

## Revenue Laws Amendment Bill 2008

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Western Australia

LEGISLATIVE ASSEMBLY

**Revenue Laws Amendment Bill 2008**

**A Bill for**

**An Act to amend the following Acts —**

- *Duties Act 2008;*
- *Duties Legislation Amendment Act 2008;*
- *Revenue Laws Amendment (Taxation) Act 2007;*
- *Stamp Act 1921;*
- *Land Tax Act 2002;*
- *Land Tax Assessment Act 2002;*
- *Metropolitan Region Improvement Tax Act 1959;*
- *Rates and Charges (Rebates and Deferments) Act 1992.*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Revenue Laws Amendment Act 2008*.

### **2. Commencement**

- 5 (1) This Act comes into operation, or is deemed to have come into operation, as follows:
- (a) Part 1 — on the day on which this Act receives the Royal Assent (“**assent day**”);
  - 10 (b) Part 2 — subject to and in accordance with subsections (2) and (3);
  - (c) Parts 3, 4, 5, 6 and 7 —
    - (i) come into operation on 1 July 2008 if assent day is not later than that day; or
    - 15 (ii) are deemed to have come into operation on 1 July 2008 if assent day is later than that day;
  - (d) Part 8 is deemed to have come into operation on 6 February 2008.
- (2) If assent day is not later than 1 July 2008, then on assent day —
- 20 (a) Part 2 Divisions 1 and 3 come into operation; and
  - (b) Part 2 Division 2 is repealed.
- (3) If assent day is after 1 July 2008, then on assent day —
- (a) Part 2 Division 1 is repealed; and
  - (b) Part 2 Divisions 2 and 3 come into operation.

## **Part 2 — Amendments relating to vehicle licence duty**

### **Division 1 — Amendments if assent day not later than 1 July 2008**

#### **3. *Duties Legislation Amendment Act 2008* amended**

- 5 (1) The amendments in this section are to the *Duties Legislation  
Amendment Act 2008*.
- (2) Section 2(b) is amended by deleting “1 January 2009;” and  
inserting instead —  
“ 1 July 2008; ”.
- 10 (3) The heading to Part 2 Division 2 Subdivision 2 is amended by  
deleting “1 January 2009” and inserting instead —  
“ **1 July 2008** ”.

#### **4. *Duties Act 2008* amended**

- (1) The amendment in this section is to the *Duties Act 2008*.
- 15 (2) Schedule 3 Division 2 is repealed.

### **Division 2 — Amendments if assent day after 1 July 2008**

#### **5. *Duties Legislation Amendment Act 2008* amended**

- (1) The amendments in this section are to the *Duties Legislation  
Amendment Act 2008*.
- 20 (2) Section 2(b) is amended by deleting “1 January 2009;” and  
inserting instead —  
“  
25 the day on which the *Revenue Laws  
Amendment (Taxation) Act 2008* receives the  
Royal Assent;  
”.

**Revenue Laws Amendment Bill 2008**

**Part 2** Amendments relating to vehicle licence duty

**Division 3** Amendment to other Acts

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- (3) The heading to Part 2 Division 2 Subdivision 2 is amended by deleting “commencing on 1 January 2009” and inserting instead —

“ **to vehicle licence duty** ”.

5 **6. Duties Act 2008 amended**

- (1) The amendments in this section are to the *Duties Act 2008*.

- (2) Schedule 3 Division 2 clause 29 is amended as follows:

- (a) in subclause (1) by deleting “1 January 2009.” and inserting instead —

10 “ 1 July 2008. ”;

- (b) by deleting subclause (2) and inserting instead —

“

- (2) Subject to section 17 of the *Taxation Administration Act 2003*, the Commissioner must make any reassessment necessary to give effect to this clause.

15

”.

**Division 3 — Amendment to other Acts**

**7. Revenue Laws Amendment (Taxation) Act 2007 amended**

- 20 (1) The amendments in this section are to the *Revenue Laws Amendment (Taxation) Act 2007*.

- (2) Section 2 is amended as follows:

- (a) at the end of paragraph (d) by deleting the semicolon and inserting instead a full stop;

- (b) by deleting paragraph (e).

- 25 (3) Section 13(2) is repealed.

**8. Stamp Act 1921 amended**

- (1) The amendment in this section is to the *Stamp Act 1921*.

- (2) Schedule 4 Division 2 clause 3 is repealed.



**Part 3 — Land Tax Act 2002 amended**

**9. The Act amended**

The amendments in this Part are to the *Land Tax Act 2002*.

**10. Section 5 amended**

5 Section 5 is amended as follows:

- (a) in the heading to Table 6 by deleting “and subsequent financial years”;
- (b) by inserting after Table 6 the following Table —

“

10

**Table 7: Land tax rates for 2008/09 and subsequent financial years**

| Unimproved value<br>of the land |                       | Rate of land tax   |
|---------------------------------|-----------------------|--|
| Exceeding<br>(\$)               | Not exceeding<br>(\$) |  |
| 0                               | 300 000               | Nil  |
| 300 000                         | 1 000 000             | 0.10 cent for each \$1 in excess<br>of \$300 000                 |
| 1 000 000                       | 2 200 000             | \$700 + 0.50 cent for each<br>\$1 in excess of \$1 000 000       |
| 2 200 000                       | 5 500 000             | \$6 700 + 1.30 cents for each<br>in excess of \$2 200 000        |
| 5 500 000                       | 11 000 000            | \$49 600 + 1.55 cents for each<br>\$1 in excess of \$5 500 000   |
| 11 000 000                      |                       | \$134 850 + 2.30 cents for each<br>\$1 in excess of \$11 000 000 |

”.

## Part 4 — *Land Tax Assessment Act 2002* amended

### 11. The Act amended

The amendments in this Part are to the *Land Tax Assessment Act 2002*.

### 5 12. Section 22 amended

Section 22 is amended as follows:

- (a) in paragraph (a) after “executor” by inserting —  
“ or administrator ”;
- (b) by deleting paragraph (b)(ii) and inserting instead —

10

“

- (ii) has a right under the will to use the property as a place of residence —

- (I) for as long as he or she wishes;  
or

15

- (II) for a fixed or ascertainable period,

whether or not the individual is or may become entitled under the will to ownership of all or part of the property at some future time;

20

”;

- (c) after paragraph (a) by inserting —  
“ and ”.

25

Note: The heading to section 22 will be altered after “administrator” by inserting “ — **beneficiary with right to reside**”.

**13. Section 23A inserted**

After section 22 the following section is inserted —

“

5           **23A. Private residential property owned by executor or administrator — beneficiary with right to future ownership**

- 10           (1) Private residential property is exempt for an assessment year if at midnight on 30 June in the previous financial year —
- 15                 (a) the property is owned by the executor or administrator of an individual’s estate; and
- (b) an individual identified in the will (the “**beneficiary**”) is entitled under the will to ownership of all or part of the property at a fixed or ascertainable future time; and
- 20                 (c) the beneficiary uses the property as his or her primary residence.
- (2) However, if the beneficiary’s future entitlement is to ownership of part only of the property, then the exemption applies to the proportion of the property to which the beneficiary will become entitled.
- (3) If —
- 25                 (a) land is exempt under this section for a financial year; and
- (b) at midnight on 30 June in that financial year the beneficiary is not using the property as his or her primary residence,

30           the executor or administrator must notify the Commissioner to that effect within 3 months after that 30 June.

Penalty: \$5 000.

”.

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14. Section 26A amended

- (1) Section 26A(1) and (2) are repealed and the following subsections are inserted instead —

“

5

- (1) In this section —

“**disabled person**” means a person who —

10

- (a) is qualified for a disability support pension under the *Social Security Act 1991* (Commonwealth) Part 2.3 (whether or not the person receives that pension); or

15

- (b) is under 16 years of age and is cared for by a parent or guardian, within the meaning given in the *Social Security Act 1991* (Commonwealth), who is qualified for a carer payment under Part 2.5 of that Act in respect of that care (whether or not the person receives that payment).

20

- (2) Private residential property is exempt for an assessment year if at midnight on 30 June in the financial year before the assessment year —

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

- (b) it is owned by one or more individuals, at least one of whom is related to the disabled person.

25

”.

- (2) Section 26A(3) is amended by deleting “subsection (2)(a)(ii) —” and inserting instead —

“ subsection (2)(b) — ”.

- (3) Section 26A(4), (5) and (6) are repealed.

**15. Section 36 amended**

Section 36(a) is amended by deleting “other” and inserting instead —

“ similar ”.

**5 16. Section 39A amended**

(1) Section 39A(3) is amended by inserting after “subsection (4)” —

“ or (5A) ”.

(2) Section 39A(4) is repealed and the following subsections are inserted instead —

“

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

15 (5A) A person who owned land in an assessment year (“**year A**”) may apply to the Commissioner in the approved form for a determination that the land was dwelling park land as at midnight on 30 June in the financial year preceding year A.

20 (5B) An application under subsection (5A) cannot be made —

(a) more than 5 years after the original assessment for year A was made; or

(b) if year A commenced before 1 July 2005.

25

”.

(3) Section 39A(5) is amended by inserting after “subsection (4)” —

“ or (5A) ”.

(4) Section 39A(6) is repealed.

**s. 17**

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(5) Section 39A(7) is amended by deleting “subsection (4)(b)” and inserting instead —

“ subsection (4) ”.

(6) After section 39A(7) the following subsection is inserted —

5

“

(8A) If a determination as to land is made as applied for under subsection (5A), section 39B applies to that land in respect of year A.

”.

10

(7) Section 39A(8) is amended by deleting “subsections (6) and (7)” and inserting instead —

“ subsections (7) and (8A) ”.

(8) Section 39A(9) is amended by inserting after “is made” —

“ as applied for under subsection (4) ”.

15

(9) Section 39A(10) is amended by deleting “subsection (6), (7),” and inserting instead —

“ subsection (7), (8A), ”.

**17. Section 39B amended**

20

Section 39B(2) is amended by deleting “referred to in section 39A(6)(a).” and inserting instead —

“

in respect of which an assessment has already been made.

”.

**18. Glossary amended**

(1) The amendments in this section are to the Glossary.

(2) Clause 1 is amended as follows:

5 (a) in the definition of “disabled beneficiary” by deleting paragraphs (a) and (b) and “or” after paragraph (b) and inserting instead —

“

10 (a) is qualified for a disability support pension under the *Social Security Act 1991* (Commonwealth) Part 2.3 (whether or not the person receives that pension); or

15 (b) is under 16 years of age and is cared for by a parent or guardian, within the meaning given in the *Social Security Act 1991* (Commonwealth), who is qualified for a carer payment under Part 2.5 of that Act in respect of that care (whether or not the person receives that payment); or

”;

20 (b) in the definition of “registered” by deleting “Western Australian Land Information Authority established by the *Land Information Authority Act 2006* section 5” and inserting instead —

“ Land Information Authority ”;

25 (c) by inserting in the appropriate alphabetical position —

“

30 **“Land Information Authority”** means the Western Australian Land Information Authority established by the *Land Information Authority Act 2006* section 5;

”.

**s. 18**

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(3) Clause 2(1) and (2) are repealed and the following subclause is inserted instead —

“

(1) In this Act unless the contrary intention appears —

5

“lot” means a defined portion of land —

(a) which is the whole of the land the subject of —

(i) a Crown grant issued under the *Land Act 1933*; or

10

(ii) a certificate of title registered under the *Transfer of Land Act 1893*; or

(iii) a certificate of Crown land title or qualified certificate of Crown land title, created and registered under the *Transfer of Land Act 1893*; or

15

(iv) a survey into a location or lot under the *Land Administration Act 1997* section 27(2); or

20

(v) a part-lot shown on a diagram or plan of survey of a subdivision deposited with the Land Information Authority; or

(vi) a conveyance registered under the *Registration of Deeds Act 1856*; or

25

(vii) a lot depicted on a strata plan or survey strata plan where the land the subject of the plan has been subdivided within the meaning given in clause 3(1)(d) or (e); or

(viii) an entitlement to occupy a non-strata home unit;

or

30

(b) depicted on a plan or diagram available from, or deposited with, the Land Information Authority and for which a separate Crown grant or certificate of title has been or can be issued; or



- (c) depicted on a diagram or plan of survey of a subdivision approved by the Western Australian Planning Commission.

”.

5 (4) Clause 2(4) is amended as follows:

- (a) after “constructed” by inserting —

- “ (the “**home lot**”) ”;

- (b) after “each other lot” by inserting —

- “ (the “**other lots**”) ”.

10 (5) After clause 2(4) the following subclauses are inserted —

“

- (5) In determining whether to be satisfied as mentioned in subclause (4) the Commissioner may have regard to the following —

- 15 (a) the nature, extent and degree of permanence of any structures or other improvements on the other lots;

- (b) the degree of physical separation of, and the means of access between, the home lot and the other lots;

- 20 (c) whether the appearance and physical characteristics of the home lot and the other lots, taken together, are those of one integrated area;

- (d) the extent to which the home lot and other lots are collectively or separately provided for in terms of matters such as —

- 25 (i) fencing;

- (ii) means of access and egress;

- (iii) provision of water, power and other utilities;

- 30 (e) the purposes for which the other lots are used and whether that use is —

- (i) of a residential nature; and

- (ii) of an ongoing, not temporary or transient, nature;

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- (f) whether the use of the home lot and the use of the other lots, taken together, constitutes the use of all of the lots as one integrated place of residence;
  - (g) how often the other lots are used and by whom;
  - 5 (h) the extent to which the activities undertaken on the other lots could be undertaken at the home lot in the absence of the other lots;
  - (i) the relative size of the lots;
  - 10 (j) any other matters the Commissioner considers relevant.
- (6) For the purposes of subclauses (3), (4) and (5) the intention of the owner of the land, the individuals residing there or any other person, in relation to all or any of the lots is irrelevant.
- 15
- (6) Clause 3(1) is amended as follows:
- (a) by deleting paragraph (d) and “or” after it and inserting instead —
    - “
    - 20 (d) in the case of land that is the subject of a strata plan —
      - (i) if the plan is required to be accompanied by a certificate under the *Strata Titles Act 1985* section 25 — the plan is approved by the Commission; or
      - 25 (ii) if not — a certificate required under the *Strata Titles Act 1985* section 5B(2) is given by a local government;
    - or
    - 30
  - (b) after each of paragraphs (a), (b) and (c) by inserting —
    - “ or ”.

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

**19. The Act amended**

5 The amendments in this Part are to the *Metropolitan Region Improvement Tax Act 1959*.

**20. Section 10 amended**

Section 10 is amended as follows:

- (a) in the heading to Table 1 by deleting “and subsequent years of assessment”;
- 10 (b) by inserting after Table 1 the following Table —

“

**Table 2: Metropolitan Region Improvement Tax rates for 2008/09 and subsequent years of assessment**

| Unimproved value<br>of the land |                       | Rate of Metropolitan Region<br>Improvement Tax   |
|---------------------------------|-----------------------|--|
| Exceeding<br>(\$)               | Not exceeding<br>(\$) |  |
| 0                               | 300 000               | Nil  |
| 300 000                         |                       | 0.15 cent for each \$1 in excess<br>of \$300 000 |

”.

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

**21. The Act amended**

5 The amendments in this Part are to the *Rates and Charges (Rebates and Deferments) Act 1992*.

**22. Section 23 amended**

(1) Section 23(5)(b) is amended by deleting “and no rent or income is derived from the land by anyone”.

10 (2) Section 23(7) is repealed and the following subsection is inserted instead —

“

(7) In this section —

“**disabled person**” means a person who —

15 (a) receives a disability support pension under the *Social Security Act 1991* (Commonwealth) Part 2.3; or

20 (b) is under 16 years of age and is cared for by a parent or guardian, within the meaning given in the *Social Security Act 1991* (Commonwealth), who receives a carer payment under Part 2.5 of that Act in respect of that care.

”.

## **Part 7 — Duties Act 2008 amended**

**23. The Act amended**

The amendments in this Part are to the *Duties Act 2008*.

**24. Section 28 amended**

5 Section 28(5)(b) is amended by deleting “section 30(1)(a),” and inserting instead —

“ section 30(1), ”.

**25. Section 118 amended**

Section 118(1) is amended by inserting before “includes” —

10 “

means a trustee of a trust, other than a unit trust scheme or a discretionary trust, and

”.

**26. Chapter 2 Part 6 Division 4A inserted**

15 Before Chapter 2 Part 6 Division 4 the following Division is inserted —

“

### **Division 4A — Residential concession**

**147A. Terms used in this Division**

20 (1) In this Division —

“**construction**” includes the continuation of construction of a partially constructed building;

“**eligible transaction**” has the meaning given in section 147B;

25 “**residence**” means a building, or part of a building, that —

(a) may lawfully be used; and

s. 26

---

(b) in the Commissioner’s opinion, is suitable to be used; and

(c) is intended by the taxpayer to be used, as a place of residence for one or more individuals;

5 “residential property” has the meaning given in section 147D;

“taxpayer”, in relation to a transaction, means the person liable to pay duty.

10 (2) For the purposes of this Division the construction of a residence begins on —

(a) the date when laying the foundations for the residence begins; or

(b) another date the Commissioner considers appropriate in the circumstances of the case.

15 **147B. Eligible transactions**

Each of the following is an “eligible transaction” —

(a) a dutiable transaction referred to in section 11(1)(a);

20 (b) a dutiable transaction referred to in section 11(1)(b) other than a transaction referred to in section 67;

(c) a dutiable transaction referred to in section 11(1)(d)(ii);

25 (d) a dutiable transaction of a kind prescribed for the purposes of this section.

**147C. Concessional transactions**

(1) An eligible transaction is a “concessional transaction” for the purposes of this Division if the dutiable property is land that is residential property.

- 5 (2) Despite section 37(3)(a), transactions may be aggregated under section 37 even though at least one of them is a concessional transaction under subsection (1), and the transactions so aggregated are to be treated as a single dutiable transaction that is a concessional transaction for the purposes of this Division.

**147D. Residential property**

Land is “**residential property**” if —

- 10 (a) there is a residence on the land; or  
(b) the taxpayer has begun construction of a residence on the land; or  
(c) the taxpayer has entered into a contract for the construction of a residence on the land; or  
15 (d) the taxpayer has entered into a contract to purchase a movable building that will be affixed to the land and be a residence,

and it does not matter if the land is also used for another purpose.

**147E. Concessional rate**

20 Duty is chargeable on a concessional transaction at the applicable concessional rate of duty and the Commissioner, on the application of the taxpayer, is to assess the liability to duty at that rate.

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

- 25 (1) Subsection (2) applies if duty is assessed at the general rate on an eligible transaction for dutiable property that is land (the “**land**”).

**s. 26**

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- (2) If this subsection applies and, within the period of 5 years from the day on which liability to duty arose (the “**relevant period**”), the taxpayer —
- (a) begins construction of a residence on the land;  
or
  - (b) enters into a contract for the construction of a residence on the land; or
  - (c) enters into a contract to purchase a movable building that will be affixed to the land and be a residence,

the Commissioner, on the application of the taxpayer, is to reassess the liability to duty of the eligible transaction at the applicable concessional rate of duty.

- (3) Subsection (4) applies if duty is assessed at the general rate on 2 or more transactions (the “**separate transactions**”) aggregated and treated as a single transaction (the “**aggregated transaction**”) under section 37 as long as at least one of the separate transactions is an eligible transaction for dutiable property that is land (the “**land**”).

- (4) If this subsection applies and, within the period of 5 years from the day on which liability to duty arose (the “**relevant period**”), the taxpayer —
- (a) begins construction of a residence on the land;  
or
  - (b) enters into a contract for the construction of a residence on the land; or
  - (c) enters into a contract to purchase a movable building that will be affixed to the land and be a residence,

the Commissioner, on the application of the taxpayer, is to reassess the liability to duty of the aggregated transaction at the applicable concessional rate of duty



and the duty as reassessed is to be apportioned between the separate transactions as decided by the Commissioner.

- 5 (5) An application for reassessment under this section can be made at any time on or before whichever is the later of —
- (a) the last day of the relevant period; or
  - (b) the last day of the period of 12 months from the day on which construction began or the contract was entered into, as the case may be.
- 10 (6) The limitations as to time in the Taxation Administration Act section 17 do not apply in respect of a reassessment under this section.

15 **147G. Application for assessment or reassessment at concessional rate**

An application for assessment or reassessment under this Division must be made in the approved form.

”

**27. Section 147 amended**

20 After section 147(2) the following subsection is inserted —

“

- 25 (3) If a dutiable transaction is, or is treated as, a concessional transaction for the purposes of this section and for the purposes of Division 4A, the taxpayer may choose whether this Division or Division 4A is to apply and the Commissioner, with the consent or at the request of the taxpayer, may —
- (a) treat an application for assessment or reassessment under this Division as an application for assessment or reassessment under Division 4A, in which case this Division no longer applies; or
- 30

**s. 28**

---

- 5 (b) treat an application for assessment or reassessment under Division 4A as an application for assessment or reassessment under this Division, in which case Division 4A no longer applies. ”.

**28. Schedule 2 amended**

- 10 (1) Schedule 2 Division 2 is amended by deleting “3 and” and inserting instead —  
“ 3, 4A and ”.
- (2) Schedule 2 Division 2 is amended in the item for section 143 as follows:
- 15 (a) by deleting “\$24.81” and inserting instead —  
“ \$22.51 ”;
- (b) by deleting “\$14.91” and inserting instead —  
“ \$13.01 ”.
- (3) Schedule 2 Division 2 is amended by inserting before the item for section 147 —

“

s. 147E

|                      |                       |   |
|----------------------|-----------------------|---|
| Residential property | \$0 — \$120 000       | \$1.90 per \$100.00 or part of \$100.00                           |
|                      | \$120 001 — \$150 000 | \$2 280 + \$2.85 per \$100.00 or part of \$100.00 above \$120 000 |
|                      | \$150 001 — \$360 000 | \$3 135 + \$3.80 per \$100.00 or part of \$100.00 above \$150 000 |

|                       |   |
|-----------------------|---|
| \$360 001 — \$725 000 | \$11 115 + \$4.75 per<br>\$100.00 or part of<br>\$100.00 above<br>\$360 000 |
| \$725 001 and upwards | \$28 453 + \$5.15 per<br>\$100.00 or part of<br>\$100.00 above<br>\$725 000 |

”.

**29. Schedule 3 amended**

After Schedule 3 clause 10 the following clause is inserted —

“

5

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

(1) In this clause —

“**concessional transaction**” means a transaction that is a  
concessional transaction under section 147C(1).

10

(2) Section 147C(2) applies as long as the concessional  
transaction mentioned in it (or at least one of them, if there  
are 2 or more) takes place on or after 1 July 2008.

”.

**Part 8 — Stamp Act 1921 amended**

**30. The Act amended**

The amendments in this Part are to the *Stamp Act 1921*.

**31. Section 76 amended**

5 (1) Section 76(1) is amended in paragraph (b) of the definition of  
“land” by deleting “of ownership” and inserting instead —  
“ of an entitlement ”.

(2) Before section 76(7) the following subsection is inserted —

“

10 (7A) In determining the entitlement of an entity to land for  
the purposes of section 76AI, 76AL, 76AP, 76AS,  
76ATB, 76ATE, 76ATI or 76ATL, if —

(a) the entity has an entitlement to something that  
is part of land as a fixture; and

15 (b) that entitlement is, or purports to be, separate  
from the ownership of the rest of the land,

the entity is to be regarded as having an entitlement to  
land to the extent of its entitlement to the fixture.

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