for 2008/09 and subsequent financial years.

Paragraph (a) amends the heading in Table 6 so that the rates in that table only have application for the 2007-08 assessment year.

Paragraph (b) inserts Table 7, which sets out the land tax rates for 2008/09 and subsequent financial years.

Part 4 – *Land Tax Assessment Act 2002* amended

Clause 11: This clause provides that the amendments in this Part are to the *Land Tax Assessment Act 2002*.

Clause 12: **Section 22 amended**

This clause amends section 22 of the Act.

Paragraph (a) amends section 22 to clarify that the exemption can be applied to property owned by an executor or administrator.

The current provisions of the Act provide an exemption for private residential property that is owned by the executors of a will as trustee and an individual who has a life tenancy or a right to reside for as long as he or she wishes under the will and uses the property as their primary place of residence.

In the majority of circumstances, the property in question will be owned by an executor of a will. However, in some cases, it might be that the property is owned by an administrator, such as when the person nominated as the executor declines to act or is unable to administer the estate of the deceased. This

amendment ensures consistency between the provisions in sections 22, 23A and 23.

Paragraph (b) replaces section 22(b)(ii).

In 1995, the *Land Tax Assessment Act 1976* was amended to deem a person who had the right to reside in the property under a will as "owner" of the land. By deeming this person to be an owner, and where the person occupied the property as his or her principal place of residence, even though they may not be entitled to any estate of freehold in possession, the principal place of residence exemption for land tax applied. A person who may have also had a contingent right to ownership or part ownership of the land at a later date was not denied the exemption.

When the provisions were rewritten by the *Land Tax Assessment Act 2002*, the wording changed and the provision became capable of being interpreted more narrowly, despite there being no change to the policy intent.

This amendment ensures that the land tax exemption is granted in the circumstances intended when it was first operative.

Such a circumstance may occur, for example, where a will specifies that a deceased person's daughter is to receive a right to reside in the family home until she marries. Upon her marriage the right of occupancy ceases, but she is then entitled to a proportionate interest in the residue of the estate in equal shares with her brother. This amendment clarifies that despite the fact that she is entitled to a share in the residue of the estate, an exemption applies for the period she lives in the family home in accordance with the right of occupancy granted under the will.

Paragraph (b) also clarifies the period that a person who is granted a right of occupancy under a will may use the property as a place of residence.

The amendment has been made to ensure that the exemption is available in situations where one or more persons are given consecutive rights to reside.

For example, two siblings are granted the right to reside at a property under their father's will, for two distinct time frames after his death.

The elder sibling has been granted the right to reside at a property for a period of 5 years from the date of his father's

death, and after this period the right to reside at the property is granted to the younger sibling for as long as she wishes.

Under the current wording of section 22, the property will be exempt for only the period the younger sibling is residing at the property, but not when the elder sibling is residing at the property.

This amendment ensures that exemption will also apply in situations where a will provides for a specific period of occupancy.

Paragraph (c) makes a minor grammatical amendment.

Clause 13: Section 23A inserted

This clause inserts new section 23A after section 22 to implement recommendation 2.4.4 of the State Tax Review. The relevant discussion of this issue is found at page 54 of the May 2007 State Tax Review Final Report.

Section 23A – Private residential property owned by an executor or administrator – beneficiary with right to future ownership

Subsection (1) provides an exemption for private residential property in a particular assessment year if at midnight on 30 June in the previous financial year the following criteria are met:

(a) the property is owned by the executor or administrator of an individual's estate; and

(b) an individual identified in the will (which may be either by use of a specific name or reference to a class of identifiable persons) is entitled under the will to ownership of all or part of the property at a fixed or ascertainable future time; and

(c) the beneficiary uses the property as his or her primary residence.

This amendment covers circumstances where, for example, a mother dies and leaves the family home to her son. Her will specifies that the son becomes entitled to freehold possession of the home at age 25. The trustee or administrator of the will permits the beneficiary to occupy the property as his primary residence until ownership passes to the beneficiary.

Prior to the amendments made in clause 12 above, the current exemption found in section 22 of the Land Tax Assessment Act

would not apply to provide an exemption for the property up until the time the beneficiary turns 25, despite the fact that he is living in the home as his principal place of residence and will eventually become entitled to it when he reaches the age specified in the will.

Subsection (2) provides for a proportionate land tax exemption in the circumstances when a beneficiary identified in the will has a future entitlement, but it is only to a part interest in the property. An example of when this may arise is where more than one child has a future entitlement to the property owned by a parent, and only one of them has been granted permission to occupy the property.

Subsection (3) requires that if land has been considered exempt for a financial year under this section, and at midnight 30 June in that financial year the beneficiary is not using the property as his or her primary residence, the executor or administrator must notify the Commissioner of this within 3 months after that 30 June.

An example of how the provision would operate is set out below:

- Land is exempt from land tax for the 2009-10 assessment year because the requirements specified in subsection (1) have been met as at 30 June 2009. The beneficiary lives in the property for six months, but finds it too difficult living alone and moves out to live with a relative on 1 January 2010. The land tax for the 2009-10 assessment year is not reassessed, as the criteria were met as at the date of the land tax liability, namely 30 June 2009.

- As at midnight on 30 June 2010, the beneficiary is not using the property as his principal place of residence, and the executor or administrator is required to notify the Commissioner of this by 30 September 2010, (i.e. within 3 months of 30 June 2010).

- This ensures that when land tax is assessed for the 2010-11 assessment year, based on the non-occupancy of the property by the beneficiary on 30 June 2010, it will be taxable on the basis that the qualifying criteria have not been met by the beneficiary (i.e. it was not his principal place of residence on 30 June 2010).

An offence penalty of $5,000 applies if the Commissioner is not notified that the beneficiary is not using the property as his or her primary residence within 3 months after 30 June.

Clause 14: **Section 26A amended**

The amendments in this clause partially implement recommendation 2.4.5 of the State Tax Review. The discussion of these amendments are found at pages 54 to 56 of the May 2007 State Tax Review Final Report. In addition, the issues are also discussed at pages 185 to 194 of the State Tax Review Technical Appendices.

Subclause (1) repeals and replaces section 26A(1) and (2).

Section 26A(1) currently provides the owner with an exemption from land tax for property in which a disabled relative resides. Under the current section a disabled relative must meet the definition of a "disabled person" under the *Disability Services Act 1993,* and they must have been independently assessed as needing full-time care. The shortcomings of this definition were discussed in the State Tax Review Final Report.

Subsection (1) defines "disabled person" as a person who:

(a) qualifies for a disability support pension under the *Social Security Act 1991* Part 2*.3,* whether or not the person actually receives that pension, or

(b) is under 16 years old, is cared for by a guardian or parent who according to the *Social Security Act 1991* qualifies for a carer payment under Part 2.5 of that Act, whether or not the person actually receives that payment.

The proposed amendments to this section provide that should a person residing in a private residence be eligible for a disability support pension, or carer payments in accordance with the *Social Security Act 1991* the owners of the property are to receive an exemption from land tax. The amendment removes the necessity that an assessor review the situation in order for a person to be a "disabled person" under this provision, and links the proposed definition to the Commonwealth's criteria for a disability support pension and a carer's payment pension.

Subsection (2) sets out that a private residential property is exempt for an assessment year if at midnight 30 June before the assessment year:

(a) a disabled person uses the property as his or her primary place of residence; and

(b) it is owned by one or more individuals, at least one of whom is related (as set out in section 26A(3)) to the disabled person.

This subsection no longer prevents a land tax exemption being applied to a property if rent or other income is being derived from the property in which the disabled relative resides.

Subclause (2) amends section 26A(3) to update a cross-reference to section 26A(2).

Subclause (3) repeals section 26A(4), (5) and (6).

These subsections were relevant to circumstances where rent or other income was derived from the property and have been deleted as they are no longer relevant.

Clause 15: This clause amends section 36(a) by removing any reference to "other" and inserting instead "similar".

Section 36 of the Act sets out that land is exempt for an assessment year if:

(a) at midnight on 30 June in the previous financial year, it is dedicated to, or vested in trustees for, the purposes of a zoological garden, an agricultural, pastoral or horticultural show, a historical society, a public museum or other public purposes; and

(b) it is used for those purposes.

The intention of the provision when inserted in the *Land Tax Assessment Act 1976* was that the exemption would only apply to similar other public purposes. When the Act was rewritten in 2002, the same wording as the 1976 Act was adopted, however, the application of the *Interpretation Act 1984* and the effect that it has on the word "or" was not considered. Section 17 of the *Interpretation Act 1984* provides that "or" included in a section should be construed disjunctively and not as implying similarity unless the word "similar" or some other word with the same meaning is added.

When considering this section in the decision in *Rapp and Commissioner of State Revenue* [2006] WASAT 135, the State Administrative Tribunal interpreted this section in a far wider manner than was intended when the exemption was legislated. While the Tribunal found for the Commissioner on other grounds in that case, the decision highlighted a problem with the exemption. It has been amended to restore the original

policy intent of the exemption.

Clause 16: **Section 39A amended**

Section 39A provides for a concessional rate of land tax to apply to dwelling park land that is used solely for dwelling park purposes (as those terms are defined in section 39A(1)).

Subclause (1) amends section 39A(3) by inserting a cross-reference to new subsection (5A).

Subclause (2) repeals section 39A(4) and inserts new subsections (4), (5A) and (5B).

Subsection (4) provides that the owner of land may apply to the Commissioner in the approved form for a determination that the land is dwelling park land.

This subsection requires application to be made for the concessional rate of land tax to apply, as in the absence of such an application being made in the first instance detailing the required information, the Commissioner is unable to determine whether the requirements of the section have been met.

Should the Commissioner find that the land is dwelling park land, subsection (7) would allow a concessional rate of tax to apply for each subsequent year without having to submit further applications (subject to there being no change in the use or ownership of the land).

Subsection (5A) provides that a person who owned land in an assessment year ("year A") may apply to the Commissioner in the approved form for a determination that the land was dwelling park land as at midnight on 30 June in the financial year preceding year A.

This subsection no longer prevents an application being made for a prior assessment year, in the event that the taxpayer did not make application in a particular year. Such circumstances may arise, for example, where a taxpayer did not receive an assessment notice for a particular year or simply forgot to make application for the concession in that year.

Subsection (5B) provides that under subsection (5A) a person cannot submit an application to the Commissioner more than 5 years after the original land tax assessment was made for year A, or if year A commenced before 1 July 2005. These time limits are consistent with the 5 year reassessment time period in the Taxation Administration Act and the year the concession

was introduced for dwelling park land (i.e. on 1 July 2005). Once enacted, this provision will allow applications to be made that cover the period back to 1 July 2005, even in cases where a particular applicant may not have qualified under the previous legislation due to the relevant application timeframes not being met.

Subclause (3) amends section 39A(5) to insert a cross-reference to subsection (5A).

Subclause (4) repeals redundant section 39A(6).

Subclause (5) amends section 39A(7) to update a cross-reference to subsection (4).

Subclause (6) inserts new subsection (8A).

Subsection (8A) provides that if a determination as to land is made as applied for under subsection (5A), section 39B applies to that land in respect of year A. Section 39B applies the concessional rate of land tax at 50% of the rate imposed by the *Land Tax Act 2002*.

Subclause (7) amends section 39A(8) to update cross-references.

Subclause (8) amends section 39A(9) to insert a cross reference to an application under subsection (4).

Subclause (9) amends section 39A(10) to update cross-references.

Clause 17: Section 39B amended

This clause amends subsection (2) to direct the Commissioner to reassess land tax in respect of which an assessment has already been made to give effect to section 39B. Such circumstances will occur where subsection (1) applies.

Clause 18: Glossary amended

Subclause (1) provides the amendments in this clause are to the Glossary of the *Land Tax Assessment Act 2002*.

Subclause (2) amends clause 1 of the Glossary.

Paragraph (a) amends the definition of “disabled beneficiary” by replacing paragraphs (a) and (b) of the definition.

This definition of a “disabled beneficiary” ensures that a person does not have to receive a pension or payment, but merely has to qualify for these social security payments in order to meet the definition for land tax purposes.

Paragraph (b) amends the reference to the Western Australian Land Information Authority in the definition of “registered”.

Paragraph (c) inserts a definition of “Land Information Authority” in the appropriate alphabetical position of the Glossary. The amendments do not change the meaning of the reference, but merely define the term in the Glossary.

Subclause (3) repeals clause 2(1) and (2) of the Glossary and inserts clause 2(1) to provide an amended meaning of a “lot” to be used throughout the Act.

This new definition ensures that where strata plans are exempt from approval by the Western Australian Planning Commission, strata plans approved by a local government will suffice in order for the land to be considered a “lot” for land tax purposes.

The definition of a “lot” in the Land Tax Assessment Act was considered by the State Administrative Tribunal in *McKinney & Ors and Commissioner of State Revenue* [2006] WASAT 216.

In that case, the Tribunal determined that the land was proposed to be subdivided into two strata lots under the Strata Titles Act but, as at 30 June 2005, was not the subject of a strata plan lodged by the applicants for approval under that Act, or approved or registered under that Act, and was not constituted of separate "lots" for land tax purposes as at 30 June 2005. As a result, the land in question comprised one unsubdivided lot in respect of which the exemption from land tax of private residential property owned and occupied by individuals created by section 21 of the Act applied.

Since the decision, the Commissioner of State Revenue has continued to administer the land tax legislation on the basis of the *McKinney* decision, which means that the date of Western Australian Planning Commission approval is accepted as the date upon which a newly created strata lot is separately assessable for land tax purposes. However, some strata plans are exempt from Western Australian Planning Commission approval, which means that despite the subdivision being approved by the relevant local government authority, the lot does not become separately assessable for land tax purposes until the Certificate of Title is issued. The legislation prior to this amendment only dealt with Western Australian Planning

Commission approvals and not those created through local government.

The amendments in this clause and subclause (6) overcome this issue.

Subclause (4) amends clause 2(4) of the Glossary to insert references to (the "home lot") and (the "other lot"). These amendments help to clearly delineate which lots are being referred to in new subclause (5).

Subclause (5) inserts new subclauses (5) and (6) into the Glossary. These amendments have been made as a result of the Western Australian Court of Appeal decision in *Commissioner of State Revenue v De Campo* [2007] WASCA 136.

Subclause (5) provides that in determining whether to be satisfied as mentioned in subclause (4) the Commissioner may have regard to the circumstances listed in paragraphs (a) to (j). Each of these principles have been designed from case law, both at State and Commonwealth level, to assist in determining whether the lots are one integrated residence. Such issues arise in the context of land tax at a State and Territory level, but also at a Federal level in relation to capital gains tax matters.

When examining each of these matters, it is expected that no single factor will be determinative in the Commissioner's decision. However, when the evidence surrounding each circumstance is considered in totality, it is likely that the situation regarding extent to which the other lot or lots are integrated with the home lot will be apparent. As a consequence, the decision about whether a land tax exemption should apply to the other lot or lots will be more transparent.

Paragraph (a) refers to the nature, extent and degree of permanence of any structures or other improvements on the other lots. Substantial physical structures, such as a brick garage with a concrete driveway allowing access to the home lot from the road or an underground pool with landscaped gardens, are more likely to be accepted as indicative of properly integrated lots. This could be compared to a situation where the other lot is essentially "vacant" land with no structures, or a few easily removable items upon it, such as a swing set that could be removed quickly and easily.

It should also be noted that subsections (3) to (6) of the Glossary are not intended to be apply in circumstances where the other lot or lots include a separate residence.

Paragraph (b) refers to the degree of physical separation of, and the means of access between, the home lot and the other lots. This paragraph would allow consideration to be given to, for example, whether the lots are separated by a dividing fence, and if so, whether there are gates or other means of ready and convenient access between the lots. The fact that a hose may need to be passed over a wall to water a small plot of garden would not be an indicator that the lots are sufficiently integrated for the purposes of the exemption.

For example, the NSW case *Castle v Chief Commissioner of State Revenue* [2007] NSWADT 242, concerned applicants who lived in a residential dwelling house on one lot which was at some stage subdivided into two lots. The two properties were separated by a wire fence and, after their dog habitually escaped, a more substantial wooden fence was erected. That fence had a gap in the fence to allow access to the other lot. When access was not required a temporary wooden barrier was placed across the gap to contain the "fugitive" dog. The other lot was used by the taxpayers for a number of activities including golf, activities with the dog, and for reading; in addition, it was used for holding building materials. The decision of the court in this case was that the fence was of such a nature that it had the effect that the lots were at all relevant times physically separate as the wooden fence was constructed to achieve a physical separation. In similar circumstances, it is unlikely that the Commissioner would treat the lots as integrated for the purposes of these provisions.

Paragraph (c) refers to whether the appearance and physical characteristics of the home lot and the other lots, taken together, are those of one integrated area. In many instances where this exemption is currently applied, it is impossible to tell from an inspection of the property that it consists of a home lot and another lot. This may be due to extensive gardens and reticulation that operate across both lots, or other types of structures, such as tennis courts, that appear to be part of a single property. In other cases, upon inspection, it is clearly apparent that one lot is separate from the other, both in terms of structures and the overall look and feel of the integrated property. This paragraph allows the Commissioner to examine and take into account the overall appearance of the home lot and other lots to ensure that they are completely integrated.

In this respect, this criteria allows the judgement of a "reasonable person" to be a factor when examining the physical appearance and characteristics of a property. In more blunt terms, if a property looks like two separate lots, then it is more than likely going to be assessed for land tax purposes as two separate lots.

Paragraph (d) refers to the extent to which the home lot and other lots are collectively or separately provided for in terms of matters such as fencing, means of access and egress, provision of water, power and other utilities. Examples of the matters considered by this paragraph might be factors such as:

- whether there is one boundary fence around all the lots;
- the appearance of the entry to the property;
- are the utilities provided from one lot or does each lot have its own utilities provided.

Paragraph (e) refers to the purposes for which the other lots are used and whether that use is of a residential nature, and of an ongoing, not temporary or transient nature.

An example of the matters considered by this paragraph could be where two lots are used as a residence and garden on one lot, and a garden that is well established and of a permanent nature on the other lot. The uses are not identical but if the garden on the other lot complements the use of the residence to such an extent that the properties are found to be undivided in use, the lots are integrated as a place of residence.

Paragraph (f) refers to whether the use of the home lot and the use of the other lots, taken together, constitutes the use of all of the lots as one integrated place of residence. This paragraph refers to the use of the lots and whether they comprise a parcel of land as they are undivided, not only by physical separation, but also in use, occupation and ownership. This test has been accepted as a principal test to be applied when determining whether two (or more) lots of land are together a “parcel” of residential land for the purposes of the principal place of residence exemption in the decision of Hunt J in the NSW Supreme Court case of *Ryan v Commissioner of Land Tax* [1982] 1 NSWLR 305.

Paragraph (g) refers to how often the other lots are used and by whom. An example of this would be when the owner does not have sufficient space in the home lot for their activities and purchases an adjoining lot to carry out those activities. The Commissioner would also consider those activities for the purposes of paragraph (e) above, whether or not the use of the other lot for the activities is permanent, temporary or transient.

Paragraph (h) refers to the extent to which the activities undertaken on the other lots could be undertaken at the home lot in the absence of the other lots. This paragraph is primarily

for the purposes of defining the owner's actual use of the lots and whether that use demonstrates that the lots are one integrated area that constitutes a place of residence. A vacant grassed lot that is occasionally used to kick a football or play cricket would not normally be sufficient for the lots to be considered integrated with the residence. If that were the case, it would become a very simple process for taxpayers to avoid paying land tax.

Paragraph (i) refers to the relative size of the lots. Many cases have included a discussion on the size of the lots, for example the size of the home lot was such that there was no room for a garden, etc., so demonstrating the reasons 2 or more lots are integral to the taxpayer's lifestyle. This consideration is also relevant for paragraph (g) above.

Paragraph (j) refers to any other matters the Commissioner considers relevant, in the event that a unique circumstance arises that may not fit within the factors listed in the paragraphs above, but is nevertheless still relevant to determining the land tax status of the lots.

Subclause (6) provides that for the purposes of subclauses (3), (4) and (5) the intention of the owner of the land, the individuals residing there or any other person, in relation to all or any of the lots is irrelevant.

This part outlines that it is not a person's intent, but rather the substance of the circumstances surrounding the use of the lot as at midnight on 30 June that is important.

A liability for land tax arises on the basis of land owned at midnight on 30 June. It then follows that where an exemption is provided because of a particular use of the land, such use is measured at the same time, unless the Act specifically allows events subsequent to that period to be taken account of (such as the exemption in section 24 which takes account of the subsequent construction of a residence within the assessment year).

In establishing intent, it should be noted that use that is merely contemplated or proposed on 30 June is not relevant. Accordingly, where for example, plans have been submitted to a local government to approve the construction of a shed on the other lot, the integrated use of the lot is considered to be merely contemplated or proposed.

Subclause (6) makes amendments as a consequence of the changes to the definition of lot in subclause (3)

Paragraph (a) amends clause 3(1) of the Glossary to update the meaning of when land is subdivided.

Paragraph (b) makes a minor grammatical amendment.

Part 5 – *Metropolitan Region Improvement Tax Act 1959* amended

Clause 19: **The Act amended**

This clause provides that the amendments in this Part are to the *Metropolitan Region Improvement Tax Act 1959.*

Clause 20: **Section 10 amended**

This clause amends section 10 to update the rate of metropolitan region improvement tax that is to apply for the 2008/09 year of assessment and beyond.

Paragraph (a) limits the application of the rates in Table 1 to the 2007/08 year of assessment.

Paragraph (b) inserts a new Table 2 to specify the metropolitan region improvement tax rate scale for the 2008/09 and subsequent years of assessment.

Part 6 – *Rates and Charges (Rebates and Deferments) Act 1992* amended

Clause 21: The clause provides that the amendments in this Part are to the *Rates and Charges (Rebates and Deferments) Act 1992*.

Clause 22: Subclause (1) amends section 23(5)(b) by deleting the requirement that no rent or income be derived from the land in order for an eligible person who is related (within the meaning of section 23(6)) to a disabled person to qualify for a rates concession.

Subclause (2) repeals and replaces section 23(7).

Subsection (7) provides a definition of a "disabled person" for the purposes of the Act. Unlike the amendments made to the *Land Tax Assessment Act 2002,* a person must actually receive, rather than merely be entitled to receive, a social security payment of the kind outlined in the definition to qualify for rebates and concessions under this Act.

This differentiation between the Acts is as a result of the amendments to section 23 of this Act to require eligible pensioners to be holders of a pensioner concession card. If the

person did not receive a disability support pension or a carer's allowance, they would not be the holder of a card provided by the Commonwealth.

Part 7 – *Duties Act 2008* amended

Clause 23: **The Act amended**

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

Clause 24: **Section 28 amended**

This clause amends section 28(5)(b) by updating the cross-reference to section 30 that appears in this section.

This amendment corrects a shortcoming in the Duties Act and ensures that duty is not charged on the value of dutiable property transferred from the trustee of a discretionary trust to a beneficiary, in situations where the only consideration for the transfer is the release or extinguishment of a debt.

Section 28(5) of the Duties Act provides the dutiable value of certain transactions involving the transfer of dutiable property from the trustee of a discretionary trust to a beneficiary, and applies where the consideration takes the form of the beneficiary assuming a trust liability.

When a beneficiary of a discretionary trust, in consideration of property transferred to them, assumes a trust liability, the value of the assumption will be charged with duty (subject to certain other criteria being met). However, in the absence of this amendment, if a beneficiary releases a debt owing to them from the trustee in consideration of the transfer, duty would be calculated on the greater of the unencumbered value of the property and the value of the debt released.

Under the previous operation of the *Stamp Act 1921*, duty would have been charged on the value of the debt released or extinguished. In the absence of this amendment, a taxpayer would pay more duty under the Duties Act than they would have under the Stamp Act arrangements.

Clause 25: **Section 118 amended**

This clause amends section 118(1) to clarify the definition of trustee that is used for the purposes of this section.

Section 118 of the Duties Act specifies that nominal duty applies where there is a transfer to or from a trustee who is holding property solely for the transferor if certain criteria are satisfied.

It has been suggested that this provision could also extend to apply nominal duty to a transfer of dutiable property to a trustee of a unit trust that has a single unit holder.

Were this to be the case, it would present a significant opportunity for avoidance of duty, as property could be transferred into a unit trust structure for the payment of only nominal duty. Dispositions of units within the trust could then occur without the payment of duty if the landholder duty thresholds (land holding of $2 million or greater and interest acquired of 50% or greater) were not exceeded.

The provision has therefore been amended to make it clear that the provision cannot be used where the trustee is a trustee of a unit trust scheme or a discretionary trust.

Clause 26: **Chapter 2 Part 6 Division 4A inserted**

This clause inserts new Division 4A into Chapter 2 Part 6. These provisions introduce a new concessional transfer duty scale for residential property purchases with effect from 1 July 2008.

Where possible, concepts used in the *First Home Owner Grant Act 2000* have been adopted in this concession to minimise taxpayer and industry compliance costs.

Division 4A – Residential concession

Section 147A. Terms used in this Division

Section 147A defines the terms used in Division 4A.

Subsection (1) inserts definitions of “construction”, “eligible transaction”, “residence”, “residential property”, and “taxpayer”. These definitions are self-explanatory.

Subsection (2) provides clarity around the timing on the construction of a residence, which is necessary for the purposes of sections 147D and 147F.

Section 147B. Eligible transactions

Section 147B specifies the types of dutiable transactions that the concessional rate of transfer duty will applied to.

Paragraph (a) specifies that a dutiable transaction referred to in section 11(1)(a) of the Duties Act will be an eligible transaction. Section 11(1)(a) is a transfer of dutiable property and would include, for example, a transfer of land.

Paragraph (b) specifies that a dutiable transaction referred to in section 11(1)(b) of the Duties Act, other than a transaction referred to in section 67, will be an eligible transaction. Section 11(1)(b) is an agreement for the transfer of dutiable property, whether that agreement is conditional or not.

Standard offer and acceptance documents are an example of the types of transactions that fall within this paragraph.

An agreement for the transfer of dutiable property under section 67 refers to a share disposition in a corporate trustee that is deemed to be an agreement for the transfer of trust property.

Paragraph (c) specifies that a dutiable transaction referred to in section 11(1)(d)(ii) of the Duties Act will be an eligible transaction. Section 11(1)(d)(ii) is a vesting of dutiable property by, or as a consequence of, a court order. An example of this type of transaction could occur where two parties (who are not spouses or de facto partners) are in dispute and the court orders that residential property be transferred from one party to the other as part of the settlement of the dispute.

Paragraph (d) refers to a dutiable transaction of a kind prescribed for the purposes of this section. It is not intended for any dutiable transactions to be prescribed at this point, however, the prescription power has been inserted for flexibility in the event that other types of dutiable transactions may need to be prescribed in the future.

Section 147C. Concessional transactions

Section 147C sets out the meaning of a concessional transaction for the purposes of identifying when the concessional rate of transfer duty will apply.

Subsection (1) specifies that an eligible transaction is a concessional transaction under Division 4A if the dutiable property is land that is residential property (as defined in

section 147D).

Subsection (2) has been inserted to overcome what would otherwise be an issue in relation to the aggregation of a concessional transaction with a non-concessional transaction.

Section 37(3)(a) of the Duties Act only aggregates dutiable transactions relating to separate items of dutiable property if the transactions to be aggregated are all chargeable at the same rate of duty.

This subsection overrides this restriction in section 37(3)(a) if at least one of the separate transactions is a concessional transaction under subsection (1). Once the transactions are aggregated under section 37, this subsection then specifies that the transactions are to be treated as a single dutiable transaction that is a concessional transaction under this Division.

It should be noted that section 37 allows the aggregation of a dutiable transaction with a transaction that may not otherwise be a dutiable transaction (such as a chattel under section 14). If an agreement were entered into for the transfer of residential land and chattels, duty would be charged on the acquisitions of the residential land and chattels as a single dutiable transaction at the concessional rate.

Section 147D. Residential property

Section 147D defines the circumstances in which land is residential property, and specifies that it does not matter that the land is also used for another purpose.

This exception will therefore allow property that is only partly residential property to qualify for the concessional rate of duty. This means that the concessional duty rate may be applied to properties that have mixed use, such as a restaurant with a residence above it.

Paragraph (a) covers situations where there is a residence on the land. A “residence” is defined in section 147A in a manner generally consistent with the definition in the First Home Owner Grant Act.

In general, where a property includes a residence, the concessional rate of duty would apply (subject to the required application being made by the purchaser). For the purposes of this concession, it is irrelevant whether the home will be occupied by the owner as a place or residence, occupied by a tenant as a place of residence under a lease with the owner, or

occupied as a holiday home for part of a year. In this regard, the use of “place of residence” should be distinguished from the use of “principal place of residence”, or “sole or principal place of residence”, that is used in the first home owner grant and land tax legislation.

Under the operation of this paragraph, examples of circumstances where land will not be residential property would include where:

- the building has not been approved by the relevant local government for use as a residence (i.e. it cannot lawfully be used as a place of residence); or

- the land included a residence at the time of purchase, but the transfer is subject to rezoning approvals being obtained that indicate that the transferor does not intend for the property to be used as a place of residence.

Paragraph (b) covers situations where the taxpayer has begun construction of a residence on the land. This applies where, at the time of acquisition of the land, the purchaser has commenced construction of a residence on the land (within the meaning of section 147A(2)). This may occur where approval to commence construction has been obtained from the vendor prior to completion of the sale and the purchaser, as an owner builder, commences to build a residence.

The situation should be contrasted with circumstances where a purchase of vacant land is made, and the owner subsequently commences building a residence. In this situation, the transaction does not immediately qualify for duty at the concessional rate. Rather, the circumstances in section 147F would apply, such that the duty that had been assessed at the general transfer duty rate can be reassessed after the taxpayer begins construction of a residence on the land (subject to an application being made).

Paragraph (c) applies to situations where the taxpayer has entered into a contract for the construction of a residence on the land. This means that where a taxpayer has, for example, purchased vacant land and simultaneously entered into a building contract (as often occurs when a house and land package is purchased), the taxpayer will be eligible for the concessional rate “up front”.

Where vacant land is purchased, but a building contract is not entered into until some future date, duty would be payable at the general rate, and a reassessment and refund will be applicable at the time the contract to construct a residence is

entered into as per the provisions in section 147F.

Paragraph (d) applies where a contract has been entered into to purchase a moveable building that will be affixed to the land and be a residence. This situation commonly arises, for example, where a transportable home is purchased at the same time as vacant land, and will be affixed to the land and be a residence. In order to qualify under this provision, it would be expected that the contract would include some indication of the placement of the moveable building, or matters relating to the connection of services or preparation of foundations that would indicate the intention to affix the building to the land being purchased. It should be noted that this provision will not apply where the contract is for the purchase of a caravan, unless it is on the basis that it will be permanently affixed to the land. In determining whether this is the case, regard will need to be given to the principles that are extracted from the relevant case law to determine whether it would constitute a fixture.

Section 147E. Concessional rate

This section provides that the duty chargeable on a concessional transaction is the applicable concessional rate of duty (as specified by the section 147E designation before the scale in Schedule 2 Division 2). The clause also provides that upon application by the taxpayer, the Commissioner is to assess the liability to duty at the concessional rate.

Section 147F. Reassessment if building begins or contract is entered into after duty liability arises

This section provides for the reassessment of duty at the concessional rate on eligible transactions in relation to land, where the construction of a residence is commenced at some point subsequent to the acquisition of the land.

The operation of these provisions is generally consistent with the rules that apply under the first home owner grant legislation. The need for this type of provision is based on a situation where, at the time of acquisition, the taxpayer is acquiring vacant land which does not include a residence. As the concession is targeted at residential property, a process needs to be established to ensure the concession is only available when the property becomes residential in nature.

Subsection (1) specifies that where duty has been assessed at the general rate on the acquisition of land, the concessional rate will be applied if the criteria set out in subsection (2) apply.

Subsection (2) sets out the criteria that must be met in order for

a reassessment to be made on the acquisition of land that has been assessed at the general rate of transfer duty.

Within 5 years of the day on which the liability arose (as specified in Schedule 1 Column 3 in relation to the specific type of dutiable transaction), the taxpayer must have:

- begun construction of a residence on the land (within the meaning of section 147A(2));

- entered into a contract for the construction of a residence on the land; or

- entered into a contract to purchase a moveable building that will be affixed to the land and be a residence.

Where this occurs and the taxpayer has made application, the Commissioner is required to reassess the liability to duty of the eligible transaction at the applicable concessional rate of transfer duty.

Subsections (1) and (2) do not apply to transactions that have been aggregated under section 37. Rather, subsections (3) and (4) deal with these types of transactions.

Subsection (3) specifies that where duty has been assessed at the general rate on two or more transactions that are aggregated and treated as a single transaction under section 37, the concessional rate may be applied if at least one of the separate transactions is an eligible transaction for dutiable property that is land, providing the criteria set out in subsection (4) apply.

Subsection (4) sets out the criteria that must be met in order for a reassessment to be made on the acquisition of land that has been aggregated and treated as a single transaction under section 37 and assessed at the general rate of duty.

Within 5 years of the day on which the liability arose (as specified in Schedule 1 Column 3 in relation to the specific type of dutiable transaction), the taxpayer must have:

- begun construction of a residence on the land (within the meaning of section 147A(2));

- entered into a contract for the construction of a residence on the land; or

- entered into a contract to purchase a moveable building that will be affixed to the land and be a residence.

Where this occurs and the taxpayer has made application, the Commissioner is required to reassess the liability to duty of the aggregated transaction at the applicable concessional rate of transfer duty. The duty is to be apportioned between the separate transactions as decided by the Commissioner.

Subsection (5) sets out the period during which an application can be made for a reassessment under section 147F, namely whichever is the later of the last day of the relevant period (5 years from the day on which the liability to duty arose, as specified in subsections (2) and (4)) or the last day of the period of 12 months from the day on which construction began or the contract was entered into. This ensures that where construction commenced or the contract was entered into less than 12 months before the end of the 5 year period, the taxpayer has 12 months to make their application.

Subsection (6) provides that the time limits in section 17 of the Taxation Administration Act do not apply in respect of a reassessment under this section. This is required as the time limits above extend the standard 5 year reassessment period that is normally available for reassessments.

Section 147G. Application of assessment or reassessment at concessional rate

This section provides that an application for assessment or reassessment under Division 4A must be made in the approved form. A pro-forma application form will be made available by the Office of State Revenue.

Clause 27: Section 147 amended

This clause inserts new subsection (3) into section 147. This clause addresses problems that may arise with the interaction between the residential property concession under Division 4A and the existing concession that applies up to 1 July 2010 for principal places of residence.

While the relief under this concession is available in wider circumstances, the concession under Division 4 (which links back to section 75AE of the *Stamp Act 1921*) will be more beneficial to taxpayers where the value of the principal place of residence purchased is less than $116,000. As it is likely that taxpayers or their agents may not be immediately aware of this fact, this subsection has been inserted to allow the taxpayer to choose which concession will apply, with the obvious outcome that the taxpayer is likely to choose the transaction that gives them the greater duty benefit.

Subsection (3) specifies that if a dutiable transaction is a concessional transaction under Division 4A and Division 4, the taxpayer may choose which concession is to apply. The Commissioner may then, with the consent or at the request of the taxpayer, treat an application for assessment or reassessment under each Division as an application under the alternate Division.

From a practical point of view, the application form being prepared for the Division 4A concession will include a reference to this provision and will obtain the relevant consent at the time the application is made. This approach will ensure that any compliance costs that might otherwise arise in trying to administer this provision are removed.

Clause 28: Schedule 2 amended

This clause amends Schedule 2 to insert the new concessional transfer duty scale and make other consequential adjustments.

Subclause (1) amends the Chapter reference at the top of the table in Division 2 to accommodate the insertion of the new scale.

Subclause (2) amends the marginal rates that apply when the first home owner rate scale is phased out to ensure that the phase out points are consistent.

Subclause (3) inserts a new item specifying the concessional duty scale that applies under section 147E of the Act.

Clause 29: Schedule 3 amended

This clause inserts a new transitional provision, section 11A, into Schedule 3.

Section 11A. Residential concession (Part 6 Division 4A)

Subsection (1) defines a concessional transaction for the purposes of subsection (2).

Subsection (2) provides that section 147C(2), which applies the concessional rate to aggregated transactions, only applies if the concessional transaction (or at least one of them if there are two or more) takes place on or after 1 July 2008.

This ensures that the benefit of the concessional rate is not applied in a manner that would effectively pre-date the date of its introduction in relation to the acquisition of residential property, merely through the operation of the transitional provisions.

Part 8 – Stamp Act 1921 amended

Clause 30: The Act amended

This clause provides that the amendments in this Part are to the *Stamp Act 1921*.

Clause 31: Section 76 amended

This clause amends section 76 of the *Stamp Act 1921*, which contains interpretation matters for the purposes of the land-rich provisions contained in Part IIIBA of that Act.

The purpose of the amendments contained in this clause is to ensure that where a corporation is regarded as having an entitlement to land, that entitlement will be to the extent of its ownership of the fixture.

Subclause (1) amends the definition of "land" by changing the reference to "ownership" of a fixture to a reference to "an entitlement" to a fixture, in order to be consistent with the terminology used throughout the remainder of Part IIIBA.

Subclause (2) inserts new subsection (7A).

Subsection (7A) ensures that where an entity has an entitlement to a fixture, but does not otherwise have an entitlement to land, the entitlement to the fixture will still be regarded as being an entitlement to land.

The proposed amendments clarify the treatment of fixtures for the purposes of the land-rich provisions of the *Stamp Act 1921*.