

EXPLANATORY MEMORANDUM

REVENUE LAWS AMENDMENT BILL 2006

This Bill seeks to amend the *Stamp Act 1921*, *Land Tax Act 2002*, *Land Tax Assessment Act 2002* and *Rates and Charges (Rebates and Deferments) Act 1992*, to implement the abolition of stamp duty on hire of goods and mortgages, and the proposed 2006-07 Budget measures.

Amendments are proposed to the Stamp Act to:

- abolish hire of goods duty with effect from 1 January 2007;
- halve the rate of mortgage duty with effect from 1 July 2006, and abolish mortgage duty with effect from 1 July 2008;
- extend the first home owner concession to certain purchases under shared equity arrangements with the Department of Housing and Works with effect from 1 July 2004;
- remove the requirement under section 31B for persons to lodge a statement and pay duty in respect of transfers from a bankrupt to creditors with effect from 1 January 2004; and
- change the person liable to pay duty on settlements and gifts from the donor to the donee.

Amendments are proposed to the Land Tax Act and the Land Tax Assessment Act to:

- introduce a new land tax scale for 2006-07 and subsequent financial years;
- extend the current one-year land tax exemption for building new residences to two years (from 1 July 2006, with appropriate transitional arrangements where a residence is under construction on 1 July 2006);
- extend the primary residence exemption that applies for trust property owned and used by a disabled beneficiary to situations where the property is held by a parent, grandparent or sibling of the person with a disability; and
- insert an anti-avoidance provision targeted at landowners avoiding a higher "aggregated" land tax rate by acquiring land with a small portion in different ownership, or transferring a small portion of already owned properties to different ownership.

For consistency with the land tax measure in relation to the exemption for property owned by certain family members and used by a person with a disability, amendments to the Rates and Charges (Rebates and Deferments) Act are proposed to extend the availability of concessions for local government rates, water rates and the emergency services levy.

Further detail in relation to each of these proposed amendments is provided below.

Stamp Act amendments

Abolition of hire of goods duty

Amendments to the Stamp Act are proposed to abolish hire of goods duty with effect from 1 January 2007.

The provisions imposing duty on hire of goods arrangements are contained in Part IVB of the Stamp Act. That Part imposes a liability on commercial hire businesses to pay hire of goods duty in relation to hiring charges received in a return period. Commercial hire businesses are required to be registered, and lodge returns and pay duty. In addition, a person who hires goods from a person who is not a commercial hire business is required to lodge a statement and pay hire of goods duty.

Amendments to Part IVB are proposed to ensure that a liability does not arise in relation to hiring charges received on or after 1 January 2007 in respect of a hire of goods arrangement, regardless of when the hiring arrangement was entered into. Amendments are also included to abolish rental business duty on income received on or after 1 January 2007 from rental business arrangements entered into prior to the introduction of the hire of goods regime on 1 July 2004, which are currently still liable to rental business duty under the old Part IVB. Further, amendments are proposed to ensure that a liability does not arise in relation to hiring charges paid by a person to a non-commercial hire business on or after 1 January 2007.

In addition, the requirement for a commercial hire business to apply for registration once the hiring charges received in a month exceed the specified level will not apply after the abolition date.

As the hire of goods provisions involve an annual reconciliation process, a reconciliation will need to occur on 31 December 2006. However, this does not require any amendment to implement, as it is intended that the Commissioner will cancel the registrations of all commercial hire businesses as of this date in accordance with section 112JB, which will result in the annual duty free threshold being reduced to \$25,205 due to the operation of section 112LD(5).

Abolition of mortgage duty

Amendments to the Stamp Act are proposed to reduce the *ad valorem* rate of mortgage duty by 50 per cent with effect from 1 July 2006. Further amendments are included which propose to abolish mortgage duty with effect from 1 July 2008.

The provisions imposing duty on a mortgage are contained in Part III E of the Stamp Act. That Part imposes a liability on any instrument that mortgages or creates a charge over property wholly or partly in Western Australia. A mortgage is liable to duty when the instrument is first executed and also when an advance or further advance is made, if the total secured amount exceeds the secured amount for which the mortgage has been stamped.

Amendments to the Second Schedule are proposed to reduce the *ad valorem* rate of mortgage duty by 50 per cent with effect from 1 July 2006.

Further amendments to Part III E are included to ensure that mortgage duty is not chargeable on a mortgage first executed, or that first affects property in Western Australia, on or after 1 July 2008. Amendments are also proposed to ensure mortgage duty is not chargeable in respect of an advance, or further advance made on or after 1 July 2008 under a mortgage first executed, or that first affects property in Western Australia, before that day.

In addition, amendments are proposed to ensure that the Stamp Act as in force immediately prior to the reduction of mortgage duty continues to apply to a mortgage that is first executed, or that first affects property in Western Australia, before the reduction of duty, and an advance or further advance made before the reduction of duty secured under such mortgages.

Extension of the first home owner concession for shared equity purchases with the Department of Housing and Works

A shared equity purchase occurs when the Department of Housing and Works (DHW) assists home buyers who are unable to finance the entire purchase price of their intended

home by buying or retaining some of the equity in that home as tenants in common with the home buyer. The home buyer then has the opportunity, sometime after the initial purchase, to acquire further interests in their home. Customers are able to purchase the DHW share either in one transaction or, if necessary, in multiple transactions.

Many of these initial purchases by first home buyers result in no duty being payable as section 75AG of the Stamp Act provides, subject to certain criteria being met, for a complete reduction of duty where the property is valued up to \$250,000. In addition, a reduced amount of duty is payable where the property is valued between \$250,000 and \$350,000. Where duty is payable, section 119 of the Stamp Act also operates such that an exemption is provided for the proportion of the duty payable equivalent to DHW's interest in the property.

To qualify for the concession, the purchaser must be paid (or will be paid) a first home owner grant under the *First Home Owner Grant Act 2000*.

However, when purchasing a further interest in the home, a shared equity home owner does not qualify for a reduction of duty under section 75AG of the Stamp Act as the person is not eligible to receive a first home owner grant in respect of the purchase of the subsequent interest.

Proposed amendments to the stamp duty relief provided for by section 75AG seek to extend the relief to apply to further purchases of interests made within ten years of the original purchase by the original purchaser(s), or one of the original purchasers, where the initial purchase was eligible for such relief. The relief will apply where the further purchase is made on or after 1 July 2004, where the initial purchase was also made on or after that date.

Amendment to section 31B to exclude transfers to creditors upon bankruptcy

On bankruptcy, the property of a bankrupt vests in the Official Trustee or a registered trustee (collectively referred to as a "bankruptcy trustee") under section 58(1) of the *Bankruptcy Act 1966* of the Commonwealth.

The equitable interest held by the bankruptcy trustee is limited to the right to be registered as the legal owner. The trustee at all times holds the property on trust for the creditors. Beneficial ownership of the property vests in the creditors upon bankruptcy, by the operation of section 58(1) of the Bankruptcy Act.

Prior to 1 January 2004, the change in beneficial ownership that occurred under the operation of the Bankruptcy Act did not constitute a "transaction" for the purposes of section 31B of the Stamp Act (which charges duty on undocumented transactions) and was not subject to ad valorem duty.

However, section 31B of the Stamp Act, as amended effective from 1 January 2004, no longer requires there to be a "transaction" with the result that it is necessary to prepare a dutiable statement upon transfers of property from a bankrupt with respect to the acquisition of beneficial ownership by the creditors.

While this was the intended effect of the amendments for other vestings or transfers that occur under other statutes, the application of section 31B of the Stamp Act to acquisitions of the beneficial ownership of property by creditors is not considered appropriate and such transfers were not intended to be brought within the scope of section 31B.

An amendment to section 31B, with retrospective application from 1 January 2004, is proposed to exclude these transactions from the operation of that section.

Change the person liable to pay duty on settlements and gifts from the donor to the donee

The Second Schedule to the Stamp Act sets out the nature of instruments liable to stamp duty, the rates of duty applicable to those instruments, and the person liable to pay that duty.

In most cases, the person liable to pay duty is the purchaser or transferee. However, in the case of settlements or gifts, that person is the transferor.

It is proposed that the person liable to pay duty for gifts or settlements be amended to become the donee or transferee.

This will result in the donee or transferee being the person liable to pay duty on all conveyances and gifts of property.

It is also considered that this change will encourage the gifting of property to charitable organisations, as the onus of obtaining an exemption will be placed on the charitable organisation who is in the best position to determine whether the organisation is eligible for the exemption, rather than the person making the gift.

Land Tax amendments

Land tax scale

On the basis of preliminary land values for 2006-07, land tax and metropolitan region improvement tax revenues were forecast to grow strongly. In order to ease the impact of rapidly growing land values on land tax liabilities for land owners, adjustments to the land tax scale are proposed.

From 1 July 2006, the land tax exemption threshold will increase by \$20,000 to \$150,000. This will free around 18,000 land owners from paying land tax in 2006-07 who, in the absence of this change, would have been required to do so.

In addition, the second tier threshold will be increased by \$100,000 to \$390,000 and the third tier threshold will be raised by \$125,000 to \$875,000. All taxpayers will benefit from these threshold increases, including those in the upper value ranges.

Reducing the incidence of bracket creep is a priority identified in the State Tax Review, as expressed in public submissions and by Reference Group members. As a result of these and previous amendments to the tax scale, growth in aggregate land tax revenues will have effectively been capped at less than half the growth in the Perth median house price over the past five years.

Extension of exemption for constructing or renovating a primary residence

It is proposed to extend the current one-year land tax exemption for building or renovating a residence to two years where this period is required to complete the home.

Currently, an exemption from land tax for one assessment year is provided for individuals constructing or renovating a home. The exemption applies where the residence is not completed at 30 June but is completed and used as the primary residence prior to midnight on the following 30 June.

A rebate of land tax is also available where two residences are owned at 30 June in transitional circumstances. The amount of the rebate is the amount by which the liability of the owner would have been reduced if the second private residential property had been exempt for the assessment year because of its use by the individual as his or her primary residence.

Anecdotal evidence from the real estate and building industries indicates that it is currently taking longer to construct a home, due to high demand and labour shortages.

Accordingly, the current one-year limit is to be extended to two years in cases where construction or renovation of a residence is involved. In addition, the current rebate regime for situations where two residences are owned at 30 June is to be changed to an exemption. This will simplify the process for taxpayers and administrators by removing the requirement to pay the land tax and then seek a rebate.

Extending the land tax concessions will reduce the risk of persons renovating or constructing new homes incurring land tax bills while waiting for completion.

The Bill contains transitional arrangements to allow the exemption for the 2005-06 year where a person would otherwise not be eligible because they failed to finish the home and take up residence on or before 30 June 2006. This will ensure that those persons completing construction in 2005-06 and beyond will not be disadvantaged by the longer building periods to construct a home.

Taxation relief for property provided to disabled persons for use as their primary residence

Currently section 26 of the Land Tax Assessment Act provides an exemption from land tax for private residential property held in trust for one or more disabled beneficiaries who occupy the property as their primary residence. It is proposed to extend the availability of land tax relief to parents and certain other family members who currently are required to pay land tax on property occupied independently as a principal place of residence for a family member with a disability.

Extending the land tax exemption to properties held in the name of the parents, grandparents or siblings will remove a disincentive for the private provision of accommodation for a child, grandchild or sibling with a disability and allow access to the land tax exemption without the need to transfer the property into a trust structure, which may have associated stamp duty and capital gains tax implications.

The related owner can be the only owner or one of a number of owners of the property, however, all the owners must be individuals.

No rent or other income is to be derived from the property by anyone while the person with a disability occupies the home as his or her primary residence. To allow rent or other income to be derived would be inconsistent with other residential exemptions contained in the Land Tax Assessment Act. Furthermore, when a family member owns the property for the person with a disability and the owner receives rent from the person with a disability, or another person occupying the property, then the situation is no different than a rental property used for investment purposes.

The definition in these provisions of a “disabled person” is based on the current definition of a “disabled beneficiary” which specifies that the person has a disability as defined in section 3 of the *Disability Services Act 1993* and has been assessed as requiring full time care.

The provisions commence from 1 July 2006 and will apply from the 2006-07 assessment year.

For consistency, the Rates and Charges (Rebates and Deferments) Act is also being amended to provide concessions for local government rates, water rates and the emergency services levy to cover these situations.

This measure will have only a minor cost to revenue but will increase the equity of the taxation laws.

Anti-avoidance provision

This land tax measure seeks to address a practice whereby minor interests in property are held by, or transferred to, different owners in order to defeat the aggregation provisions.

The Act provides that the assessment of land is to be kept separate and distinct from an assessment of any land that is owned by any one of the joint owners individually, or by any of them as joint owner with any other person.

By structuring property holdings so that each land item is assessed separately, aggregation of property holdings can be avoided, which results in significant land tax savings, due to the progressive nature of the land tax scale.

It has been identified that some owners with multiple land holdings are avoiding paying a higher aggregated land tax rate by structuring their holdings so that another person or entity, usually related to the owner of the majority interest, holds a minor interest in the land.

In a large number of cases identified, the interest being held by the minor party is one percent or less.

This practice undermines the equity of the taxation system, allowing people with property holdings of similar aggregate value to pay different amounts of land tax.

This practice is resulting in a significant amount of land tax being avoided each year, thereby placing a greater burden on those taxpayers who do not seek to minimise their liabilities in this way.

The proposed legislation does not define a minor interest, as this is likely to encourage the creation of minor interests which fall just outside of the defined amount.

However, the legislation does provide a series of factors that the Commissioner is to consider when making a determination to disregard a minor interest.

Once a determination has been made, the legislation requires the Commissioner to notify the owner and to provide the reasons for the decision.

It is noted that certain commercial transactions such as joint ventures, time-share arrangements and deceased estates could potentially include at least one minor interest. The joint ownership under these arrangements is usually consistent across all landholdings and as a result, does not reduce the amount of land tax payable. Accordingly, it is unlikely that this provision would be applied to those types of interest.

In respect of minor interests of 5% or less, the onus will be on the taxpayer in any review proceedings to establish that the purpose, or one of the purposes, of the creation of the interest was not to reduce land tax. This onus of proof provision will not apply to minor interests that are greater than 5%.

However, it is important to note that the taxpayer will be given ample opportunity, prior to assessment and at the objection stage, to provide all facts and circumstances that support the underlying reasons that may exist for the minor interest, regardless of whether the minor interest is above or below 5%.

It is estimated that additional revenue of around \$10 million each year will be raised by dealing with this contrived avoidance.

This additional revenue has been directed to increasing the general land tax scale thresholds, thereby reducing the land tax bills for the many thousands of taxpayers who have not engaged in this avoidance activity.

Rates and Charges (Rebates and Deferments) Act amendments

Taxation relief for property provided to disabled persons for use as their primary residence

Similar to the amendments to land tax, it is proposed to amend the Rates and Charges (Rebates and Deferments) Act to provide rebates and concessions for private residential property held by a parent, grandparent or sibling where a child,

grandchild or sibling with a disability occupies the property as their primary residence. The proposed amendments deem the related owner of the property to be an eligible person for the purposes of the Act.

Similar qualifying criteria to that required for the land tax exemption apply to the rebates and concessions for prescribed rates and charges. The definition of a "disabled person" requires the person to be in receipt of a disability support pension in addition to the requirement to have a disability as defined in section 3 of the Disability Services Act and be assessed as requiring full time care.

The proposed amendments will commence from 1 July 2006 and apply for the 2006-07 rating year and future years. A transitional provision has been provided for the first rating year, to allow eligible persons to apply to have their entitlement registered from after 30 June 2006 to before 1 October 2006, for the entitlement to apply in full to the first year.

Part 1 - Preliminary

Clause 1: Short title

This clause provides that the short title of this Act is the *Revenue Laws Amendment Act 2006*.

Clause 2: Commencement

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

Subclause (1) provides that the Act comes into operation on the day it receives Royal Assent, subject to the remainder of the section.

Subclause (2) provides that section 4 (which contains the amendment to section 31B to exclude acquisitions as a result of bankruptcy) is deemed to have come into effect from 1 January 2004.

The retrospective application of section 4 is necessary to ensure that any liability to duty that was created by amendments to section 31B that were effective from 1 January 2004 is removed where a creditor acquires a beneficial interest in property upon bankruptcy.

Subclause (3) provides that sections 5(2) (relating to the existing first home owner stamp duty relief) and section 6 (which contains the amendments to extend the first home owner stamp duty relief to certain shared equity purchases) are deemed to have come into effect from 1 July 2004.

The retrospective application of section 5(2) is necessary to ensure that those home buyers who have received the stamp duty relief provided by section 75AG, which is dependent on receiving a first home owner grant, and have then been required to repay that grant, have the stamp duty on their instrument of transfer reassessed.

The amendments to extend the first home owner stamp duty relief contained in section 6 have also been made retrospective to 1 July 2004, which is the date that the first home owner rate of stamp duty came into effect. This will provide a benefit to the purchasers that have acquired an initial interest and further interest in their home since that date, and will simplify the administration of the scheme in the future.

Subclause (4) provides that if the Act receives Royal Assent on or before 1 July 2006, then the following come into operation on 1 July 2006:

- section 14 (which contains the rate reduction for mortgage duty);
- Part 3 (which contains the land tax rate scale for the 2006-07

- and subsequent assessment years);
- Part 4 Division 2 (which extends the land tax exemption available for construction and renovation of primary residences);
- section 29 (which provides a land tax exemption for property in which a relative with a disability resides);
- Part 4 Division 4 (which contains the land tax anti-avoidance provision); and
- Part 5 (which provides the concession for local government rates, water rates and the emergency services levy for a property in which a relative with a disability resides).

Subclause (5) provides that if the Act receives Royal Assent after 1 July 2006, those Parts, Divisions and sections referred to in subclause (4) are deemed to have come into operation on 1 July 2006.

Subclause (6) provides that section 16 (which contains the transitional arrangements applying to the amendments to the Stamp Act contained in this Act) comes into operation on the day this Act receives Royal Assent, or 1 July 2006, whichever is the earlier.

Part 2 –*Stamp Act 1921* amended

Clause 3: The Act amended

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

Clause 4: Section 31B amended

This clause amends section 31B by making minor punctuation changes and inserting a new paragraph (g).

New paragraph (g) provides that section 31B does not apply to the acquisition of the beneficial ownership of property of a bankrupt by a creditor that occurs as a result of section 58 of the *Bankruptcy Act 1966* of the Commonwealth. Section 58 of that Act provides that the beneficial ownership of property vests in the creditors upon bankruptcy. The effect of new paragraph (g) is that a statement is not required to be lodged with the Commissioner in respect of the acquisition of the beneficial ownership of property by the creditors that occurs upon the bankruptcy of a person.

Clause 5: Section 75AG amended

Subclause (1) repeals section 75AG(8).

Section 75AG(8) currently provides that where a gift of property is made and the Commissioner is satisfied that the transferee has paid, or will pay, the stamp duty, the transferee remains eligible for the first home owner rate of stamp duty. This section has been required in the past as the party liable to pay stamp duty for a gift of property is the transferor (rather than the transferee as in the case of other transfers of property).

Section 15(4) of this Bill seeks to change the liable party for a gift from the transferor to the transferee, which will remove the necessity to link the availability of the first home owner rate of stamp duty to the actual payment of duty, rather than the liability.

Subclause (2) amends section 75AG(9) to insert a reference to section 21 of the *First Home Owner Grant Act 2000*.

To be eligible for a reduction of stamp duty under section 75AG, a purchaser must receive a first home owner grant.

Section 75AG(9) currently removes a transferee's eligibility for a reduction of stamp duty where the transferee is required to repay a first home owner grant under section 51 of the First Home Owner Grant Act.

This amendment seeks to also remove the eligibility for a reduction of stamp duty where a transferee is required to repay a first home owner grant under section 21 of the First Home Owner Grant Act. Section 21 of the First Home Owner Grant Act requires applicants to repay the first home owner grant if they fail to meet the residence requirements of that Act.

This subclause amends section 75AG(9) to include a reference to section 21 of the First Home Owner Grant Act, making the stamp duty repayment obligation consistent regardless of which section of the First Home Owner Grant Act required the repayment of the grant.

This amendment is retrospective to 1 July 2004, in line with the other amendments to the first home owner stamp duty relief contained in section 6 of this Bill.

Clause 6: Section 75AH inserted

This clause inserts a new section 75AH in Part IIIB. This section comes into effect from 1 July 2004.

Subsection (1) provides that the defined terms or attributed meanings in section 75AG are also applicable for the purposes of section 75AH.

Subsection (2) sets out the circumstances, subject to subsection (6), in which section 75AH will apply. The reference to subsection (6) is necessary as subsection (6) sets out certain circumstances where an instrument of transfer will not be eligible for relief under this section.

Paragraph (a) provides that section 75AH applies where an instrument of transfer has been assessed for stamp duty under section 75AG and was executed on or after 1 July 2004. Such an instrument is referred to as the “first instrument”.

The current section 75AG, which allows for a reduced rate of stamp duty to be applied to certain purchases of first homes, was enacted to apply to instruments of transfer executed on or after 1 July 2004.

Paragraph (b) provides that the section will apply if, within 10 years of the execution of the first instrument, the circumstances set out in subparagraphs (i) and (ii) apply to a transferee in relation to the first instrument.

Subparagraph (i) provides that the transferee must execute an instrument to acquire a further interest in the property from an excluded person, as referred to in section 16(1) of the First Home Owner Grant Act. That section provides that an excluded person is not required to be an applicant in respect of a first home owner grant, despite the fact that they are an owner of the home that is the subject of the grant. The State Housing Commission is currently prescribed in the Regulations to the First Home Owner Grant Act as an excluded person.

Subparagraph (ii) provides that the transferee must be liable to pay duty in respect of the further instrument.

It should be noted that if a transferee makes more than one further purchase of an interest in their home, they will be eligible for the relief on each further purchase provided it meets the requirements of this section.

The effect of paragraph (b) is that a person who acquired property through a shared equity arrangement with the State Housing Commission, is able to apply for an instrument

transferring a further interest in that property to be assessed under this section if it is executed within 10 years of the acquisition of the initial interest. It should be noted that at least one of the transferees in relation to the first instrument must be acquiring the interest under the further instrument. However, subsection (7) sets out limitations on any other transferees in respect of the further instrument.

Subsection (3) sets out how duty is to be charged on a further instrument under this section.

Paragraph (a) provides that a further instrument assessable under section 75AH is to be assessed using both the rate of duty and the thresholds applicable at the time of the execution of the first instrument which evidenced the purchase of the initial interest in the property.

Stamp duty is normally applied using the rates and thresholds that apply at the time of execution of an instrument to purchase the property. This paragraph is required to allow the rates and thresholds that applied to the initial purchase to be applied to the instrument evidencing the further purchase.

Paragraph (b) deems that the value of the consideration on which duty will be assessed on a further instrument to be the higher of the amount or value of the consideration on which duty was charged on the first instrument, or the unencumbered value of the whole of the property at that time.

For example, if an initial purchase of a \$300,000 property was made under a shared equity arrangement with the State Housing Commission whereby the property was purchased from a third party and at the time a further purchase is made four years later, the property has a value of \$500,000, the further instrument will be assessed using the value of \$300,000 irrespective of the increased value of the property.

However, if the shared equity arrangement resulted from a transferee purchasing a 50% interest in a property directly from the State Housing Commission for \$150,000, the assessment of the further interest would be based on the unencumbered value of the whole of the property, being \$300,000, which is higher than the consideration of \$150,000 paid for the initial interest in the property.

Paragraph (c) provides that an assessment of duty on a further instrument is to be made using the value specified in paragraph

(b) and the rates and thresholds specified in paragraph (a). However, the proportion of the duty payable by the transferee is the same as the proportion of the interest in the property that the transferee will hold following the execution of the further instrument and the registration of the transfer with the Department of Land Information. The remaining duty payable, which is the same proportion of the duty payable as the interest in the property held by an excluded body after the execution and registration of the further instrument, is exempt from duty.

Paragraph (d) provides that the duty payable on the further instrument is to be reduced by the duty already paid by the transferee on the initial purchase of an interest in the property and any subsequent interest.

As paragraph (c) provides that an assessment under section 75AH is to be made based on the total interest held by the transferee following the purchase of the further interest, paragraph (d) is required to ensure that duty is not paid twice on the initial purchase or any subsequent purchases.

The operation of this subsection is set out in the following examples.

Example 1:

A shared equity arrangement is entered into on 1 July 2004 between the State Housing Commission and X, whereby each acquires a 50% interest in a property valued at \$300,000 from a third party. The duty payable on the acquisition of the 50% interest by X would be 50% of \$6,600, resulting in duty payable by X of \$3,300 (the proportion of the duty payable by the State Housing Commission would be exempt from duty in accordance with section 119).

If X later purchases a further 25% interest in the property from the State Housing Commission, the duty payable on the further instrument would be assessed as \$6,600 (using the same rates, thresholds and consideration as the original purchase). However, the duty payable by X would be 75% of \$6,600 (as the transferee will hold a 75% interest in the property following execution and registration of the further instrument), resulting in X being liable for duty of \$4,950. The remaining \$1,650 is exempt from duty. This represents the duty that relates to the 25% interest still held by the excluded body following the execution and registration of the further instrument. However, the duty of \$3,300 paid by X on the initial purchase would be deducted from the assessment of \$4,950 in respect of the further instrument, leaving X with a duty liability of \$1,650 payable for the acquisition of the further 25%

interest.

Example 2:

A shared equity arrangement is established as a result of a transferee (Y) purchasing an interest in a property from the State Housing Commission on 1 August 2004. Y makes an initial purchase of a 50% interest in the property from the State Housing Commission for \$150,000. There would be no duty payable on that purchase as it falls below the threshold at which duty is chargeable under section 75AG.

If Y later purchases a further 25% interest in the property from the State Housing Commission, the duty payable on the further instrument would be assessed as \$6,600 (using the same rates and thresholds as the original purchase and using the unencumbered value of the whole property, being \$300,000). The duty payable by Y would be 75% of \$6,600 (as the transferee will hold a 75% interest in the property following execution and registration of the further instrument), resulting in Y being liable for duty of \$4,950. The remaining \$1,650 is exempt from duty. This represents the duty that relates to the 25% interest held by the excluded body following the execution and registration of the further instrument.

This results in the same duty outcome for a purchaser as in Example 1 (being that the purchaser has acquired a 75% interest and has paid duty of \$4950), except that in this case, the payment of duty is deferred until a further interest is acquired.

Subsection (4) provides that the administrative requirements set out in specific subsections of section 75AG apply to applications under section 75AH.

Specifically these requirements are:

- a transferee may apply to the Commissioner for an assessment under this section;
- all transferees in relation to a property must make the application;
- the application must be in an approved form containing the necessary information;
- the First Home Owner Grant Act and the *Taxation Administration Act 2003* have application to applications under this section; and
- information provided in relation to an application must be verified by a statutory declaration or other evidence if required by the Commissioner.

Subsection (5) specifies that an application under this section must be made within twelve months from the date of execution of the instrument. This is consistent with the time limit contained in section 75AG for an application for first home owner stamp duty relief on the initial purchase.

Subsection (6) removes a transferee's eligibility for an assessment under this section if they are required to repay a grant under the First Home Owner Grant Act.

Sections 21 and 51 of the First Home Owner Grant Act set out circumstances under which a grant made under that Act may be required to be repaid. As the stamp duty relief provided under this section is dependent upon the transferee receiving a first home owner grant, being required to repay the grant also makes a transferee ineligible for the stamp duty relief.

Subsection (7) restricts the transferees who may apply for relief under this section. It prevents a person who was not a transferee in relation to the first instrument from being able to access the relief in relation to a further instrument. It also prevents a transferee in relation to the first instrument from accessing the relief in relation to a further instrument when they are purchasing the further interest jointly with a person who was not a transferee in relation to the first instrument.

For example, if an initial purchase was made by a husband and wife, and following that purchase one of the parties dies, only the survivor can make an application. A new transferee cannot be introduced. Similarly, after a separation or divorce, the party who retains the subject residence cannot introduce a new partner, although he or she would still be eligible if that party alone purchased the further interest in the property.

Subsection (8) provides that irrespective of section 17 of the Taxation Administration Act, the Commissioner must make any necessary reassessment to give effect to this section. Section 17 of the Taxation Administration Act sets a time limit of five years in which a reassessment can be made.

This subclause allows for the Commissioner to make reassessments beyond the five year time limit. This is necessary to allow the Commissioner to reassess instruments where the transferee is no longer eligible for relief under this section as a result of having to repay their first home owner grant under either sections 21 or 51 of the First Home Owner Grant Act.

Clause 7: Section 85A inserted

This clause inserts a new section 85A in the mortgage duty provisions contained in Part IIIE.

Section 85A provides that mortgage duty is not chargeable in relation to a mortgage first executed, or that first affects property in Western Australia, on or after 1 July 2008. Section 85A also provides that mortgage duty is not chargeable in relation to an advance or further advance made on or after 1 July 2008 secured under a mortgage first executed, or that first affects property in Western Australia, before 1 July 2008.

For example, a mortgage first executed on 1 July 2008 will not be liable for duty. However, a mortgage first executed on 30 June 2008 will still be liable for duty (if it is secured by property in Western Australia at that date).

Furthermore, in the case of a mortgage first executed on 30 June 2008 that did not secure property in Western Australia at that date, but a Western Australian property becomes security for that mortgage on 1 September 2008, the mortgage will not be liable for duty.

In the case of a properly stamped mortgage first executed on 1 January 2007 that is secured by property in Western Australia, where an advance is made on 1 January 2008 in excess of the amount to which the mortgage has been stamped, that advance is liable for duty. Should a further advance be made on 1 January 2009, that advance will not be liable for duty regardless of whether the advance is in excess of the amount to which the mortgage has been stamped.

In the case of a mortgage first executed on 1 January 2008 that did not secure property in Western Australia at that date, but a Western Australian property becomes security for an advance made under that mortgage on 1 January 2009, that advance will not be liable for duty.

Clause 8: Section 86 amended

This clause amends section 86(2) of the Stamp Act to clarify that a mortgage is not chargeable with any duty other than mortgage duty. However, this is subject to section 85A, which provides that mortgage duty is abolished from 1 July 2008.

However, it should be noted that section 86 will continue to operate as an anti-avoidance provision to prevent taxpayers from avoiding conveyance duty by transferring property indirectly

through a deliberate mortgage default. Currently, section 86 of the Stamp Act prevents indirect transfers of this nature by allowing the Commissioner to impose conveyance duty on an instrument that transfers an interest in property under, or in accordance with, a mortgage, where he is not satisfied that the instrument was intended principally or solely as security under, or in accordance with, a mortgage. This section will continue to operate following the abolition of mortgage duty to ensure that taxpayers cannot avoid their duty liabilities by transferring property indirectly under the guise of a mortgage.

Clause 9: Part IVB Division 1A inserted

This clause inserts a new section 112 under new Division 1A in the hire of goods provisions contained in Part IVB.

Section 112 provides that hire of goods duty is not chargeable under Part IVB in relation to hiring charges received by a commercial hire business on or after 1 January 2007, or hiring charges paid or payable by a hirer to a non-commercial hire business on or after 1 January 2007. It should be noted that the abolition applies regardless of when the hire of goods arrangement was entered into. For example, a hire of goods arrangement entered into on 1 November 2006 which provides for monthly payments of hiring charges, would not be subject to duty in relation to the hiring charges paid on or after 1 January 2007.

Clause 10: Section 112J amended

This clause inserts a new subsection (3) into section 112J to remove the requirement for a commercial hire business to apply for registration if hiring charges exceed the specified threshold in a month after December 2006.

Clause 11: Section 112L amended

This clause inserts a new subsection (5) into section 112L to remove the requirement for registered and unregistered commercial hire businesses to lodge a return in respect of a return period after December 2006 and pay the duty in relation to hiring charges received on or after 1 January 2007. This means that a return will need to be lodged in January 2007 in relation to hiring charges received before 1 January 2007. However, further returns in respect of return periods commencing after December 2006 will not be required.

Clause 12: Section 112M amended

This clause inserts a new subsection (5) into section 112M to remove the requirement for a person who hires goods from a person who is not a commercial hire business to prepare a statement in accordance with section 112M, or lodge a statement and pay duty in accordance with section 112MA in relation to hiring charges paid or payable on or after 1 January 2007.

Clause 13: Section 122 inserted

This clause inserts a new section 122 which refers to the transitional arrangements contained in Schedule 4. It is considered that the inclusion of transitional arrangements in a Schedule to the Act, rather than remaining in the amending Act, will assist in understanding and applying the Act. However, the transitional arrangements contained in the amending Acts will continue to have effect.

Clause 14: Second Schedule amended (mortgages)

This clause amends the Second Schedule of the Stamp Act to reflect the reduced rates of mortgage duty that apply from 1 July 2006.

Subclause (1) provides that the amendments are to the Second Schedule.

Subclause (2) amends item 13(2) of the Second Schedule which relates to mortgages other than home mortgages to:

- (a) delete the reference to "\$5 000" and replace it with a reference to "\$10 000"; and
- (b) delete the reference to "\$0.40" and replace it with a reference to "\$0.20".

Subclause (3) amends item 13(2a) of the Second Schedule which relates to home mortgages to:

- (a) delete the reference to "\$8 000" and replace it with a reference to "\$16 000"; and
- (b) delete the reference to "\$0.25" and replace it with a reference to "\$0.125".

Subclause (4) amends item 13(2b) of the Second Schedule which relates to home mortgages where only part of the secured amount is used for the mortgagee's dwellinghouse to:

- (a) delete the reference to “\$8 000” and replace it with a reference to “\$16 000”;
- (b) delete the reference to “\$0.25” and replace it with a reference to “\$0.125”; and
- (c) delete the reference to “\$0.40” and replace it with a reference to “\$0.20”.

Subclause (5) amends the “Duty payable” column of item 13 of the Second Schedule so that the duty payable under that item is rounded down to the nearest 5 cents. This means that, for example, in the case of a \$16,100 home mortgage, the duty payable would be \$20.125, which would be rounded down to \$20.10. This provision also applies to mortgages stamped under special tax return arrangements where duty is paid on mortgages by way of a return. In this case, the duty liability of each mortgage included in the return shall be rounded down to the nearest 5 cents, where appropriate.

Clause 15: Second Schedule amended (settlements and gifts)

This clause amends the Second Schedule of the Stamp Act to reflect the new liable party on settlements and gifts.

Subclause (1) provides that the amendments are to the Second Schedule.

Subclause (2) amends item 13(3)(b) to change the person liable to pay the duty on the transfer or assignment of a mortgage by way of gift from the donor to the donee.

Subclause (3) amends item 17(b) to change the person liable to pay the duty on a release or renunciation of property, or of any right or interest in any property, from the donor to the donee.

Subclause (4) amends item 19 to change the person liable to pay the duty on a deed of settlement or gift from the settlor or donor, to the person on whom the property is settled or the donee.

Clause 16: Schedule 4 inserted

This clause inserts a new Schedule 4 which contains transitional provisions. Division 1 sets out the transitional arrangements in relation to the amendments contained in this Act.

Clause (1) of the Schedule sets out the transitional arrangements in relation to the application of old Part IVB of the Stamp Act.

Subclause (1) provides that for the purposes of subclause (2), “old Part IVB” has the same meaning as it had in the *Business Tax Review (Assessment) Act (No. 2) 2003*. The Business Tax Review (Assessment) Act (No. 2) replaced the old rental business duty provisions with the hire of goods duty provisions. The term “old Part IVB” was defined in that Act as the Part that was in force immediately before the commencement of the hire of goods provisions on 1 July 2004.

Subclause (2) provides that despite section 94(7) of the Business Tax Review (Assessment) Act (No. 2), old Part IVB ceases to apply to a rental business conducted on or after 1 January 2007. Section 94(7) was a transitional provision which provided that despite the repeal of old Part IVB, it would continue to apply in relation to the conduct of a rental business prior to the commencement of the hire of goods provisions, and to the conduct of a rental business after commencement that related to rights granted prior to the commencement of the hire of goods provisions, to which the rental business duty provisions of old Part IVB would have applied.

The effect of clause (1) is that duty will no longer be payable in relation to the conduct of a rental business on or after 1 January 2007.

Clause (2) of the Schedule sets out the transitional arrangements in relation to applications under the new section 75AH. It allows for applications for stamp duty relief in respect of further interests purchased on or after 1 July 2004 but prior to section 75AH receiving Royal Assent, to be made for a period of 12 months from Royal Assent. This is necessary to ensure that persons who have acquired a further interest in a property during this period are still able to make an application to the Commissioner, despite the requirement in section 75AH(5) that an application be made within 12 months of the date of the acquisition. For example, a person who acquired an initial interest on 1 July 2004 and acquired a further interest in their property on 1 January 2005, would have 12 months from the date section 75AH receives Royal Assent to lodge an application for assessment under section 75AH.

Clause (3) sets out the transitional arrangements in relation to the reduction in the rates of mortgage duty. It provides that despite amendments made by section 14, the rates of mortgage duty that applied immediately before 1 July 2006 continue to apply to, and in relation to, mortgages that were first executed before 1 July 2006 or that first affect property in Western Australia before that

date, and advance or further advances made before 1 July 2006 secured under such mortgages. Therefore, such mortgages and advances will not be subject to the reduced rates of mortgage duty.

Clause (4) sets out the transitional arrangements in relation to the change in the liable party on gifts of property. It provides that despite the amendments made by sections 5(1) and 14, the provisions of the Stamp Act in force immediately prior to the date of Royal Assent continue to apply to instruments chargeable with duty under item 19 of the Second Schedule executed prior to that date.

The effect of clause (4) is that to obtain a reduction of stamp duty under section 75AG in relation to gifts of property executed prior to Royal Assent, the Commissioner must still be satisfied that the transferee paid the relevant stamp duty. Further, for gifts or settlements where the instrument is executed prior to Royal Assent, the liable party remains as the donor or settlor.

Part 3 – The *Land Tax Act 2002* amended

Clause 17: The Act amended

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

Clause 18: Section 5 amended

This clause amends section 5 to limit the application of the current land tax rate scale so that it does not extend beyond the 2005-06 assessment year.

This clause also inserts a new table in section 5 to specify the land tax rate scale for the 2006-07 assessment year and subsequent years.

The proposed table is set out below.

Table 5: Land tax rates for 2006/07 and subsequent financial years		
Unimproved value of the land		
Exceeding (\$)	Not exceeding (\$)	Rate of land tax
0	150 000	Nil
150 000	390 000	0.15 cent for each \$1 in excess of \$150 000

390 000	875 000	\$360.00 + 0.45 cent for each \$1 in excess of \$390 000
875 000	2,000 000	\$2 542.50 + 1.62 cents for each \$1 in excess of \$875 000
2 000 000	5 000 000	\$20 767.50 + 2.30 cents for each \$1 in excess of \$2 000 000
5 000 000		\$89 767.50 + 2.50 cents for each \$1 in excess of \$5 000 000

Part 4 - Land Tax Assessment Act 2002 amended

Division 1 - Preliminary

Clause 19: The Act amended

This clause provides that the amendments are to the *Land Tax Assessment Act 2002*.

Division 2 - Exemptions relating to private residences

Clause 20: Section 24 amended

Section 24 provides an exemption from land tax for an assessment year for private residential property that is to be constructed.

This clause repeals section 24(2) and inserts new subsection (2). This is necessary to ensure that the exemption is not allowed where income is derived from the property from the beginning of the assessment year until the individual occupies the residence as their primary residence. It is consistent with the proposed new section 24A which allows an exemption for two assessment years for construction of a private residence.

Subsection (2) provides that the property is not exempt from land tax in an assessment year in certain circumstances.

Paragraph (a) provides that the property is not exempt if any person derived any income from the property from the beginning of the assessment year to the time when the property was first occupied.

Paragraph (b) provides that the property is not exempt if any other private residential property owned by the individual is exempt for the assessment year as a result of its use by the individual as his or her primary residence.

Clause 21: Section 24A inserted

This clause inserts a new section 24A to deal with situations where the construction of a private residence spans more than one assessment year.

Subsection (1) sets out the requirements to be met for an exemption for two consecutive assessment years.

Paragraph (a) requires that the commencement date for the construction of the private residence is in the first assessment year or in any previous assessment year. A definition of “commencement date” is being inserted into the Glossary of the Act.

Paragraph (b) requires that the completion date for the construction is in the second assessment year. A definition of “completion date” is being inserted into the Glossary of the Act.

Paragraph (c) requires that the individual owned the land at midnight on 30 June immediately before the first assessment year. If the individual did not own the land at that date, they would not have a land tax liability in respect of that land for the first assessment year.

Paragraph (d) requires the individual to be the first occupant of the private residence once it is completed. This means that the exemption will not apply where the property is rented out or any other persons occupy the property before the individual owner or owners.

Paragraph (e) provides that the exemption will apply if the individual uses the private residence as their primary residence during the second assessment year.

Example:

Bill and Susan own a vacant block of land on 30 June 2006 on which they intend to build their first home. They do not own any other property and are living in rental accommodation.

On 1 August 2006, they enter into a building contract with a builder. On 1 May 2008, the home is completed and Bill and Sue occupy it as their primary residence.

In this case the land will be exempt from land tax for the 2007-08 assessment year, being the second assessment year when completion and occupancy occurred. The land will also be exempt for the 2006-07 assessment year, being the first assessment year. This is because the commencement date for the

construction of the home was in that assessment year.

Subsection (2) provides that the property will not be exempt in certain circumstances.

Paragraph (a) provides that the property is not exempt if any person derived any income from the property from the beginning of the first assessment year until the home is occupied by the individual as the first occupant of the home.

Paragraph (b) provides that where the same individual receives an exemption for other private residential property, this exemption will not apply.

However, where the property is owned by more than one individual, a partial exemption will apply in respect of those individuals that do meet the criteria.

Example:

Jeff was unable to afford to buy land and build a home on his own. His sister Kerry assisted Jeff by buying a half interest in the land and equally sharing the costs of constructing a home. When Jeff can afford it, Kerry intends to let Jeff purchase her share of the property.

The home was partially completed at midnight on 30 June 2006.

Kerry owns a number of other properties and resided at 30 June 2006 and 30 June 2007 with her husband Sam in one of them.

Jeff was living in rental accommodation on 30 June 2006 and continued to do so until completion of the premises on 4 January 2008. On 5 January, Jeff moved into the property and used it as his primary residence. He was the first occupant of the premises.

In this case, a 50% exemption would apply to the 2006-07 and the 2007-08 years of assessment because Jeff meets the requirements in respect of his half share. The remaining 50% is taxable, on the basis that Kerry does not live in the property and receives an exemption in respect of other private residential property.

Subsection (3) provides for the individual to apply for the exemption in the approved form after the commencement date of the construction. The commencement date is defined in the Glossary.

Subsection (4) requires the individual to notify the

Commissioner in the approved form of the date when the construction was completed and the date that the individual occupies the private residence.

Subsection (5) requires the Commissioner to make any reassessment necessary to give effect to this section.

The two-year land tax exemption is to apply to the assessment year in which the date of completion and occupation falls (the second assessment year) and the previous consecutive assessment year (the first assessment year) if the construction of the residence either commenced, or was ongoing, in the first assessment year. If the construction of the private residence is completed within one assessment year, section 24 will apply.

Upon receipt of the application, the Commissioner will exempt the land for the assessment year during which construction commenced and the following assessment year. If the land tax assessment has been issued and paid for the commencement year, the land tax will be refunded to the taxpayer.

If construction of the private residence is not completed and the home occupied by 30 June in the second assessment year, the Commissioner will “roll forward” the two-year exemption by exempting the following assessment year and reassessing the land tax for the first exempt year. This roll forward can continue until the private residence is constructed and the individual occupies the residence as their primary residence, at which time the completion date is known and the two-year exemption will apply as described above. The other conditions must continue to be met for this roll forward to apply.

The operation of the section is illustrated by the following example.

Example:

Jim and Tina own a vacant block of land at 30 June 2006 and have decided to build their home on it.

They enter into a building contract with a builder on 1 October 2006 and complete an application form for the land tax exemption to be applied. The Commissioner applies the exemption to the assessment years 2006-07 and 2007-08 in anticipation that the home will be completed on or before 30 June 2008 and Jim and Tina will have moved into the residence. If they have paid their land tax assessment for 2006-07, the Commissioner will refund the tax paid in respect of that land.

Unfortunately, due to a shortfall of certain building supplies, the builder does not commence building until April 2007 and their home is not completed at 30 June 2008. They inform the Commissioner that they will not be able to satisfy the criteria of completing the home and making it their primary residence on or before 30 June 2008.

On receiving this information, the Commissioner will reassess the 2006-07 year as the land tax exemption will not apply to that year and exempt the 2008-09 year in anticipation that Jim and Tina will have completed the construction of their home and made it their primary residence on or before 30 June 2009.

As the land tax exemption will only apply to two assessment years, the year the construction is completed and the previous consecutive year, for Jim and Tina the land tax exemption applies to the 2008-09 year (year of completion) and the 2007-08 year (previous consecutive year).

Clause 22: Section 25A inserted

This clause inserts a new section 25A to deal with situations where the renovation of a private residence takes in excess of one assessment year.

Subsection (1) sets out the requirements to be met for an exemption for 2 assessment years.

Paragraph (a) requires that the commencement date for the refurbishment of the private residence is in the first assessment year or in any previous assessment year.

Paragraph (b) requires that the completion date for the refurbishment is in the second assessment year.

Paragraph (c) requires that at midnight on 30 June immediately before the first assessment year, the private residence was unoccupied to enable the private residence to be refurbished.

Paragraph (d) requires the individual to be the first occupant of the private residence once it is refurbished. This means that the exemption will not apply where the property is rented out or any other person occupies the property before the individual owner or owners.

Paragraph (e) provides that the exemption will apply if the individual uses the private residence as their primary residence during the second assessment year.

Example:

Greg and Sarah own a home on 30 June 2006 which is vacant on that date as they have moved out in order to refurbish it. On 1 August 2006, they enter into a building contract with a builder. On 1 May 2008, the refurbishment is completed and Greg and Sarah reoccupy it as their primary residence.

In this case the land will be exempt from land tax for the 2007-08 assessment year, being the second assessment year when completion and reoccupancy occurred.

The land will also be exempt for the 2006-07 assessment year, being the first assessment year. This is because the commencement date for the refurbishment of the home was in that assessment year.

Subsection (2) provides that the property will not be exempt in certain circumstances.

Paragraph (a) provides that the property is not exempt if any person derived any income from the property from the beginning of the first assessment year until the home is reoccupied by the individual as the first occupant of the home since its refurbishment.

Paragraph (b) provides that where the same individual receives an exemption for other private residential property, this exemption will not apply.

However, as with new section 24A, where the property is owned by more than one individual, a partial exemption will apply in respect of those individuals that do meet the criteria.

Subsection (3) provides for the individual to apply for the exemption in the approved form after the commencement date for the refurbishment.

Subsection (4) requires the individual to notify the Commissioner in the approved form of the date when the refurbishment was completed and the date that the individual occupies the private residence.

Subsection (5) requires the Commissioner to make any reassessment necessary to give effect to this section.

This section will operate in a similar manner to section 24A such that the two year exemption will effectively roll-over where the

refurbishment spans more than two assessment years. This means that the land will be exempt for a maximum of two years.

Clause 23: Section 27 replaced by sections 27 and 27A

This clause repeals section 27 and replaces it with new sections 27 and 27A. Section 27 has been repealed and rewritten to operate as an exemption, rather than a rebate.

Section 27 provides an exemption from land tax where two residences are owned at midnight on 30 June in the financial year before the assessment year, because the owner acquired a new primary residence, but is still in the process of selling the former primary residence.

The exemption will apply where neither property has been used to derive rent or other income during the period that the individual owned both properties, both have been used as the owner's primary residence and the former residence was sold in the assessment year to which the assessment relates.

Subsection (1) specifies that private residential property (defined as "property A") is exempt for an assessment year if the criteria contained in paragraphs (a) to (f) are satisfied.

Paragraph (a) provides that the owner is to have owned property A and another private residential property (defined as "property B") at midnight on 30 June in the previous financial year.

Paragraph (b) identifies property B as exempt, as the individual resided in the property as the individual's primary residence at midnight on 30 June in the financial year prior to the assessment year.

Paragraph (c) provides that property A would have been exempt for the assessment year as a private residential property had the individual used it as the primary residence instead of property B.

Paragraph (d) provides that the owner must have acquired whichever property was acquired second during the financial year before the assessment year.

Paragraph (e) requires that the individual must have used property A as a primary residence either in the previous financial year before using property B for that purpose, or in the

assessment year after using property B for that purpose.

Paragraph (f) requires the owner to have sold the residence that was first acquired and have delivered possession of it to the new owner in that assessment year.

The following example sets out how this provision operates.

Example:

Tony and Elsa own two properties at midnight on 30 June 2006, one in Scarborough and one in Sorrento.

They have lived in their Scarborough property for 7 years. They are using this property (property B) as their primary residence at midnight on 30 June 2006.

They acquired their Sorrento property (property A) on 5 June 2006 (i.e. the settlement date), with the intention of moving into it as their primary residence. This property was left empty until 15 September 2006.

Their Scarborough property is on the market and sells on 18 September 2006 (i.e. the settlement date). They move into the Sorrento property on 15 September 2006.

Tony and Elsa meet the criteria in subsection (1) on this basis.

Subsection (2) provides that property A will not be exempt if during the period the owner owned both properties, rent or other income was derived by any person from the property that was not being used as the primary residence of the individual.

Subsection (3) requires the owner to notify the Commissioner in the approved form when he or she has disposed of the first acquired property and has delivered possession of it to the purchaser.

Subsection (4) provides the Commissioner with the power to make any reassessment necessary to give effect to this section.

Section 27A provides an exemption from land tax for two consecutive years where two residences are owned at midnight on 30 June in the financial year before the first assessment year, because the owner is constructing a new primary residence or is renovating a new private residence, but is still in the process of selling the former primary residence.

The exemption will apply where neither property has been used

to derive rent or other income, both have been used as the individual's primary residence and the former residence was sold in either of the assessment years.

Subsection (1) specifies that private residential property is exempt for two consecutive assessment years if the criteria contained in paragraphs (a) to (j) are satisfied.

Paragraph (a) provides that the owner is to have owned the exempt property and another private residential property at midnight on 30 June in the financial year before the first assessment year.

Paragraph (b) identifies that the property acquired first is exempt for the first assessment year, as the individual resided in the property as the individual's primary residence at midnight on 30 June in the financial year prior to the assessment year.

Paragraph (c) provides that property acquired second would have been exempt for the assessment year as a private residential property had the individual used it as the primary residence instead of the property acquired first.

Paragraph (d) provides that the owner (i.e. the individual) must have acquired the property acquired second during the previous financial year.

Paragraph (e) requires that the commencement date for the construction or refurbishment of the property acquired second is in:

- (i) the first assessment year; or
- (ii) is in a previous financial year and the construction or refurbishment is continuing in the first assessment year.

Paragraph (f) requires the date of completion of the construction or refurbishment of the private residence that was acquired second to be in the second assessment year.

Paragraph (g) refers to a private residence that is to be refurbished and requires the private residence to be unoccupied at midnight on 30 June immediately before the first assessment year but only because the individual has not taken up occupation to enable the private residence to be refurbished.

Paragraph (h) requires the individual to be the first occupant of the private residence that was acquired second following its construction or refurbishment.

Paragraph (i) requires the individual to use the second acquired private residence as his or his primary residence during the second assessment year.

Paragraph (j) requires the owner, by the end of the second assessment year, to have –

- (i) sold or otherwise disposed of the first acquired property; and
- (ii) delivered possession of that property to the new owner.

Subsection (2) provides that the second acquired property will not be exempt if any person has derived income from the property that was not used as the individual's primary residence.

Subsection (3) allows the owner to apply for the exemption in the approved form after the commencement date for the construction or refurbishment. The term "commencement date" is defined in the Glossary.

Subsection (4) requires the owner to notify the Commissioner in the approved form of:

- (a) the completion date of the construction or refurbishment;
- (b) the date the individual occupies the second acquired property; and
- (c) the date that the first acquired property is sold and possession is delivered to the purchaser.

Subsection (5) requires the Commissioner to make any reassessment necessary to give effect to this section.

The operation of this provision can be illustrated by the following example.

Example:

Gary and Maria own two properties at midnight 30 June 2006, one in Balcatta and one in Tuart Hill.

They have lived in their Balcatta property for 7 years as their primary residence.

They acquired their Tuart Hill property, vacant land, on 5 June 2006 (i.e. the settlement date), with the intention of constructing a new private residence and moving into it as their primary residence.

They sign a building contract on 31 August 2006 and apply for the exemption by completing the application form and providing

it to the Commissioner.

The Commissioner exempts the second property for the 2006-07 and 2007-08 assessment years, in anticipation that the second property will have been constructed and occupied by Gary and Maria and the first property will have been sold or otherwise disposed of by 30 June 2008.

Their Balcatta property, which they occupy as their primary residence, is on the market while they wait for the new residence to be constructed.

Due to the length of time taken for the construction of their new residence, it is not completed until after 30 June 2007, and they move into the Tuart Hill property on 15 September 2007. A land tax exemption continues to apply to both properties under this provision.

Gary and Maria sell their property in Balcatta on 21 November 2007 (i.e. the settlement date) and deliver possession to the new owners on that date.

As Gary and Maria have not received any rent for the property on which their private residence was being constructed, they meet the criteria for the 2-year exemption to apply on this basis.

Clause 24: Section 42 amended

Section 42 provides a land tax exemption for an assessment year where land is vacated or otherwise cannot be used for an exempt purpose because a mortgagee has required the owner to provide vacant possession in order for the mortgagee to sell the land under the conditions of the mortgage.

This clause amends section 42(3)(a) to insert a reference to an exemption provided by new sections 24A or 25A.

Clause 25: Section 47 inserted

This clause inserts a new section 47 which refers to the transitional arrangements contained in new Schedule 1. It is considered that the inclusion of transitional arrangements in a Schedule to the Act, rather than remaining in the amending Act, will assist in understanding and applying the Act.

Clause 26: Schedule 1 inserted

This clause inserts a new Schedule 1 which contains transitional provisions. Division 1 sets out the transitional arrangements in relation to the amendments contained in this Act.

Clause (1) provides that under sections 24A, 25A and 27A, a 2-year land tax exemption will apply from the 2005-06 assessment year if the completion date for the construction or refurbishment of the private residence is on or after 1 July 2006.

The effect of this provision is that an exemption from land tax will apply for the 2005-06 assessment year if that year is the “first assessment year” for the purposes of the relevant sections.

Clause 27: Glossary amended

Paragraph (a) amends the Glossary by inserting definitions of “**building contract**”, “**commencement date**”, “**completion date**” and “**owner builder**”. These definitions are self explanatory.

Paragraph (b) amends the Glossary in paragraph (d) of the definition of “**private residential property**” to include a reference to new sections 24A and 27A.

**Division 3 - Exemptions relating to disabled beneficiaries
and relatives**

Clause 28: Section 26 amended

This clause amends section 26 of the Act. Section 26 provides a land tax exemption for private residential property held in trust if there are one or more disabled beneficiaries of the trust who occupy the property as their primary residence.

Subclause (1) inserts subsection designation (1) before “Private” to allow for a new subsection (2) to be inserted.

Subclause (2) inserts a new subsection (2) at the end of section 26.

Subsection (2) requires a trustee to notify the Commissioner within 3 months after 30 June in the financial year before the assessment year, if -

- (a) land was exempt under this section in the previous financial year; and
- (b) on 30 June before the assessment year either:
 - (i) the trustee ceases to hold land in trust for one or more disabled beneficiaries; or
 - (ii) no disabled beneficiary uses the property as his or her primary residence.

The provisions require the trustee to notify the Commissioner by 30 September so that an exemption is not allowed incorrectly.

Failure to notify the Commissioner is an offence for which a maximum penalty of \$5,000 may be applied by a court in a successful prosecution.

Clause 29: Section 26A inserted

This clause inserts section 26A after section 26.

Subsection (1) provides a definition of “**disabled person**” for the purposes of this section.

Subsection (2) provides that residential property is exempt for an assessment year if the following conditions are met.

Paragraph (a) requires that at midnight on 30 June in the financial year before the assessment year –

- (i) a disabled person uses the property as their primary residence; and
- (ii) it is owned by one or more individuals, at least one of whom is related to the disabled person.

Paragraph (b) requires that no rent or other income is derived from the property by anyone in the assessment year.

The requirement that all owners should be individuals has been included to be consistent with other provisions of the Act, as no primary residence exemption is available to companies and trusts (other than in the case of land held in trust for a disabled beneficiary).

Subsection (3) provides a definition of persons related to a disabled person for the purposes of subsection (2)(a)(ii).

Paragraph (a) provides that the persons related to a disabled person are a parent, grandparent, brother or sister of the person.

Paragraph (b) specifies the status of illegitimate children for the purposes of paragraph (a).

Paragraph (c) includes relationship provisions which will cover the situation of any adopted person.

Subsection (4) provides for the exemption to be allowed in advance, if the owner advises the Commissioner that no rent or other income is expected to be derived from the property during any assessment year.

This will allow the exemption to continue each year until the

Commissioner is notified in accordance with subsection (5). This provision will prevent a person from having to make a separate declaration each year.

Subsection (5) requires the owner to notify the Commissioner if rent or other income is derived from the property in an assessment year. The owner must notify the Commissioner within 3 months of the end of the assessment year and provide any particulars necessary for the Commissioner to make a reassessment.

Failure to notify the Commissioner as required is an offence for which a maximum penalty of \$5,000 may be imposed by a court in a successful prosecution.

Subsection (6) requires the Commissioner to make a reassessment if he becomes aware, or if he is notified, that rent or income has been derived from the property in an assessment year.

Subsection (7) requires the owner to notify the Commissioner within 3 months after 30 June in the financial year before the assessment year, if –

- (a) land was exempt under this section in the previous financial year; and
- (b) on 30 June before the assessment year, there was not at least one disabled person related to an owner using the property as his or her primary residence.

The owner is to notify the Commissioner within 3 months after 30 June in the financial year before the assessment year, that is by 30 September, so that an exemption is not allowed incorrectly.

Failure to notify the Commissioner as required is an offence for which a maximum penalty of \$5,000 may be imposed by a court in a successful prosecution.

Division 4 – Minor interests

Clause 30: Sections 45A and 45B inserted

After section 45, new sections 45A and 45B are inserted to enable the Commissioner to counter certain avoidance practices which have arisen involving the use of minor interests in property to defeat the aggregation provisions of the Act.

Section 45A sets out the provisions that allow a minor interest to be disregarded.

Subsection (1) allows the Commissioner to determine that an interest in a lot or parcel of land of a joint owner is to be disregarded for the purposes of the Act.

Subsection (1) is to apply regardless of when the interest was created, however, a Commissioner's determination will apply from the commencement date of these provisions. This means that these provisions will only apply to allow tax to be reassessed from the 2006-07 year of assessment onwards, despite the fact that the interest may have been created prior to that year of assessment.

Subsection (2) sets out the conditions under which the Commissioner can make a determination under subsection (1).

Paragraph (a) provides that the interest must be a minor interest in the lot or parcel of land.

A minor interest is not defined for the purposes of these provisions. Generally, a minor interest is a part or share of property that is less than 50%. However, the mere presence of a minor interest will not in itself be the trigger for the Commissioner to determine to disregard that interest. Other factors are to be considered in addition to the minor interest. Rather, the concept of a minor interest is used in this section to clarify that no interest of 50% or greater will be the subject of a determination by the Commissioner.

Paragraph (b) provides for the minor interest to be disregarded if the Commissioner's opinion is that the purpose, or one of the purposes, for the creation of the minor interest was to reduce the amount of land tax payable on the lot or parcel of land or any other lot or parcel of land.

Certain commercial transactions such as joint ventures, time-share arrangements and deceased estates could potentially include at least one minor interest. The joint ownership under these arrangements is usually consistent across all landholdings and as a result, do not reduce the amount of land tax payable. Accordingly, it is unlikely that this provision would be applied to those types of interest, unless the ownership of such arrangements have been separated into different ownership to avoid tax.

Subsection (3) provides a list of the factors that the Commissioner may have regard to when forming his opinion for the purposes of subsection (2)(b).

Paragraph (a) provides that the Commissioner may have regard to the nature of any relationship between the owners of the lot or parcel of land. The Commissioner will consider the nature of any connection between the owners, whether of a business, family or other nature and whether direct or indirect, for example, through companies or trusts.

Paragraph (b) provides that the Commissioner may have regard to the form and substance of any transaction giving rise to the minor interest, including any legal or economic obligations of the parties to the transaction, and the economic and commercial substance of the transaction. The Commissioner will consider the terms of the transaction which creates the minor interest in the lot or parcel of land, and also any legal or economic obligations the owners acquire under the transaction, including whether the transaction is for economic and/or commercial reasons.

Paragraph (c) provides that the Commissioner may have regard to the amount or value and source of the consideration for the minor interest, including where there was no consideration because the transfer of the minor interest was a gift.

Paragraph (d) provides that the Commissioner may have regard to whether any professional advice was received in relation to the transaction that created the minor interest. The Commissioner will consider whether advice was received by the original owner of the lot or parcel of land from an accountant, legal adviser or financial adviser and where possible, the nature of the advice provided by the professional adviser.

Paragraph (e) provides that the Commissioner may have regard to the way in which the transaction giving rise to the interest was entered into and carried out.

Paragraph (f) allows the Commissioner to have regard to any other relevant matters.

Subsection (4) requires the Commissioner to give a notice to the owner of the lot or parcel of land when making a determination under subsection (1) in respect of the lot or parcel of land. The Commissioner is required to set out the reasons for the determination.

Subsection (5) provides that where the Commissioner has made a determination under subsection (1) after having regard to the factors included in subsection (3), and the minor interest is 5% or less of a lot or parcel of land, in any review proceedings of the Commissioner's determination, the taxpayer has the onus of

establishing that the purpose, or one of the purposes, of the creation of the interest was not to reduce the amount of tax payable for that, or any other, lot or parcel of land.

The term “review proceedings” is defined in the Glossary to the *Taxation Administration Act 2003* (TAA) to mean –

- (a) proceedings on an application under section 40 of the TAA;
- (b) proceedings on appeal under Part 5 of the *State Administrative Tribunal Act 2004* from a decision on an application under section 40; or
- (c) proceedings on appeal from a decision on an appeal referred to in paragraph (b).

The onus of proof is placed on the taxpayer in any review proceedings as there appear to be few commercial reasons to arrange property holdings with such minor interests. However, it is important to note that the taxpayer will be given ample opportunity prior to assessment and at the objection stage, to provide all facts and circumstances that support the underlying reasons that may exist for the minor interest, regardless of whether the minor interest is above or below 5%.

Section 45B sets out the effect of making a determination under section 45A.

Section 45B provides that if the Commissioner makes a determination under section 45A that a minor interest in a lot or parcel of land is to be disregarded, the owner of the minor interest is taken not to be the owner of the lot or parcel of land for the purposes of the Act. Furthermore, the land tax payable is to be assessed and payable by the other owner or owners of the lot or parcel of land, who are not the owners of the minor interest.

Accordingly, the owner of the minor interest is deemed not to be an owner and the definition of “owner” included in the Glossary, does not apply to the owner of the minor interest. As the owner of the minor interest is not an owner of the lot or parcel of land for the purposes of the Act, the owner of the minor interest is no longer jointly or severally liable for payment of land tax assessed in respect of the lot or parcel of land. The remaining joint owners will be considered to be the sole owners and the joint ownership provisions in section 12 of the Act, which provide that the assessment of land is to be aggregated on land owned by the same persons, will be applied according to the ownership of the major interest. The effect of the determination that the owner of the minor interest is not an owner for the purposes of the Act is illustrated in the following example.

Example:

A Pty Ltd and B Pty Ltd, as joint owners, own five commercial properties in the centre of Perth, each valued at \$750,000. The aggregated value of the property holding is \$3,750,000 with land tax payable under 2004-05 rates of \$67,323.

To reduce the land tax liability on the assessment of these lots and parcels of land for the 2005-06 assessment year, A Pty Ltd and B Pty Ltd have transferred a 1/1000th share in each of the properties on 30 August 2004 to different related entities, including individuals, trusts and other companies which have the same shareholders of A Pty Ltd and B Pty Ltd. In the past, this resulted in five separate assessment notices being issued, with land tax payable on each of \$2,310. The total land tax bill was \$11,550 in 2005-06.

The stamp duty paid on the transactions was \$225. However, by the creation and transfer of a minor interest in each property, the ownership of each lot or parcel of land has been amended and the various lots and parcels of land are assessed on 1 July 2005 according to different ownership. This resulted in a reduction in the 2005-06 land tax of \$51,260.

A Pty Ltd and B Pty Ltd had no apparent commercial reason for creating and transferring a minor interest in each lot or parcel of land to different related entities.

As a result of the passage of this legislation, the Commissioner determined that he is of the opinion that each minor interest created and transferred in each lot or parcel of land should be disregarded for the purposes of assessing the 2006-07 land tax. The owner of each minor interest is taken not to be an owner and the owner of the properties is A Pty Ltd and B Pty Ltd. Land tax payable will be assessed as if all the land was owned by A Pty Ltd and B Pty Ltd. Based on 2006-07 rates, with values remaining static, this would be \$61,017.50.

The effect of the Commissioner's determination that the owner of the minor interest in the landholding of each property is not an owner will result in that person not being liable for the payment of land tax assessed on the lot or parcel of land. Accordingly, only A Pty Ltd and B Pty Ltd will be jointly and severally liable for the land tax payable on the land.

**Part 5 -Rates and Charges (Rebates and Deferments) Act 1992
amended**

Clause 31: The Act amended

This clause provides that the amendments contained in this Part are to the *Rates and Charges (Rebates and Deferments) Act 1992*.

Clause 32: Section 23 amended

Section 23 provides a list of persons who are eligible to apply to the administrative authority to have their entitlement regarding any land registered.

After section 23(4), new subsections (5), (6) and (7) are inserted.

Subsection (5) provides that a person is eligible to apply to the administrative authority to have their entitlement regarding their land registered in the following circumstances.

Paragraph (a) specifies that the person must be related to a disabled person who occupies the land as his or her ordinary place of residence.

Paragraph (b) requires that no owner occupies the land and no income is derived from the land by anyone.

For the purposes of section 30, which deems that the land is the eligible person's ordinary place of residence when the eligible person is not for the time being resident on the land, the owner is deemed to occupy the land. However, for the purposes of this provision, no owner is to occupy the land.

This is to ensure that the rates concession is not available where the disabled person is residing with the family in the family home, where the owner of the home is not an eligible pensioner or senior. This would be beyond the purpose of these amendments which are to assist family members who are providing independent accommodation for their disabled family member.

Subsection (6) provides a definition of persons related to a disabled person for the purposes of subsection (5)(a).

Paragraph (a) provides that the persons related to a disabled person are a parent, grandparent, brother or sister of the person.

Paragraph (b) specifies the status of illegitimate children for the purposes of paragraph (a).

Paragraph (c) includes relationship provisions which will cover

the situation of any adopted person.

Subsection (7) inserts a definition of “**disabled person**” for the new provisions. The person is required to satisfy the provisions of both paragraphs.

Paragraph (a) requires the person to receive a disability support pension under the *Social Security Act 1991* of the Commonwealth.

Paragraph (b) requires the person to have a disability as defined in section 3 of the *Disability Services Act 1993* and to have been independently assessed as requiring full time care by an appropriate assessor.

Paragraph (b) is similar to the requirement that already exists in the Land Tax Assessment Act.

Clause 33: Section 27 amended

This clause amends section 27(3) of the Act. Section 27(3) provides for an apportionment of the rebate when an owner is not the sole owner of the land

Subclause (1) amends section 27(3) so that it makes reference to the new subsection (5a).

Subclause (2) inserts subsection (5a) after section 27(5).

Subsection (5a) provides guidance to the administrative authority in circumstances where land is taken to be wholly occupied by a person under proposed section 30(2) and that person is not the sole owner.

Paragraph (a) provides that any entitlement and any rebate are to be determined as if the person was the sole owner of the land.

Paragraph (b) provides for the basis of any apportionment to be set out in the procedural manual.

This subsection provides for any entitlement or rebate to be allowed in full to an owner who is related to a disabled person who occupies the land as their ordinary place of residence, once the person has registered their entitlement. It is not necessary for any other owner to be related to the disabled person or for any other owner to register an entitlement in regard to the land.

Clause 34: Section 30 amended

Section 30(1) of the Rates and Charges (Rebates and Deferments) Act deems the eligible person to occupy the land as their ordinary place of residence when he or she is not resident for the time being, due to circumstances beyond their control.

Section 30 is amended by inserting a new subsection (2).

Subsection (2) deems the land to be the ordinary place of residence of an eligible person, even though the person does not reside there in certain circumstances. The deeming provision is necessary for the purposes of section 27(2) of the Act, which provides that a person is entitled, as regards the land, to register for that entitlement when they occupy the land.

Paragraph (a) requires the person to be eligible under the new section 23(5) to have their entitlement for a rates rebate to be registered against the land.

Paragraph (b) requires the person to have their entitlement registered against the land on the basis of eligibility under the new section 23(5).

Paragraph (c) requires that the person does not have any other entitlement as regards the same land registered.

Clause 35: Section 32 amended

Section 32 of the Rates and Charges (Rebates and Deferments) Act provides the procedures necessary for an eligible person to register their entitlement as regards the land on which any prescribed charge is payable. Section 32 is amended by inserting new subsection (4a).

Subsection (4a) provides that subsection (4) does not apply when a person is eligible to register on the basis of eligibility under section 23(5).

Subsection (4) prohibits a person who has eligibility to register for more than one place of residence, from registering eligibility for all those places of residence.

Therefore, new subsection (4a) provides that if a person can register for a place of residence that they occupy, they may also register with regard to land they provide to a disabled relative to occupy as their ordinary place of residence. This ensures that the parent, grandparent or sibling does not lose their own entitlement (where applicable) if they are providing accommodation for a disabled relative.

Clause 36: Section 35 amended

Section 35(2) provides that where an eligible person would be authorised to have registered an entitlement as regards land in more than one place, and each is considered the ordinary place of residence of the person, the entitlement can only apply to one of the places. Section 35 is amended by inserting a new subsection (2a).

Subsection (2a) provides that in the instance where a person is eligible to register for entitlement as regards land which is their ordinary place of residence, if the person is also eligible under section 23(5), subsection (2) does not apply to prevent the person from registering their entitlement as regards land they provide to a disabled relative. This ensures that the parent, grandparent or sibling does not lose their own entitlement (where applicable) if they are providing accommodation for a disabled relative.

Clause 37: Section 43 amended

Section 43 provides for a deferment of the charges in certain circumstances.

Subclause (1) amends section 43(1) by inserting a reference to new subsection (1b).

Subclause (2) inserts new subsection (1b).

Subsection (1b) provides that no deferment is allowable if the person liable to pay the charge is eligible to register their entitlement under the new section 23(5).

Clause 38: Section 53 inserted

This clause inserts a new section 53 which refers to the transitional arrangements contained in Schedule 1. It is considered that the inclusion of transitional arrangements in a Schedule to the Act, rather than remaining in the amending Act, will assist in understanding and applying the Act.

Clause 39: Schedule 1 inserted

Clause 1 provides a grace period for persons who are eligible to register their entitlement under section 23(5) at 1 July 2006 to register their entitlement and receive the benefit of the rebate for the entire charged period. In practical terms, eligible persons will have until 30 September 2006 to register their entitlement to a

rebate of prescribed charges for the 2006-07 rating year.

This provision is required as section 40 of the Act operates to apportion the rebate from the date that the eligible person registers his or her entitlement.

This transitional provision specifies that if an eligible person under section 23(5) of the *Rates and Charges (Rebates and Deferments) Act 1992* registers an entitlement in respect of land under section 32 of that Act after 30 June 2006 and before 1 October 2006, section 40 of that Act applies to that person as if the entitlement had been registered at the commencement of the charged period. Essentially, this provides a full year rebate in the first year of operation, which allows sufficient time for those entitled to register following commencement of these amendments.