

LAND TAX ASSESSMENT BILL 2001

EXPLANATORY MEMORANDUM

This Explanatory Memorandum provides detailed notes on the operation of each clause of the Land Tax Assessment Bill 2001. This Bill will replace the existing Land Tax Assessment Act 1976 with an up-to-date, contemporary statute in an easy to follow format. The repeal and where relevant, saving, of the Land Tax Assessment Act 1976 can be found in the Taxation Administration (Consequential Provisions) Bill 2001.

It should be noted that many of the administrative provisions of the 1976 Act have not been reproduced in this Bill. Common administrative provisions that apply to this Act and several other taxation Acts are located in the Taxation Administration Bill 2001.

The attachment to this document includes a table of cross-referenced sections, showing the Land Tax Assessment Act 1976 provisions with equivalent Land Tax Assessment Bill 2001 and Taxation Administration Bill provisions. A reversed table is also attached.

PART 1 - PRELIMINARY

Clause 1: Short title

This clause provides that the Act is to be cited as the Land Tax Assessment Act 2001.

Clause 2: Commencement

This clause provides for the Act to operate on the day on which the Taxation Administration Act 2001 comes into operation. A combined operation date for both Acts is necessary as the Taxation Administration Bill contains the relevant administrative provisions applicable to land tax. It is proposed that the commencement date of the Taxation Administration Act will be 1 July 2002.

Clause 3: Relationship with other Acts

This provision is a general interpretation provision relevant to the application of the Land Tax Assessment Act 2001 ("the Act").

It combines the Taxation Administration Act 2001, the Land Tax Act 2001 and the Land Tax Assessment Act 2001, so that they can be read as if they constituted one Act.

Clause 4: Meaning of terms used in this Act

The clause provides the status of the Glossary at the end of the Act and the Taxation Administration Act, insofar as they include terms that are used in the Act or affect the meaning of the Act. It also notes that the Glossaries may affect the operation of other provisions.

PART 2 – LAND TAX LIABILITY AND ASSESSMENT

Division 1 – Liability to land tax

Clause 5: Taxable land

This clause specifies that land tax imposed by the Land Tax Act 2001 is payable each financial year on all land in Western Australia except for land that is exempt under clause 17.

Clause 6: Time for payment of land tax

This clause provides the standard payment times for land tax assessments and reassessments.

Subclause (1) provides that, in the case of an original assessment, land tax is due for payment on the 49th day after an assessment notice is issued. An original assessment is the first assessment notice issued in any assessment year.

Under the repealed 1976 Act, the payment period was 45 days from the date of service of the notice by post. This required an adequate period be given for the service of the assessment notice.

The arrangements in the Act provide 49 days for payment from the date in the assessment notice, being an effective period of 7 weeks. The extra 4 days takes account of the service period previously allowed.

Subclause (2) specifies that where a reassessment of a land tax liability is made, the tax is due for payment on the date specified in the assessment notice. Clause 24(3) of the Taxation Administration Bill provides that such a date must be at least 14 days from the date of the assessment notice. Clauses 16, 17 and 18 of the Taxation Administration Bill set out the powers relating to reassessments.

Clause 7: Liability to pay land tax

This clause specifies the persons who are liable to pay land tax.

Subclause (1) provides that the person who is the owner of land at midnight on 30 June in the previous financial year is liable to pay land tax on that land.

For example, Bill Smith is liable to pay land tax assessed on his investment property for the financial year 1 July 2002 to 30 June 2003, as he owned it at midnight on 30 June 2002 (ie. midnight on 30 June in the previous financial year).

Subclause (2) provides an exception to the liability created under subclause (1). Where a person or a taxable authority (as defined in the Glossary) is deemed under clause 8 to be the owner of land as at midnight on 30 June, then that person or taxable authority is liable to pay the land tax in respect of that land.

Subclause (3) clarifies that where clause 8(1) and (2) both operate and a person and a taxable authority are both liable to pay land tax, the taxable authority is liable to pay. In most cases, the taxable authority will have commercial arrangements in place under lease agreements or other arrangements that pass the incidence of the tax onto the person.

Subclause (4) provides that notwithstanding a joint owner's respective interests in, or use of, the land, they are jointly and severally liable to pay the land tax payable in respect of the land.

Subclause (5) provides that the person or taxable authority that is liable to pay land tax is also liable to pay any additional taxes, interest, penalties or charges payable under a land tax Act. An example of this could include penalty tax payable under clause 27 of the Taxation Administration Bill.

Clause 8: Certain persons and bodies taken to be owners of land

This clause deems certain persons to be owners of land.

Subclause (1) specifies two instances where a person is taken to be the owner of land, and is therefore liable to pay the land tax charged on it.

Paragraph (a) deems a person who is entitled to the land under any lease or licence from the Crown, regardless of whether a right to acquire the fee simple exists, to be the owner.

Paragraph (b) deems a person to be the owner of land if the person is entitled to use land for business, commercial, professional or trade purposes under an agreement or arrangement with:

- the Crown;
- an agency or instrumentality of the Crown;
- a local government; or
- a public statutory authority.

Subclause (2) ensures that a taxable authority is taken to be the owner of land for land tax purposes where the land is vested in the taxable authority otherwise than as owner by the operation of an enactment. This commonly occurs with a number of taxable authorities, where the land is vested in a limited sense, being for the purposes of management and control of such land.

Subclause (3) provides two deeming provisions in relation to determining who is liable to pay land tax where there is an uncompleted agreement for the sale of land.

Paragraph (a) states that the vendor is taken to be the owner until the purchaser obtains possession of the land.

Paragraph (b) states that the purchaser is taken to become the owner of the land when he or she obtains possession of it.

Clause 9: Liability of agents or trustees

This clause specifies how agents and trustees are to be assessed for land tax.

Subclause (1) provides that an agent of an owner of land, or a trustee in whom the legal estate of land is vested, is to be liable for land tax as if they were the beneficial owner. In the case of trustees, this includes those who are sole trustees, or those who are joint trustees with other trustees.

Subclause (2) limits the personal liability of the agent or trustee to the amount of funds or securities held or controlled by the agent or trustee for the beneficiary or principal as at the time of receipt of the assessment notice.

Subclause (3) empowers an agent or a trustee to recover from the person he represents the amount of land tax paid by him. He may also retain the amount from funds that is received by him in his representative capacity.

Subclause (4) renders agents and trustees accountable for such matters under a land tax Act that would otherwise be required of the owner.

Subclause (5) subjects agents and trustees to the same penalties or liabilities in respect of neglect, refusal or default under a land tax Act as would otherwise apply to the principal or beneficiary.

Subclause (6) defines "taxes" for the purposes of this section to include land tax, penalties, interest or other amounts that may be payable under a land tax Act. For example, this could include penalty tax, amounts for the lodgement or removal of a memorial or interest that is payable under the Taxation Administration Bill.

Division 2 – Assessment of land tax

Clause 10: Assessing the amount of land tax payable

This clause provides detail on how the amount of land tax payable by an owner is to be determined.

Unless the taxable land is subject to a rebate or concession under this Act, the amount of land tax is to be calculated by applying the rate specified in the Land Tax Act 2001 to the unimproved value of the land as at 30 June in the previous financial year. The unimproved value is that in force under the Valuation of Land Act 1978.

Clause 11: Assessing tax on 2 or more lots with the same ownership

This clause sets out the aggregation provisions that apply when one person owns two or more lots of land. For the purposes of this clause, the terms "taxable land", "lot" and "parcel" are defined in the Glossary.

Subclause (1) states that when a person owns more than one lot or parcel of taxable land, land tax is to be calculated on the aggregated unimproved value of all taxable land owned by that person.

For example, if John and Jill Brown jointly own a vacant block of land in the Perth metropolitan area with an unimproved value of \$100,000 and a holiday house in Albany with an unimproved value of \$70,000, their land tax liability would be calculated on the total unimproved value of \$170,000.

Subclause (2) provides that where a trustee owns two or more separate lots or parcels of land in trust for different persons, then the land tax is to be assessed separately. Without this clause, the provisions of clause 9 would mean that all land held by a trustee would be aggregated, as the trustee is treated as the owner under that clause. This clause allows separate beneficial ownership to be recognised for land tax purposes.

For example, ABC Pty Ltd is the trustee of the XYZ Discretionary Trust. In that capacity, ABC Pty Ltd is the registered proprietor of a commercial building in West Perth, with an unimproved value of \$500,000. ABC Pty Ltd is also the trustee of the ABC Unit Trust. In that capacity, ABC Pty Ltd is the registered proprietor of a holiday resort in Dunsborough, which has an unimproved value of \$1.5 million. This subclause ensures that the property owned by ABC Pty Ltd is not aggregated and assessed on a total unimproved value of \$2 million. Instead, the land is separately assessed at values of \$1.5 million and \$500,000.

Subclause (3) provides for the separation of land held by a trustee where that land is partly held in a legal capacity and partly held in a beneficial capacity. This clause allows the legally held land to be assessed separately, providing that no other section of the Act specifically requires that land to be assessed on an aggregated basis.

For example, Jim Peters is the trustee of the Jim Peters Family Trust. He is the legal owner of a shop in Northbridge in the capacity as trustee. The shop has an unimproved value of \$200,000. Jim Peters also owns an investment property in Malaga in his own right, the unimproved value of which is \$80,000. This subclause ensures that the property owned by Jim Peters in the capacity as trustee and the property owned in his own right is not aggregated and assessed on a total unimproved value of \$280,000. Instead, the land is separately assessed at values of \$200,000 and \$80,000.

Clause 12: Assessing tax payable by joint owners

This clause sets out how land jointly owned by more than one person is to be assessed for land tax purposes.

Subclause (1) provides that where land tax is payable by an owner of land and that land is owned by more than one person, the joint owners shall be assessed for land tax as if the land were owned by one person. This clause results in the respective interest of each owner being ignored for assessment purposes.

Subclause (2) provides clarification on the assessment procedures to be used when determining the extent to which jointly owned land may be exempt or concessionally taxed.

Essentially, if an exemption or concession would be available to an owner in his or her own right, that exemption is to be preserved for the purpose of assessing the tax on the jointly owned land.

For example, if Jack Phillips and his brother, Peter Phillips owned a property with an unimproved value of \$100,000 in equal shares, and a 50% residential exemption was granted under clauses 18 and 21 because Jack resided on the land, a joint assessment is made on \$50,000, being the taxable component of the land. The assessment notice would be issued to Jack and Peter, who would both be liable to pay the land tax on it.

Subclause (3) provides that in assessing joint owners of land, no account shall be taken of any land owned by them individually or with any other person. In other words, only land owned by the same joint owners can be aggregated and subject to a joint assessment.

For example, Fred and Joanne Cooper own an investment villa in Leeming with an unimproved value of \$105,000. Fred also inherited a holiday home in Mandurah, with an unimproved value of \$170,000. Subclause (3) means that the Leeming property owned by Fred and Joanne cannot be aggregated with the Mandurah property owned by Fred. This contrasts with the land tax treatment on the aggregated value of both properties that would apply if Joanne and Fred jointly owned the Mandurah property.

Subclause (4) provides that this clause does not apply to owners of home units within the meaning of clause 16. These owners are liable for taxation on the unimproved value of their respective interests as provided in that clause.

Clause 13: Calculating the unimproved value of part of a lot

This clause provides the meaning of "unimproved value of land" for particular purposes under the Act. For straightforward

circumstances, the unimproved value would apply as set out by clause 10.

Subclause (1) refers to land that a person is entitled to use for a business, commercial, professional or trade purpose under an agreement with the Crown, local government or public statutory authority (clause 8(1)(b)). The unimproved value in these circumstances will be based on the same proportion of the unimproved value of the lot as the area of land that the owner (ie. the person who is taken to be the owner under clause 8(1)(b)) is entitled to use bears to the total potential lettable area of the lot.

Subclause (2) specifies that the total potential lettable area (mentioned in subclause (1)) is the total area of the lot that is capable of being let as determined by the Valuer-General. The Valuer-General is to make the assumption that none of the land is used for an exempt purpose. He also must have regard to the lease conditions of the portion of the lot being valued.

Subclause (3) specifies that where the land is newly subdivided land that qualifies for the concessional treatment under clause 41, its unimproved value will be the concessional unimproved value under that clause.

Clause 14: Land tax on newly subdivided private residential property

This clause provides for the retrospective taxation of land in excess of 2.0234 hectares, which is subdivided after a residential exemption has been allowed in previous assessment years.

Subclause (1) sets out the circumstances in which this clause will apply. Essentially, this occurs where "private residential property" (as defined in the Glossary) greater than 2.0234 hectares is subdivided, and that property was the subject of an exemption or partial exemption under Division 2 of Part 3 for any of the 5 years from and including the financial year in which subdivision takes place.

A definition of "subdivided" is provided in the Glossary.

To illustrate this time period, if previously exempt land is subdivided in August 2002, the land tax would be retrospectively charged for the financial years 2002/03, 2001/02, 2000/01, 1999/00 and 1998/99.

In this regard, land that was previously subject to a rebate under clauses 27 or 28 would not fall into this category, as it is not property that was "exempt or partially exempt" .

Subclause (2) provides that the subdividing owner is liable to pay the retrospectively assessed land tax. The "subdividing owner" is defined in the Glossary as the owner of the land on the day the land is subdivided, or if the ownership of the land changes on that day, the first owner on that day.

The use of a "subdividing owner" recognises that it is not desirable or practicable to raise this tax against the previous owner or owners of the property, who were entitled to and enjoyed the benefit of the exemption provision while the land was only being used as their residence.

This clause also provides for the tax to be assessed for each of the five years of assessment at the appropriate rate and valuation on the taxable portions of the property. The meaning of "taxable portion of the property" is set out in subclause (5).

Subclause (3) specifies that the land to be taxed under this clause cannot be aggregated with any other land owned by the subdividing owner for assessment purposes. This clause applies the rate under the Land Tax Act 2001 on that basis.

Subclause (4) makes allowance for any tax that has been charged on any part of the taxable portion of the property during the relevant period.

Paragraph (a) covers the situation where the land was partially or fully taxed (on the basis that Division 2 of Part 3 did not apply to it) in any year in the relevant period. In these circumstances, no further tax will be assessed for that year where the partial

exemption resulted in tax having already been paid on the taxable portion of the property.

Paragraph (b) covers the situation where a partial exemption (under Division 2 of Part 3) has been applied to the taxable portion of the property, or an interest in it. In these circumstances, land tax will be assessed on the part of or interest in the property to which the partial exemption applied.

In both paragraphs (a) and (b), a rebate under sections 27 and 28 is not considered to be a partial exemption.

Subclause (5) provides the meaning of "taxable portion of the property". This is the amount that remains after deducting from the whole area of the property the greater of:

- the area of the lot or parcel or portion of land on which the private residence is situated at the time of subdivision; or
- 2.0234 hectares.

"Private residence" is defined in the Glossary.

Subclause (6) provides for the determination of the proportionate unimproved value of the taxable portion of the property.

This value will be determined by an arithmetical calculation of the taxable area over the whole of the previously exempted area as a proportion of the total unimproved value of that whole exempted area.

Subclause (7) ensures that the provisions of this clause will not affect a person's liability for tax in any year of assessment following the year in which the land was subdivided.

The effect of this provision is that the tax is levied against the person who is to use the land, or the surplus area, for a purpose other than the person's residence.

However, tax will only be payable on the lesser of the subdivided area in excess of 2.0234 hectares or the subdivided area which does not contain the residence. In other words, the area of 2.0234 hectares will not be subject to the retrospective tax.

For example, a "residential" land owner, presently not liable for tax, who subdivides his half hectare residential property into two lots, would not be assessed retrospectively on the second lot as his property does not exceed the 2.0234 hectares. However, he would be subject to "normal" land tax until that vacant subdivided block is sold.

Similarly, in the case of a "residentially" exempted 10 hectare lot, were the subdivided land to be 9 hectares, leaving a residence on 1 hectare, then the arrears of tax would only be assessed on 7.9766 hectares (10 hectares - 2.0234 hectares), although future

land tax assessments would be raised on the subdivided portion of 9 hectares.

Furthermore, the tax will only be levied in those years in which the land was wholly or partially exempted.

Subclause (8) is a reassessment power requiring the Commissioner to make any reassessment necessary to apply the clause. The provisions relating to the issue of notices and other administrative matters are set out in the Taxation Administration Bill. This provision applies despite the 5 year reassessment period set down in clause 17 of the Taxation Administration Bill.

Clause 15: Land tax on newly subdivided rural business land

This clause provides for the retrospective taxation of land which is subdivided after a rural business land exemption or concession has been allowed in previous assessment years.

Subclause (1) specifies the circumstances in which rural business land, which is subdivided, is to be retrospectively assessed. Definitions of "subdivided" and "rural business land" are provided in the Glossary.

Paragraph (a) provides that this clause will apply if the land that is subdivided was previously exempt or concessionally taxed (under clause 29 or 30) for any of the 5 years from and including the financial year in which subdivision takes place. This five year retrospective time period is consistent with the example provided in clause 14(1).

Paragraph (b) provides that this clause will apply if the subdivision was not carried out only in order to define land to be taken or resumed under a written law that relates to a compulsory acquisition. This would include, for example, land resumed for roads under section 29 of the Main Roads Act 1930.

Subclause (2) provides that the "subdividing owner" (as defined in the Glossary) is liable to pay the retrospectively assessed land tax. It also provides that the land tax is to be assessed for each of the five years of assessment at the appropriate value of the taxable portions of the property. The meaning of "taxable portion of the land" is set out in subclause (3).

Again, this provision is consistent with that set out in clause 14(2).

Subclause (3) provides the meaning of the term "taxable portion of the land". This is the portion of land that remains after deducting from the whole area of land:

- the area of land immediately after subdivision is completed that is exempt due to the use of the land by the subdividing owner in accordance with the residential exemptions available under Division 2 of Part 3; and

- the area of land immediately after subdivision is completed which consists of a lot equal to or greater than 2.0234 hectares which is zoned for rural purposes under a town planning scheme.

Subclause (4) specifies that the land to be taxed under this clause cannot be aggregated with any other land for assessment purposes. This clause applies the rate under the Land Tax Act 2001 on that basis.

Subclause (5) allows a deduction for any land tax already paid within the 5 year retrospective assessment period on the taxable portion of the land.

For example, if a 50% primary production concession was granted under clause 30 in respect of a particular portion of land, the 50% tax paid on that land during the 5 year assessment period would be deducted from any assessment made under this clause.

Subclause (6) provides for the determination of the proportionate unimproved value of the taxable portion of the land.

This value will be determined by an arithmetical calculation of the taxable area over the whole of the previously exempted area as a proportion of the total unimproved value of that whole exempted area.

Subclause (7) specifies that an assessment made under this clause does not affect the future tax liability of any taxable portion. That is, an assessment under this clause is in addition to the annual land tax levied on that property.

Subclause (8) is an assessment power allowing the Commissioner to make any assessment necessary to apply the clause. The provisions relating to the issue of notices and other administrative matters are set out in the Taxation Administration Bill. This provision applies despite the 5 year reassessment period set down in clause 17 of the Taxation Administration Bill.

Clause 16: Assessing land tax on non-strata home units

This clause covers the assessment of land tax on land where non-strata home units are situated. "Non-strata home unit" is defined in the Glossary. This clause essentially permits owners of these units to be assessed on a single unit basis, rather than on an aggregated basis that would otherwise occur due to the ownership structure of the units.

Subclause (1) provides that this clause applies where the only improvements on the land, in addition to the building containing the home units, are ground works of the nature specified in paragraph (a) or those specified in paragraph (b) that are designed for the use or enjoyment of the home unit owners.

Subclause (2) provides the circumstances under which an assessment may be made under this clause. The Commissioner is able to initiate the assessment or the owners of the home units may apply for the land tax to be assessed under this section. Paragraph (c) of the definition of "owner" in the Glossary provides that an owner for the purposes of this clause is a person who owns an individual share in the land or is a shareholder in the body corporate and who is entitled to the exclusive right to occupy a unit.

Subclause (3) is a reassessment provision that enables the Commissioner to reassess the tax payable in the assessment year that the application is made or the assessment year that the Commissioner first assesses the tax under this section.

For example, if the application is made by the home unit owners in December 2002, after the original assessment has been made and the assessment notices issued, the Commissioner may reassess the tax payable for the 2002/03 assessment year.

Subclause (4) limits the reassessment under subclause (3) to the year the application is made or the year the Commissioner first makes the assessment under this clause. This prevents retrospective refunds of tax being made.

Subclause (5) sets out how an application is to be made under this section.

Paragraph (a) requires all of the owners to apply in an approved form to have this section apply. This is necessary in order to ensure that all owners are in agreement with the application of the concession, as it would prove impossible to administer the concession in part.

Paragraph (b) requires that, in the case of land owned by a body corporate, the application to the Commissioner to have this section apply must specify the proportions in which the respective owners are entitled to the land. This is necessary because the number of shares owned by a shareholder is not always indicative of that shareholder's proportionate interest in the land.

Subclause (6) sets out the method under which the calculation will be made in the case of home units constructed on land held as tenants in common.

For example, a home unit owner who owns a half-share in the land but who resides elsewhere would be liable for land tax assessed on 50% of the unimproved value of the land.

Subclause (7) proposes that, in the case of home units erected on land held by a body corporate, land tax is to be assessed on the basis of the owner's interest set out in the application submitted to the Commissioner.

Subclause (8) ensures that where a home unit owner owns other land, the value of the home unit will be aggregated with the value of the other land owned.

Subclause (9) provides that where the Commissioner makes an assessment under this section, the land tax for each subsequent year is to be assessed on the same basis unless the Commissioner revokes the decision under subclause (10). This provision ensures that the owners do not have to reapply for each assessment year.

Subclause (10) provides that this section will continue to apply until all applicants revoke it. It also empowers the Commissioner to revoke the concession when circumstances arise justifying revocation. This could be when improvements are made which are not designed for the use or enjoyment of the owners, such as public restaurants and offices. It could also arise where there is a change in the use of the property such as the use of the units as professional offices for renting.

PART 3 – EXEMPTIONS, CONCESSIONS AND REBATES

Division 1 – General provisions

Clause 17: Exempt land

This clause provides the meaning of “exempt land”. For an assessment year, land will be exempt if:

- the Commissioner grants an exemption under clause 20; or
- a statutory exemption applies under Part 3 of this Act.

It should be noted that other Acts of the Western Australian Parliament have provided land tax exemptions in certain circumstances. These exemptions will generally still apply, unless a provision of this Act prevails.

Clause 18: Partial exemptions or concessions

This clause specifies the extent to which an exemption or concession will be available if the land is partially owned or used.

Where under paragraph (a), land that would be subject to an exemption or concession if it was:

- used or occupied solely for an exempt purpose or purposes;
or
- owned, used and occupied solely by a person or persons in a particular class or classes; or both

and under paragraph (b), the land is:

- used or occupied partly for the exempt purpose or purposes and partly for another purpose or purposes; or
- owned, used or occupied partly by persons in the particular class or classes and partly by another person or persons,

then the exemption or concession only applies to the proportion of the land that is used or occupied for the exempt purpose or purposes, or is owned, used or occupied by the persons in the particular class or classes or both.

For example, if land is owned as joint tenants by Mike Perry and Rod Jones, and only Rod lives in the property, the land would only receive a 50% exemption under clause 21 in respect of the interest held by Rod.

Clause 19: Obtaining an exemption or concession

In order to allow an exemption or concession, this clause provides that the Commissioner may require an owner of land to:

- make application in an approved form; and
- give the Commissioner any information relevant to deciding whether the land is eligible for an exemption or concession.

In this case, the information must be within the knowledge or control of the owner.

Clause 20: Commissioner's power to exempt land

This clause provides the Commissioner with the ability to approve certain exemptions or concessions despite the owner not meeting the strict requirements set down in the Act.

This approach is unusual in a taxation Act. The provision was first introduced as part of the Land Tax Assessment Act 1976. The Minister at the time acknowledged "discretions in the law, especially relating to taxation, are not particularly popular with either the taxpayer or the administrator". The statement is still relevant, some 25 years later.

However, subclause (1) reproduces what was previously authorised by section 22 of the Land Tax Assessment Act 1976. This subclause allows the taxpayer to apply to the Commissioner for an exemption, concession or further concession. The power operates in respect of land that does not meet certain qualifying particulars set down by the Act.

In reviewing 25 years of practice under this provision, it is apparent that the Commissioner seriously considers the exercise of this discretion. In the majority of cases, the exemption has been granted in respect of the discretion now appearing as paragraph (d). This relates to circumstances where the grant of an exemption is not granted for land in the metropolitan region (or land outside the metropolitan region that is not in an area zoned for rural purposes under a town planning scheme). The exemption must be denied on the basis that the owner of the above land fails the "one-third income test" in clause 29(3) or the usage tests in clause 29(4).

In the past, there have been two situations where the Commissioner exercises the discretion. The first deals with the case of an established and substantial rural business, which is the owner's main source of income. Such a business would usually qualify for the exemption on a regular basis, however, due to seasonal or economic conditions, or some other temporary aberration, the owner failed to meet the test.

The second situation deals with a case of a newly established rural business. It is more likely in these cases that the one-third income test may not be met. If the Commissioner considers that the business provides, or is intended to provide, the major source of the owner's livelihood, the exemption may be granted.

Such cases are carefully monitored from year to year where the Commissioner has exercised the discretion and granted the 100% exemption. It should be noted that these situations above recognise that the tests in clause 29(3) and (4) are not going to be appropriate in all circumstances. It is for this reason that the discretion was inserted into the 1976 Act.

It should also be noted that a 50% concession was introduced into the Land Tax Assessment Act in 1996 (reproduced in clause 30) where an owner failed the one-third income test in clause 29(3) or the usage test in clause 29(4). Since that time, fewer owners have made applications for the Commissioner to exercise his discretion and grant the 100% exemption.

Paragraph (a) relates to an exemption under clauses 21, 22 or 23 that does not qualify for a full exemption because it is only partially used for residential purposes. Such situations usually arise where a property has a mixed use, such as a shop that has residential facilities at the rear. This paragraph applies to allow the owners to apply to the Commissioner for an exemption in respect of the portion of the property that is not used for residential purposes. It should be noted that the provision does not apply where a property is owned by more than one person, and only one person uses the property for residential purposes.

Paragraph (b) relates to an exemption under clause 23 that does not qualify for the exemption (or partial exemption under clause 18) because it had already received an exemption in the previous year or because rent or other income had been derived from the property.

Paragraph (c) relates to an exemption under clause 29, where the exemption is not allowed because the land used for holding paddocks for stock is not so used in the course of carrying on a rural business within the meaning of that clause.

Paragraph (d) relates to an exemption under clause 29, where the exemption is not allowed because:

- the user of the land is not the owner;
- one third of the owner's net total income was not derived from carrying out a rural business or businesses; or
- the land is used for a silvicultural or reforestation business and less than 100 hectares is fully stocked for that purpose.

Paragraph (e) relates to a rural business concession that is not allowed under clause 30. This would generally relate to those circumstances where the concession is not available (ie. because the user of the land is not the owner).

Paragraph (f) relates to land that does not receive an exemption under clause 42 because:

- the owner was already receiving an exemption under the relevant provision or clause 21, 22, 23, 24 or 25;
- rent or other income had been derived from the property during the period it was required to be vacant; or
- an exemption had applied to the land and the owner under clause 42 for the previous assessment year.

Paragraph (g) relates to land that a person is taken to be the owner of under clause 8(1), where the land is not otherwise subject to an exemption or concession.

Paragraph (h) relates to previously exempt land owned by a religious institution that is retrospectively taxed under clause 32(2) because it has been sold or used for another purpose.

Paragraph (i) relates to previously exempt land owned by an educational institution that is retrospectively taxed under clause 33(2) because it has been sold or used for another purpose.

Subclause (2) gives the Commissioner the ability to grant the exemption or concession if he is satisfied there are reasonable grounds for doing so. In making such a decision, the Commissioner is likely to have regard to the precedent such a decision will have on other persons in similar circumstances. In this regard, it is incumbent on the Commissioner to ensure that providing the exemption or concession would not undermine the exemption or concession in such a way as to make its purpose meaningless.

Subclause (3) provides a right of appeal to the Minister where the Commissioner refuses to grant the exemption or concession. At present, the Minister to whom the appeal would be made is the Hon Treasurer, Mr Eric Ripper MLA.

Subclause (4) provides the relevant time periods within which an appeal may be made. These are:

- within 60 days of the issue of the notice of the Commissioner's decision; or
- any further period allowed where reasonable cause for the extension is shown to the Minister.

Subclause (5) ensures that the obligation to pay land tax, and any corresponding right to receive or recover land tax that is not paid, is not affected by an appeal to the Minister.

For example, if the land tax to which an appeal relates is due on 5 November 2001, the fact that the taxpayer lodged an appeal on 1 November 2001 before the expiry of the appeal period on 20 November 2001 does not negate the taxpayer's obligation to pay the tax by 5 November 2001.

Notwithstanding this requirement, the taxpayer is able to seek an extension of time to pay the tax under clause 47 of the Taxation Administration Bill.

Subclause (6) gives the Minister jurisdiction to consider the appeal and make a decision on it. He is able to disallow it, or allow it wholly or in part.

Subclause (7) requires the Minister to give notice of his decision to the applicant. Notice is routinely given in writing.

Subclause (8) requires the Commissioner to make any necessary reassessment to give effect to either his decision, or the Minister's, under this section.

Division 2 – Private residential property

Clause 21: Private residential property owned by individuals

This clause provides an exemption for private residential property. The term "private residential property" is defined in the Glossary.

Subclause (1) provides a land tax exemption for property owned at midnight on 30 June in the previous financial year. Notably, the exemption will not apply where the property is held in trust. The exemption will apply where it is owned by:

- an individual who uses it as his or her primary residence ("primary residence" is defined in the Glossary); and
- a husband and wife, where one of them uses it as his or her primary residence.

This clause provides a full exemption providing all of the primary residence is used for the purpose specified. Where the land is only partially used as a primary residence, a partial exemption may apply as provided in clause 18.

It should also be noted that where the land is owned by 2 or more individuals, section 10 of the Interpretation Act operates so that "individual" is read in the plural. If both individuals use the property for the exempt purpose, a full exemption would apply. If only one individual used the property for the exempt purpose, a proportionate exemption would apply under clause 18.

For example, three individuals own a residence and have a one-third interest each. Two persons use the property as their primary residence. The land would be two-thirds exempt.

Subclause (2) gives a full exemption where the reason that the owner or owners do not use the property as their primary residence is that because of a requirement by a financial institution for a guarantee relating to the property finance.

In order to obtain this exemption, the Commissioner would require the owners to provide written confirmation from the relevant financial institution stating that the individual or individuals are only on the title due to its requirements.

Clause 22: Private residential property owned executor or administrator

This clause provides an exemption for land owned solely or jointly by one or more executors as trustees of a will.

There are a number of conditions in order for the exemption to apply. The conditions must be met as at midnight on 30 June in the previous financial year (ie midnight on 30 June 2002 for the 2002/2003 financial year).

Paragraph (a) requires that the property be owned by an executor of a will as trustee. To be an owner under this clause,

the legal title of the property must be vested in the name of the executor. In this regard, section 8 of the Administration Act provides that all real estate a deceased person owned at his death as from the date of death passes and vests in the executor or administrator to whom probate has been granted.

Paragraph (b) requires that an individual identified in the will must have a right under the will to use the property as a place of residence for as long as he or she wishes. The individual must not be entitled under the will to any estate of freehold in possession of the property. This exclusion means that an individual who is entitled to a life or remainder interest under a will would not be entitled to this exemption.

Paragraph (c) requires that the individual use the property as his or her primary residence. This requirement means that the exemption would not be available if the individual no longer occupied the land as his or her primary residence.

A proportionate exemption will apply under clause 18 where the land is owned by an executor or executors as detailed in subclause (1) and one or more other persons.

Clause 23: Continued exemption after death of resident

This clause provides a temporary residential exemption for land owned by one or more executors or administrators of a deceased estate where the deceased person died during the previous financial year.

Subclause (1) provides an exemption for the assessment year following the financial year in which the individual died. The clause operates only in the year following the person's death to allow the executor or administrator sufficient time to wind up the person's estate. Where this does not occur, the land would become taxable in the following year.

The exemption is subject to the conditions set out in paragraphs (a), (b) and (c).

Paragraph (a) provides that, in order to receive the exemption, the deceased must have received a residential exemption (ie. an exemption under Division 2 of Part 3) in respect of the land in the financial year of his or her death, or would have received such an exemption had the individual owned and used the land as a primary residence on the 30 June before his or her death.

For the purposes of this subclause, a rebate under clauses 27 and 28 is not an exemption.

The operation of this paragraph is illustrated in the two examples.

Example 1: Bob Jones owned a property on 30 June 2001, and was entitled to an exemption for the 2001/02 assessment year on the basis that he used the

property as his primary residence. Bob died on 31 December 2001 and his property was transferred to Executor Ltd as trustee for his estate on 31 January 2002.

The exemption applies for the 2002/03 assessment year (ie. the assessment year following the financial year in which Bob died).

Example 2: Mary Smith purchased a property in August 2001 and resided in that property as her primary residence. Had she owned the property on 30 June 2001, she would have been entitled to receive an exemption for the 2001/02 assessment year as she would have occupied the premises as her primary residence. Mary died on 2 November 2001 and her property was transferred to Administrator Ltd as trustee for her estate in December 2001.

The exemption under this clause would apply for the 2002/03 assessment year (ie the assessment year following the financial year in which Mary died).

Paragraph (b) provides that the executor or administrator must be the owner of the relevant property at midnight on 30 June in the financial year in which the individual died.

In the above two examples, Executor Ltd and Administrator Ltd must own the respective properties at midnight on 30 June 2002.

Paragraph (c) provides that the individual's estate must not derive any rent or other income from the property between the date of the individual's death and the end of the assessment year in which the exemption is obtained. In this regard, it should be noted that the reference to "assessment year" is read down from the beginning of subclause (1) to determine that it is the assessment year in which the exemption is being obtained.

This provision does not prevent a person from occupying the premises during the specified period, providing that no rent or other income is received in respect of that occupation.

Again referring to the two examples, Bob Jones' estate must not derive any rent or other income from the property from 31 December 2001 to 30 June 2003. Mary Smith's estate must not derive any rent or other income from the property from 2 November 2001 to 30 June 2003.

Clause 18 limits the availability of a full exemption if the deceased received or would have been entitled to receive only a partial exemption. Where this is the case, the executor or administrator is only entitled to an exemption to the same extent as the deceased received or was entitled to. Clause 18 would also provide that a proportional exemption applies where the

executors or administrators own land with one or more other persons. The exemption is allowed to the extent of the proportion of the interest owned by the executor or administrator.

Subclause (2) allows an exemption to be provided prior to the completion of the assessment year in respect of which the exemption is sought. Subclause (1)(c) requires that the individual cannot derive rent or other income within the period from the date of the individual's death to midnight on 30 June in the assessment year in which the exemption is sought.

This requirement cannot be fully satisfied until that date has passed. Accordingly, where the executor can show that the estate has not derived any rent or other income in the period already elapsed, and declares that it expects no rent or other income will be derived for the unelapsed period, then the exemption can be allowed.

Referring to example 1 above, if Executor Ltd demonstrates in an application (made in accordance with clause 19) on 15 February 2002 that Bob Jones' estate has not received any rent or other income from 31 December 2001 to 15 February 2002 and does not expect to receive any rent or other income from 16 February 2002 to midnight on 30 June 2003, the exemption would be allowed for the 2002/03 assessment year.

Subclause (3) requires the executor or administrator to notify the Commissioner if rent or other income is subsequently derived. The notification must be given within 3 months of the end of the assessment year and give the Commissioner particulars needed to make a reassessment. This will usually include land identification particulars. An offence penalty of \$5,000 exists where the executor or administrator fails to give the notice.

Subclause (4) is a clawback provision that allows the Commissioner to make a reassessment of the land tax payable where rent or other income is derived. The Commissioner is authorised to reassess whether the notification is given by the executor or administrator, or he becomes aware of the circumstances through other means.

Clause 24: New private residences

This clause provides an exemption where an owner completes the construction of a private residence during an assessment year.

Subclause (1) provides the circumstances in which a property is to be exempt under this clause. Notably, the exemption is not available if the property is held in trust.

Paragraph (a) provides that the exemption will apply if the construction of a private residence is completed during the assessment year. Notably, it is not relevant when the

construction of the residence commenced. However, if it was under construction at midnight on 30 June in the financial year prior to the previous assessment year, it is likely that land tax would have been payable for that assessment year.

Paragraph (b) requires that the individual owned that land on which the residence has been constructed at midnight on 30 June in the previous financial year.

Paragraph (c) requires that the individual must be the first occupant of the private residence. 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 (d) provides that the exemption will apply if an individual uses the private residence as their primary residence during the assessment year.

Subclause (2) provides that where the same individual receives an exemption for other private residential property, this exemption will not apply.

The operation of subclause (2), and its interaction with clause 18, is illustrated by the following example.

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 2002.

Kerry owns a number of other properties and resided at 30 June 2002 with her husband in one of them.

Jeff was renting premises at 30 June 2002 and continued to do so until the completion of the premises on 4 January 2003. On 5 January, Jeff moved into the property and used it as his primary residence. He was the first occupant of the premises.

On the basis of subclause (2) and clause 18, the property is exempt from land tax to the same extent as it would be under clause 21. Accordingly, a 50% exemption would apply 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.

Subclause (3) provides the Commissioner with the power to make any reassessment necessary to give effect to this clause. Using the facts of the example above, if a land tax assessment notice was issued on 1 October 2002 on 100% of the unimproved value of the property, it would require payment by 18 November 2002.

At 18 November 2002, Jeff cannot meet the criteria set down by subclause (1), so the land tax must be paid. However, after the residence is completed and Jeff commences occupation, he can apply to the Commissioner using the application process set out in clause 19. The Commissioner would reassess the land tax and refund the land tax on the 50% interest to Jeff and Kerry.

Clause 25: Exemptions during renovation of private residence

This clause provides an exemption in circumstances where a person does not reside in his or her private residence at midnight on 30 June due to it being renovated.

Subclause (1) sets out the circumstances in which the exemption will apply. Notably, it does not apply where the property is held in trust. In a similar manner to clause 24, the availability of the exemption is limited by subclause (2) and clause 18.

Paragraph (a) requires that the property be owned by an individual (ie. a natural person).

Paragraph (b) provides that the exemption will apply if the private residence on the property was unoccupied at midnight on 30 June in the financial year prior to the assessment year. The reason for the individual not occupying the property must be due to the private residence being refurbished.

Paragraph (c) provides that the exemption will apply if the property is occupied for the first time following the refurbishment by the individual as his or her primary residence.

Paragraph (d) provides a restriction on the use of the property during the beginning of the assessment year and the time of reoccupation in order to obtain the exemption. This requires that the owner, occupier or any other person derive no rent or other income during that period.

This clause also interacts with clause 18 to ensure that a partial exemption will apply if not all owners qualify for this exemption.

Subclause (2) provides that where the same individual receives an exemption for other private residential property, this exemption will not apply.

Example: Joe and Mary have jointly owned a federation style home in Mount Lawley for 30 years. The family property is the only property they own. Mary decides that she would like the kitchen and bathroom modernised and calls in renovators to do the work.

On 24 April 2002, Joe and Mary cannot stand the mess any longer. They move out of the home and live with their son until the renovations are completed.

The refurbishment takes longer than expected and Joe and Mary finally move back into their home on 30 November 2002. They did not derive any rent or other income from the property during the period 1 July 2002 to 30 November 2002.

Even though Joe and Mary were not using the property as their primary residence at midnight on 30 June 2002, this clause would apply to give them an exemption.

On the basis of subclause (2) and clause 18, the property is exempt from land tax to the same extent as it would be under clause 21. Accordingly, a 100% exemption would apply.

Subclause (3) provides the Commissioner with the power to make any reassessment necessary to give effect to this clause.

Clause 26: Exemption for trust property used by disabled beneficiary

This clause provides an exemption for private residential property that is held in trust for a disabled beneficiary.

Paragraph (a) provides that an exemption will apply if the land is owned by a trustee in trust for one or more disabled beneficiaries. The terms "trustee" and "disabled beneficiary" are defined in the Glossary. In regard to disabled beneficiaries, the beneficiary must have an interest in the trust (contingent or otherwise) and must be a person who:

- has a disability as defined in section 3 of the Disability Services Act 1993 and has been independently assessed by an appropriate person as requiring full time care;
- is mentally incapacitated; or
- is a minor who is an orphan.

Section 3 of the Disability Services Act 1993 defines a disability in the following terms:

"disability" means a disability –

- (a) which is attributable to an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment or a combination of those impairments;
- (b) which is permanent or likely to be permanent;
- (c) which may or may not be of a chronic or episodic nature; and
- (d) which results in –
 - (i) a substantially reduced capacity of the person for communication, social interaction, learning or mobility; and
 - (ii) a need for continuing support services.

Paragraph (b) provides that at least one of the disabled beneficiaries must use the property as his or her primary residence.

This exemption applies whether the trustee is a natural person or corporate trustee, providing the trust is established for one or more disabled beneficiaries, and at least one of those beneficiaries resides in the property.

Clause 27: Rebate if moving from one residence to another

This clause provides a rebate of 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 rebate will apply where neither property has been used to derive rent or other income, 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.

Subclause (1) specifies the criteria that must be satisfied to establish an entitlement to the rebate. These are set out in paragraphs (a), (b), (c), (d), (e) and (f).

Paragraph (a) specifies that the property in which the individual resided as the primary residence at midnight on 30 June in the financial prior to the assessment year must be exempt.

Paragraph (b) provides that the individual must own a second private residential property at midnight on 30 June in the financial year prior to the assessment year that would have been exempt private residential property had the individual used it as the primary residence.

Paragraph (c) provides that the owner (ie. the individual) must have acquired either the exempt property or the second property during the financial year before the assessment year. This requirement is consistent with the purpose of the exemption.

Paragraph (d) requires that the same individual must have used the second property as a primary residence. There are two options where this can occur, namely during the:

- financial year before the assessment year, which would precede the use of the exempt property as a primary residence; or
- assessment year, after using the exempt property as the primary residence.

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

Paragraph (f) requires that during the period the owner owned both properties, no rent or other income be derived by any person from whichever property was not being used as the primary residence of the individual.

The following example sets out how this provision operates.

Example: Jim and Carol own two properties at midnight on 30 June 2002, one in Scarborough and one in Sorrento.

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

They acquired their Sorrento property on 5 June 2002 (ie. the settlement date), with the intention of moving into it as their primary residence.

Their Scarborough property is on the market and sells on 18 September 2002 (ie. the settlement date). They move into the Sorrento property on 15 September 2002. During the period from 5 June 2001 to 18 September 2002, Jim and Carol do not derive rent or other income from either property.

Jim and Carol meet the criteria in subclause (1) on this basis.

Subclause (2) provides details relevant to making the application for the rebate. The application may only be made in the approved form after the sale or disposition of the first acquired property when possession has been delivered to the new owner. There is a limited period within which the rebate application may be made. This is the later of 3 months from the end of the assessment year (ie. the assessment year during which the first acquired property was sold) or 3 months after the issue of the assessment notice.

Example: Jim and Carol received a land tax assessment notice dated 1 September 2002. They have 49 days to pay the amount assessed in accordance with clause 6(1).

Subclause (2) prevents them from applying for the rebate until after 18 September 2002 (ie. the settlement date of the first acquired property). However, if they elect to pay the amount and then seek a refund, they must apply before the later of 3 months after the end of the assessment year (ie. 30 September 2003) or 3 months after the date of issue of the assessment notice (ie. 1 January 2003).

Jim and Carol make their application on 25 September 2003.

Subclause (3) provides that the rebate is the amount by which the owner's assessment would have been reduced if the residence that was not entitled to exemption at 30 June had not been included in the assessment. Where the owner only owned the two properties mentioned in this section, the amount owing would be reduced to nil (as occurs in Jim and Carol's case). Where the owner owned multiple properties, the unimproved

value of the residence would be deducted from the aggregated value of the owner's property portfolio.

Subclause (4) provides that where the rebate is granted, the Commissioner must make a reassessment of the liability.

Clause 28: Rebate for inner-city residential property

This clause provides for a rebate for inner-city residential land for landlords who own inner-city residential properties in a commercial or other non-residential zone. The rebate amount is the difference between their land tax assessment and what it would have been if the land had a residential zoning.

Upon application by an eligible owner, the Commissioner will request the Valuer General to provide a hypothetical residential value for the land.

The rebate will be the difference between the applicant's land tax liability and the land tax liability arising from the hypothetical valuation, if the hypothetical land tax liability is lower.

Subclause (1) provides that the owner of "private residential property" (as defined in the Glossary) may apply for a rebate under this section for an assessment year. The application must be in the approved form. The application must be received within the standard reassessment period set down under the Taxation Administration Bill (ie. within 5 years of the date of assessment).

Subclause (2) provides the eligibility requirements for the rebate under this clause. Where they are met, the owner is entitled to a rebate of the land tax payable for an assessment year on the aggregated unimproved value of their land.

Paragraph (a) provides that the property must be located in an area that is prescribed. The property must also be in an area that is the subject of a town planning scheme or a redevelopment scheme in force under the East Perth Redevelopment Act 1991 where the land is not zoned solely residential.

Paragraph (b) provides that the private residence that forms part of the private residential property must be completed before or during the assessment year. This means that the rebate will be available in the year the private residence is completed and all subsequent years. The rebate is not pro-rated in the year of completion.

Paragraph (c) provides that the residence must be occupied during the assessment year as a place of residence for one or more individuals. Where the residence is not completed at 30 June, the residence will be eligible upon completion if it is fit to be occupied and intended by the owner to be occupied as a place of residence.

Paragraph (d) requires that the private residential property (in respect of which the rebate is sought) is not exempt for the assessment year under another provision of Division 2 of Part 3.

Paragraph (e) provides that the rebate will only be payable if the land tax actually payable is greater than it would have been had the private residential property been in an area zoned solely residential.

Subclause (3) sets out the formula used to calculate the rebate, which is:

$R = (LT - RE)$. R is the rebate, while LT must be greater than RE.

LT is the land tax payable on the aggregated unimproved value of all the owner's taxable land.

RE is the amount of land tax that would be payable for the assessment year on the aggregated unimproved value of all the owner's taxable land, except that any land falling within this clause is valued at its residential equivalent value. Residential equivalent value is defined in subclause (7).

Subclause (4) allows the Commissioner to relieve an owner of the obligation of making an application for a rebate each year. When a rebate is granted, the Commissioner may notify the owner that the rebate will be applied to subsequent assessments. This subclause also provides the Commissioner with the flexibility to reimpose the obligation to make an application each year for the rebate should he consider it necessary to do so.

Subclause (5) imposes an obligation on an owner to advise the Commissioner when the land ceases to be eligible residential land under subclauses (1)(a), (b), (c) or (d), or where the area of the land is reduced. The owner must advise the Commissioner before the commencement of the next assessment year or within 3 months of the day on which the change occurred, whichever is the later. Failure to make the required notification is an offence, for which a maximum penalty of \$5,000 applies.

Subclause (6) allows the Commissioner to make any reassessment necessary to effect the granting of the rebate under this clause.

Subclause (7) provides the meaning of "residential equivalent value" for the purposes of subclause (3). The Valuer General determines this value. Where a proportion of the land is used for residential purposes, (eg. where ground level premises are used for commercial purposes and upper levels for residential purposes) the Valuer General will take this into account when providing the residential equivalent value.

Division 3 – Rural business land

Clause 29: Land used solely or principally for a rural business

This clause provides an exemption for land used for agricultural and similar purposes.

Subclause (1) provides an exemption for land in a rural zone. The land is exempt if it is used, at midnight on 30 June in the financial year prior to an assessment year, solely or principally for one or more of the following types of rural business:

- agricultural, silvicultural or reforestation; and
- grazing, horse-breeding, horticultural, viticultural, apicultural, pig-raising or poultry farming.

It should be noted that the Glossary definition of "rural business" would exclude claims for exemption from persons who are no more than hobby farmers, or who operate backyard gardens or operations where the produce is grown more or less for their own use.

The Glossary definition of "grazing business" limits this term to the business of grazing or rearing cattle, sheep, pigs or goats for the specified purposes. This definition also means that the exemption does not apply to the grazing, agistment, breeding or training of horses, other than as part of a "horse-breeding business" as defined in the Glossary.

Subclause (2) provides that land specified in subclause (1) that is used as holding paddocks for stock will only be exempt if it is used in the course of carrying on a rural business.

As a result of this defined term, land does not qualify for the exemption where it is used as a holding paddock for stock in a business that is not exempted under this clause, for example, a wholesale butcher or stock transporter.

Subclause (3) provides an exemption in more limited circumstances for land used for the same types of businesses mentioned in subclause (1), but which are conducted on land that is in a non-rural zone. "Non-rural zone" is defined in the Glossary.

This type of land is exempt only where more than one third of the owner's "total net income" (as defined in the Glossary) for the previous financial year was derived from the owner carrying out a business or businesses of the kind mentioned above in Western Australia.

Subclause (4) provides an exemption for land in a non-rural zone that is 100 hectares or more, if at midnight on 30 June in the previous financial year, it is:

- used by the owner for a silvicultural or reforestation business (or both); and
- is fully stocked for the purposes of that business or those businesses.

Clause 30: Concessional rates for other rural business land

This clause provides a concession where a person fails to qualify for a land tax exemption under clause 29 due to a failure to meet the income test set out in clause 29(3). Where this occurs, a concessional rate of tax at 50% of the rate imposed by the Land Tax Act 2001 is payable.

Should the person fail to qualify for the exemption by reason of the land not being used solely or principally for one or more of the qualifying businesses, or because its owner does not use the land for those purposes, neither the exemption nor the concession will be available.

Division 4 – Crown land and other land used for public purposes**Clause 31: Land owned by the Crown or other public authorities**

This clause specifies the land tax treatment of land owned by or vested in the Crown, an agency or instrumentality of the Crown, a local government or another public statutory authority. “Public statutory authority” is defined in the Glossary.

Subclause (1) specifies that land owned by the Crown, any agency or instrumentality of the Crown, a local government or other public statutory authority (other than a taxable authority) is exempt from land tax. An exception to this exemption is provided where a person is liable to pay land tax under section 8(1) or 8(2) because they are deemed to be an “owner” of the land.

This exception arises where the “owner” is:

- entitled to the land under any lease or licence from the Crown;
- entitled to use the land for a business, commercial, professional or trade purpose under an arrangement with the Crown or other body referred to in subclause 8(1)(b); or
- a taxable authority who is deemed to be an owner because it has land vested in it otherwise than as owner by or under an enactment.

Subclause (2) provides an exemption specific to the owner of “corridor land” within the meaning of section 3 of the Rail Freight System Act 2000. The exemption applies regardless of whether anyone is deemed to be the owner of the land under clause 8(1)(a) or (b).

Subclause (3) provides a rebate to owners (referred to as “lessees” in this document) of land under clause 8(1)(a) and (b), in circumstances where the land is leased from the Crown, a local authority or public statutory authority and the agreement is terminated involuntarily.

These lessees are taken to be the owner of land as at midnight on 30 June and are liable for land tax for the following assessment year. Any disposition of the property by the legal owner after that date does not affect the person's land tax liability.

However, where the Crown terminates a lease, licence, agreement or arrangement, the lessee does not enjoy the usual adjustment of rates and taxes on settlement that would normally occur if the person legally owned the land prior to sale.

In these circumstances, the lessee is required to pay all of the tax for an assessment year, even though it is only leased for part of the year.

Subclauses (3), (4) and (5) allow the Commissioner to provide a rebate to the lessee for the part of the assessment year where the lease or other arrangement does not operate due to an involuntary termination of it by the lessor.

Subclause (3) provides the eligibility requirements for this rebate.

Paragraph (a) specifies that the lease, licence, agreement or arrangement under which the person is deemed to be the owner, must be terminated during an assessment year before its expiry.

Paragraph (b) requires that the termination must have occurred without the person's consent and cannot have been due to the default of the lessee.

Paragraph (c) specifies that the lessee must make an application for the rebate to the Commissioner in an approved form.

Subclause (4) sets out the formula to be used to calculate the amount of the rebate the owner is entitled to receive. The formula is:

Rebate = $A \times T$ (where applicable) $\times P$

A is the amount of taxes (as defined in subclause (6)) which is normally payable on the aggregated unimproved value of all non-exempt land which is owned by the applicant (ie. the lessee).

T represents the proportion that the unimproved value of the leased land (which is the subject of the involuntary termination) bears to the total aggregated unimproved value of all land owned by the applicant.

P is the proportion of the assessment year remaining after the date of termination of the lease, licence, agreement or arrangement. This will be the number of days that remain in the year of assessment after the date upon which the termination occurred, divided by the number of days in the year of assessment.

Subclause (5) directs the Commissioner to make a reassessment where this section applies, regardless of the 5 year restriction in clause 17 of the Taxation Administration Bill.

Subclause (6) provides a definition of "taxes" for the purposes of this section. It should be noted that the definition operates so that this rebate will only apply to the amount of land tax, penalty tax or charges under the regulations for the payment arrangements. The rebate is not available for penalties associated with offences, law costs or fees for the registration or removal of a memorial.

Clause 32: Land owned by religious bodies

This clause specifies the land tax treatment of land owned by, vested in or held in trust for certain religious bodies.

Subclause (1) provides an exemption for a particular assessment year for land that is owned by, vested in or held in trust for a religious body where it is in good faith used or reserved for religious purposes. These purposes include, but are not limited to, a site for:

- a church or chapel;
- public worship;
- educational purposes; or
- the residence of a minister of the religious body.

Subclause (2) provides an exception to the exemption in subclause (1).

Where land that is exempt under subsection (1) because it is reserved as a site for religious purposes, is sold or used for any purposes other than those specified, land tax is payable on the land for the lesser of the following periods:

- for the five financial years (including the assessment year) immediately before the land was sold or used for that purpose; or
- for all the financial years from and including the assessment year in which it became exempt under subclause (1). It should be noted that land used by the owner or any other person for business, commercial, professional or trade purposes, would not be within the scope of this exemption.

Subclause (3) provides that where tax is retrospectively assessed under subclause (2), it is to be charged for that year at the appropriate rate under the Land Tax Act 2001 as if it was the only land owned by the owner (ie. it is not to be aggregated with any other land owned by the religious body).

Subclause (4) provides that the Commissioner can make any reassessment necessary to give effect to subsection (2), despite

the time restriction provided in clause 17 of the Taxation Administration Bill.

Clause 33: Land owned by educational institutions

This clause specifies the land tax treatment of land owned by, vested in or held in trust for educational institutions.

Subclause (1) provides an exemption for a particular assessment year for land that is owned by, vested in or held in trust for an educational institution as set out in subclause (4), where it is in good faith used or reserved for the purpose of providing educational facilities or is otherwise consistent with the institution's objectives and functions.

Subclause (2) provides an exception to the exemption in subclause (1).

Where land that is exempt under subsection (1) because it is reserved as a site for educational purposes, is sold or used for any purposes other than those specified, land tax is payable on the land for the lesser of the following periods:

- for the five financial years (including the assessment year) immediately before the land was sold or used for that purpose; or
- for all the financial years from and including the assessment year in which it became exempt under subclause (1).

It should be noted that land used by the owner or any other person for business, commercial, professional or trade purposes, would not be within the scope of this exemption.

Subclause (3) provides that where tax is retrospectively assessed under subclause (2), it is to be charged for that year at the appropriate rate under the Land Tax Act 2001 as if it was the only land owned by the owner (ie. it is not to be aggregated with any other land owned by the educational institution).

Subclause (4) specifies the educational institutions that are entitled to receive the exemption under subclause (1). These are:

- University of Western Australia;
- Curtin University of Technology;
- Edith Cowan University;
- Murdoch University;
- any bona fide educational institution not carried on for the purpose of private profit or gain; or
- any college, hostel or hall of residence, that is affiliated with a body or institution specified above, that has as its objects the provision of residence or education and residence of enrolled

students of the body or institution, and that is not carried on for the purpose of private profit or gain.

Subclause (5) provides that the Commissioner can make any reassessment necessary to give effect to subsection (2), despite the time restriction provided in clause 17 of the Taxation Administration Bill.

Clause 34: Land used for public or religious hospitals

This clause specifies land used solely for the purposes of a public hospital, or any hospital conducted by or on behalf of a religious body to be an exempt class of land.

Clause 35: Mining tenements

This clause specifies all land held as mining tenements within the meaning of the Mining Act 1978 to be an exempt class of land. However, if the land is owned in fee simple, the owner of the land in fee simple is liable for land tax.

Clause 36: Land used for various public purposes

This clause specifically exempts land that at midnight on 30 June in the financial year before an assessment year, is dedicated to or vested in trustees for the purposes of:

- a zoological garden;
- an agricultural, pastoral or horticultural show;
- a historical society;
- a public museum; or
- other public purposes.

Where this is the case, the land must be used for those purposes.

Clause 37: Land owned by public charitable or benevolent institutions

This clause provides an exemption for land that at midnight on 30 June in the financial year before an assessment year, where it is owned by, vested in or held in trust for a public charitable or benevolent institution. In order to be eligible for the exemption, the land must be used solely for the public charitable or benevolent purposes for which it was established.

Clause 38: Land owned by various non-profit organisations

This clause provides an exemption in certain circumstances for land that is owned by, vested in or held in trust for a sports association or any other non-profit association.

Subclause (1) provides that the land is exempt if, at midnight on 30 June in the financial year prior to the assessment year, it is owned by, vested in or held in trust for a sports association. The Glossary includes a definition of "sports association".

The exemption applies only where the land is used as a site for providing facilities necessary or conducive to the attainment of the sporting objectives of the association.

If, for example, an amateur football club used 50% of the land for sporting purposes and the balance for investment purposes, then only the part used for sporting purposes would be exempt from land tax.

Subclause (2) provides an exemption for non-profit associations other than sporting associations. The Glossary includes a definition of "non-profit association".

Paragraph (a) provides that the exemption applies if, at midnight on 30 June in the financial year before an assessment year, the land is owned by, vested in or held in trust for a non-profit association. This provision does not apply in respect of a non-profit association that is a sporting association, as subclause (1) applies to those bodies.

Paragraph (b) requires the land to be used by the non-profit association solely as a site for providing facilities that are:

- necessary for or conducive to the attainment of the objects of the association; and
- not available for use on a paying basis by persons (other than guests of members) who are not members of the association.

The exemption is not affected by the fact that the facilities on the land may also include bar amenities for the sale of liquor.

If an association does not meet the criteria for the exemption by reason that the land is not used solely by the association or the facilities are available for use on a paying basis to non-members then, depending on the extent of use, they may be entitled to a 50% concession under subclause (3).

Subclause (3) provides a concession in some cases where a non-profit association may not qualify for a full exemption under subclause (2). Where that is the case, land tax will be imposed at 50% of the rate specified in the Land Tax Act 2001.

The concession applies where at least half of the land that is capable of being let is used in the manner set out in subclause (2).

The concession is not affected by the fact that the facilities on the land may also include bar amenities for the sale of liquor.

Clause 39: Land used for retirement villages

This clause provides an exemption for certain land used for retirement villages. It ensures that retirement village units that are occupied under a form of lease or licence arrangement enjoy a similar exemption to those where the occupants have some form of title to the unit.

The exemption applies if at midnight on 30 June in the financial year before an assessment year the land is used as a retirement village as defined by the Retirement Villages Act 1992.

This definition states that a retirement village

“ means a complex of residential premises, whether or not including hostel units, and appurtenant land, occupied or intended for occupation under a retirement village scheme or used or intended to be used for or in connection with a retirement village scheme” .

The above definition refers to a “retirement village scheme” which is defined in the Retirement Villages Act 1992 as:

“ a scheme established for retired persons or predominantly for retired persons, under which –

- (a) residential premises are occupied in pursuance of a residential tenancy agreement or any other lease or licence;
- (b) a right to occupation of residential premises is conferred by ownership of shares;
- (c) residential premises are purchased from the administering body subject to a right or option of repurchase;
- (d) residential premises are purchased subject to conditions restricting the subsequent disposal of the premises; or
- (e) residential premises are occupied under any other scheme or arrangement prescribed for the purposes of this definition,

but does not include any such scheme under which no resident or prospective resident of residential premises pays a premium in consideration for, or in

contemplation of, admission as a resident under the scheme."

Under paragraph (a), the residential premises in the village must be occupied, or available for occupation under a "residence contract" within the meaning of the Retirement Villages Act.

A "residence contract" means:

"a contract, agreement, scheme or arrangement which creates or gives rise to a right to occupy residential premises in a retirement village, and may take the form of a lease or licence".

In addition, paragraph (b) provides that all approvals must be in force under Part XV of the Local Government (Miscellaneous Provisions) Act 1960 for the exemption to be valid. These approvals ensure that the building is suitable and safe for its intended use.

The exemption only applies to the extent of the land used for the exempt purpose. If, for example, there existed residential units and other units under construction at 30 June in the financial year prior to an assessment year, the area of the land comprised of the units under construction would be subject to the full rate of land tax.

Division 5 – Other exemptions and concessions

Clause 40: Land owned by veteran's surviving partner or mother

This clause provides a limited exemption for the first \$10,000 of assessable land owned at midnight on 30 June in the financial year prior to an assessment year by a:

- war widow or war widower, as defined in section 5E of the Veteran's Entitlement Act 1986 (Cwth); or
- veteran's widowed mother to whom a pension continues to be payable under subsection 4(6) of the Veteran's Entitlements (Transitional Provisions and Consequential Amendments) Act 1986 (Cwth).

Apart from the person's residence that is likely to be exempted elsewhere, the recipient of the Commonwealth entitlement is exempted on the next \$10,000 in value of other land owned.

It should be noted that the Land Tax Assessment Act 1976, which is being repealed as part of the Taxation Administration Bill package, provided an exemption to a widow who is in receipt of a pension under Division 1 of Part III of the Repatriation Act 1920 of the Commonwealth. This Act originally related to service during World War I. The application of those provisions were extended to those who had served in later wars and conflicts in which Australia was involved, to certain members of the Defence Force and to those who service in a Peacekeeping Force.

This exemption has been maintained under paragraph (a), and also specifically mentions war widowers.

Provision under the Commonwealth legislation to grant a pension to the widowed mother of a veteran ceased from 6 June 1985. However, under transitional arrangements, any widowed mother who had been granted a pension before the provisions were repealed continued to be paid it for as long as she remained eligible. The land tax concession is preserved on this basis, however, it is likely that the land tax concession for widowed mothers will be phased out over time and eventually repealed.

Clause 41: Concessional value for newly subdivided land

This clause provides a land tax concession where certain land is subdivided such that the subdivider is charged land tax at the "en globo" valuation rate for the survey strata and single residential lots subdivided in the previous financial year, and remaining in the ownership of the subdivider at 30 June in any year, until the following 30 June.

The concession ceases on the first sale of the lot.

Subclause (1) outlines the circumstances under which a concessional land tax assessment of a new lot may be made. In order to qualify, a new lot must be created in a financial year before the assessment year. The new lot must be created by subdivision of an existing lot through a subdivisional plan or diagram approved by the Western Australian Planning Commission. Where this occurs, the land tax can be assessed under this clause providing:

- the new lot is wholly within the original lot;
- at midnight on 30 June in the financial year before the assessment year, an unimproved valuation was in force for the original lot under the Valuation of Land Act 1978;
- the new lot is not a lot depicted on a strata plan, unless it is a lot in a strata survey scheme;
- the land which is the subject of the concessional assessment must have been created to be used solely for residential purposes;
- the lot must not have a building on it that is used, or suitable to be used, for residential purposes. For example, land with a partially complete house would be considered vacant for the purposes of this concession;
- the area of the new lot should be less than 2000m². However, a new lot with an area greater than 2000m² may still qualify for concessional assessment, providing that the lot is intended to be used for a building or group of buildings that comprise a number of separate residential units. This exclusion is to ensure

that an application for concessional assessment cannot be made in respect of lots in a semi-rural subdivision;

- there must be no change in the ownership of the land which is the subject of the concessional assessment by virtue of an agreement (documented or otherwise) for its sale. In essence, the land which is the subject of the concessional assessment must be owned by the same person or entity as it was when the subdivisional plan or diagram was approved by the Western Australian Planning Commission; and
- the owner of a new lot makes an application under subclause (2) to the Commissioner to have the land tax assessed on the lot under this clause.

Subclause (2) sets out how the application for the concession is to be made.

Paragraph (a) requires that the application be made in an approved form. This generally requires that the owner give full details of the land holdings on which the concession is being claimed. A standard application form is available from the Office of State Revenue for this concession.

Paragraph (b) specifies that the Commissioner must receive it on or before 31 August in the assessment year, unless the Commissioner provides an extension under subclause (3).

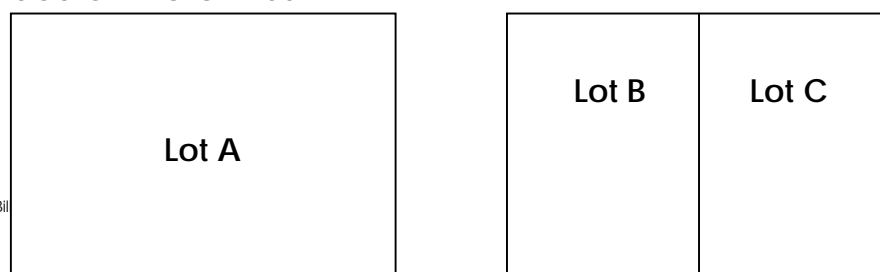
Subclause (3) gives the Commissioner the power to extend the date for lodgement of an application for the concession. The extension can only be allowed if the extension application is received before the end of the assessment year (ie. by 30 June in the assessment year). The Commissioner must be satisfied that reasonable grounds exist before he will grant the extension.

Subclause (4) provides that the decision of the Commissioner not to extend the date for making an application is non-reviewable. This means that no right of objection or appeal exists (see clause 34(2)(d) of the Taxation Administration Bill).

Subclause (5) provides for land tax to be payable on the lesser of the concessional value of the new lot, calculated in accordance with subclause (6), or the unimproved value of the new lot.

Subclause (6) provides for the concessional value of the new lot to be based on the same proportion of the unimproved value of the original lot as the area of the new lot bears to the area of the original lot.

This can be illustrated by a simple example. Lot A (depicted below), which has an "en globo" value of \$400,000, was subdivided on March 2001.



Lot D

Lot E

The owner now owns new lots B, C, D and E on 30 June 2001. Each lot has a value at 30 June of \$125,000.

For the 2001/02 assessment year, providing the owner meets all the requirements of this clause, he would be assessed on a value of \$400,000, rather than the aggregated value of the subdivided lots (ie. \$500,000).

Clause 42: Land vacated for sale by mortgagee

This clause 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 provide vacant possession in order for the mortgagee to sell the land under the mortgage conditions.

Subclause (1) provides the conditions under which the exemption will be available.

Paragraph (a) requires that the property be vacant at midnight on 30 June in the financial year before the assessment year.

Paragraph (b) requires that the land would have been subject to an exemption or concession at 30 June in the previous financial year if the owner or a particular individual had occupied the land or had been using it for an exempt purpose, or both. This could apply, for example, to land that may have been subject to a residential concession under clause 21 or a primary production exemption under clause 29.

Paragraph (c) requires that the only reason for the property not being occupied or used in the manner required by the exemption or concession provisions is due to a mortgagee which has security over the property requiring that it be vacated in accordance with the mortgagee's right to sell the property.

Subclause (2) provides that the land can only be exempt to the same extent it would have been under the provision granting the exemption or concession. For example, if the property was only subject to a 50% partial exemption, the exemption under this will only be to the extent of 50%.

Subclause (3) provides that the property is not exempt if the person would have been entitled to an exemption under the same provision, or under clause 21, 22, 23, 24 or 25 for a different property. For example, if the mortgagee required vacant possession of a person's home that was previously subject to an exemption under clause 21, and the person moved into another

property that he owned and received the residential exemption under clause 21 on 30 June 2002, the land would not be exempt under this clause.

Subclause (4) limits the availability of the exemption to one year only. If the land is still vacant on 30 June in the following year because the mortgagee has been unable to sell it, land tax would be payable.

PART 4 – MISCELLANEOUS

Clause 43: Information to be given by occupier or person in possession

This clause places an obligation on an occupier or person in possession of land to provide certain information.

Subclause (1) allows the Commissioner or an investigator (as defined in the Taxation Administration Bill Glossary) to request an occupier or person in possession of land to disclose the name of the owner of the land or the name of the person entitled to receive rents and profits of the land. Furthermore, the person must give any information in his possession that is lawfully required for the purposes of this Act, the Land Tax Act 2001 or the Taxation Administration Act 2001.

Subclause (2) provides that a person who fails to comply with a request under subclause (1) commits an offence with a maximum penalty of \$5,000.

Clause 44: Application of Act to university land

This clause over-rides any specific clause that may have otherwise applied to land owned by universities under the following Acts:

- University of Western Australia Act 1911;
- Curtin University of Technology Act 1966;
- Murdoch University Act 1973; and
- Edith Cowan University Act 1984.

Accordingly, land owned by these universities will only be exempt to the extent that its use meets the requirements of clause 33 of this Act.

Clause 45: Contracts ineffective to alter incidence of land tax

This clause provides that any contract or agreement which has the effect of altering or removing the incidence of an exemption or tax may be voided by the Commissioner.

Subclause (1) provides that any contract, agreement or understanding that may remove, qualify or alter the operation of or otherwise affect an assessment or exemption may be voided by the Commissioner to the extent that it would otherwise have effect.

Subclause (2) provides that subclause (1) will have effect regardless of how or when the contract, agreement or understanding is arrived at or evidenced.

Subclause (3) provides that the contract, agreement or understanding, although voided by the Commissioner, is enforceable for all other purposes.

Clause 46: Regulations

This clause provides a regulation making power in respect of the Act.

Subclause (1) provides that the Governor may make regulations for the purposes of the Land Tax Assessment Act 2001. This power does not limit the regulation making power in the Taxation Administration Act 2001.

Subclause (2) provides specific regulation making powers.

Paragraph (a) allows for a regulation to require a Crown instrumentality, local government or any other public authority to provide information regarding the land that they own or have vested in them that any other person is entitled to use under an agreement or arrangement with them for a business, commercial, professional or trade purpose.

Paragraph (b) provides for a regulation to specify a discount to be allowed.

Paragraph (c) authorises a regulation to be made in respect of payment of land tax by instalments, providing the first instalment is due within 49 days of the date of an assessment notice being issued.

Paragraph (d) provides for the imposition of a charge when land tax is paid by instalments and for the rate of the charge to be prescribed by regulation.

Paragraph (e) allows a regulation to be made to provide that an instalment arrangement is terminated when the terms of the arrangement selected by the taxpayer are not adhered to. In such circumstances the full amount of any unpaid land tax becomes due and payable immediately.

Paragraph (f) allows regulations to provide for any other matters considered necessary to ensure the smooth operation of payment of land tax by instalments.

With regard to the discount and interest regulation making powers in subclause (2), it should be noted that the current arrangements in the Land Tax Assessment Regulations 1976 will continue under new regulations.

Subclause (3) provides that the regulations may provide an offence penalty not exceeding \$5,000 for contravention of the regulations.

GLOSSARY

The Glossary provides the meanings of a number of terms and interpretive provisions used in the Act. The Glossary is divided into a number of clauses.

Clause 1: This clause of the Glossary defines the terms used in the Act. Explanations of the terms have not been included on the basis that the terms themselves are self explanatory.

For the purposes of the definition of " public statutory authority" , it is intended that the authorities previously excluded under the Land Tax Assessment Regulations 1976 will also be prescribed. The public statutory authorities are the:

- Electricity Corporation established by section 4 of the Electricity Corporation Act 1994;
- Gas Corporation established by section 4 of the Gas Corporation Act 1994;
- Water Corporation established by section 4 of the Water Corporation Act 1995;
- the Albany Port Authority established by section 4 of the Port Authorities Act 1999;
- Broome Port Authority established by section 4 of the Port Authorities Act 1999;
- Bunbury Port Authority established by section 4 of the Port Authorities Act 1999;
- Dampier Port Authority established by section 4 of the Port Authorities Act 1999;
- Esperance Port Authority established by section 4 of the Port Authorities Act 1999;
- Fremantle Port Authority established by section 4 of the Port Authorities Act 1999;
- Geraldton Port Authority established by section 4 of the Port Authorities Act 1999; and
- Port Hedland Port Authority established by section 4 of the Port Authorities Act 1999.

Clause 2: **Lots and parcels of land**

This clause provides the meaning of " lot" and " parcel" as used throughout the Act.

Subclause (1) provides that any reference to "lot" in a land tax Act (as defined in the Glossary) is to be interpreted in accordance with the meaning set out.

Subclause (2) also provides that a reference to a lot includes a reference to the whole of any land that is the subject of:

- a Crown grant issued under the Land Act 1933;
- a certificate of Crown land title, or qualified certificate of Crown land title, created and registered under the Transfer of Land Act 1893;
- a certificate of title registered under the Transfer of Land Act 1893;
- a survey into a location or lot under section 27(2) of the Land Administration Act 1997;
- a part-lot shown on a plan of subdivision or diagram deposited in the Department of Land Administration, or the Department within the meaning of the Transfer of Land Act 1893 or Registry of Deeds;
- a conveyance registered under the Registration of Deeds Act 1856;
- a lot depicted on a strata plan; or
- an entitlement to occupy a non-strata home unit.

Subclause (3) allows the Commissioner to treat two or more lots with common boundaries that are in the same ownership as a single property for land tax purposes if it is considered appropriate. Where this occurs, the "single property" is considered to be a "parcel" as per the definition of that term in the Glossary.

Subclause (4) provides that for determining the use of a lot or parcel of private residential property, 2 or more lots are not to be treated as a single private residential property unless the Commissioner is satisfied that the lots are established and actually used by the owners as one integrated area that constitutes a place of residence.

The operation of subclauses (3) and (4) can be illustrated as follows.

Where a person owns two adjoining lots, one of which is vacant and the other includes the person's residence, the vacant lot is assessed for land tax purposes. However, where both lots are clearly used as part of the residence, they are treated as one parcel and an exemption is granted.

Residential usage of the vacant lot may comprise a common boundary fence, a tennis court or swimming pool, or some other structure that evidences that the lot is being used as an integral

part of the residence of the owner. Where the vacant lot is not actually used by the owner as an integral part of the residence at 30 June (eg. he or she may intend to develop a tennis court or add a swimming pool in the future), the lot will be subject to tax.

Clause 3: Subdivided land

This clause provides clarification as to when land is considered to be subdivided.

Subclause (1) identifies the circumstances when land is considered to be subdivided. These circumstances are:

- upon approval of a plan of subdivision by the Western Australian Planning Commission for the purposes of section 20(2) of the Town Planning and Development Act 1928.

Section 20(2) of the Town Planning and Development Act restricts the Registrar of Titles from issuing a certificate of title for land that is the subject of a subdivision unless it has been approved by the Western Australian Planning Commission;

- upon a transfer, conveyance, lease or mortgage of any land being approved under sections 21(1)(a) or an application for the creation and registration of a certificate of title under section 21(2) of the Town Planning and Development Act 1928. In both cases, the effect of the approval must permit a dealing in a part of the land that is less than a whole lot;
- upon the Minister allowing an appeal on either of the previous two matters under section 26 of the Town Planning and Development Act 1928;
- upon approval being given by the Western Australian Planning Commission to any plan which is required to be accompanied by a certificate under section 25 of the Strata Titles Act 1985; or
- upon a statement being endorsed on a plan under section 25B of the Strata Titles Act 1985.

Subclause (2) provides an automatic presumption. The approval is conclusively presumed to have been given on the date appearing in the approval as endorsed on the plan, instrument or application, as the case requires.

Clause 4: Land in a non-rural zone

This clause provides that where land is situated in the metropolitan region or, if outside that region, is within the boundaries of an approved and operative town planning scheme, it is considered to be land in a non-rural zone.

Clause 5: Total net income of rural business owners

This clause illustrates how the total net income of the owner of a rural business is to be determined for the purposes of clauses 29

and 30. Clause 29 requires that to qualify for an exemption, one-third of the owner's total net income for the previous financial year be derived from a rural business or businesses carried on by the owner. Clause 30 provides that where this requirement is not met, a 50% concession will apply.

Paragraph (a) provides that where the owner is an individual, the total net income is an amount equal to the individual's gross income from all sources less the expenses incurred in the earning of the income.

Paragraph (b) provides that where the owner is 2 or more individuals, the total net income is the sum of the gross incomes from all sources of all individuals less the respective expenses of earning the incomes.

Paragraph (c) provides that where the owner is a body corporate, the total net income is the sum of the total net incomes of the body corporate and of any other body corporate deemed to be related to it under section 50 of the Corporations Act 2001 of the Commonwealth.

Subclause (2) provides that where the ownership of land changes during a financial year, the total net income derived is calculated by reference to the total net income derived by the person during that part of the year for which the person owned the land.

ATTACHMENT

**CONVERSION TABLE – LAND TAX ASSESSMENT ACT 1976 TO LAND TAX
ASSESSMENT BILL 2001**

OLD SECTION	OLD SECTION NUMBER	NEW SECTION	NEW SECTION NUMBER
Short title	1	Short title	1
Commencement	2	Commencement	2
Repeal and saving	3	Taxation Administration (Consequential Provisions) Act	4
Interpretation	5	Glossary	Glossary
" agent "	5	" agent "	Glossary
" Commissioner "	5	" Commissioner "	Glossary TAA
" concession "	5	No equivalent definition	N/A
" Crown "	5	Taxation Administration Bill	5
" district "	5	No equivalent definition	N/A
" exemption "	5	No equivalent definition	N/A
" exempt land "	5	" exempt "	Glossary
" exempt purpose "	5	" exempt purpose "	Glossary
" joint owners "	5	" joint owners "	Glossary
" land "	5	" land "	Glossary
" land tax "	5	" land tax "	Glossary
" Local Court "	5	No equivalent definition	N/A
" lot "	5	" lot "	Glossary
" metropolitan region "	5	" metropolitan region "	Glossary
" owned "	5	No equivalent definition	N/A
" owner "	5	" owner "	Glossary
" parcel "	5	" parcel "	Glossary
" public notice "	5	No equivalent definition	N/A
" public statutory authority "	5	" public statutory authority " & " taxable authority "	Glossary
" registered "	5	" registered "	Glossary
" repealed Act "	5	No equivalent definition	N/A
" Schedule "	5	No equivalent definition	N/A

OLD SECTION	OLD SECTION NUMBER	NEW SECTION	NEW SECTION NUMBER
" section"	5	No equivalent definition – see Interpretation Act 1984	N/A
" subsection"	5	No equivalent definition – see Interpretation Act 1984	N/A
" taxpayer"	5	" taxpayer"	Glossary TAA
" town planning scheme"	5	" town planning scheme"	Glossary
" trustee"	5	" trustee"	Glossary
" unimproved value"	5	" unimproved value"	Glossary
" year of assessment"	5	" assessment year"	Glossary
Interpretation	5(2)	Application of Act to university land	44
Interpretation	5(3)	Calculating the unimproved value of part of a lot	13(2)
Power of Commissioner to administer Act	6	Administration of taxation Acts	7 TAA
Application of Financial Administration and Audit Act 1985	6A	No equivalent provision	N/A
Power of delegation	7	Delegation	10 TAA
Power of inspection of public offices	8	Entry of premises	90 TAA
Other powers of inspection	9	Entry of premises	90 TAA
Attendance and giving evidence	10	Power to require person to attend for examination	87 TAA
Secrecy	11	Confidentiality	105 TAA
Information under this Act may be used under other Acts	12	Confidentiality	105(2)(a) TAA
Land tax	13	Assessing the amount of land tax payable	10
Date of charge	14	Liability to pay land tax	7(1)
Payable by owner	15(1)	Taxable land	5
Payable by owner	15	Assessing tax on 2 or more lots with the same ownership	11
Liability of owner who subdivides certain exempt land	15A	Tax on newly subdivided private residential property	14
Further provision relating to the subdivision of land previously	15B	Tax on newly subdivided rural business land	15

OLD SECTION	OLD SECTION NUMBER	NEW SECTION	NEW SECTION NUMBER
exempt or concessionally taxed			
Joint owners	16	Assessing tax payable by joint owners	12
Joint owners	16(2b)	Liability to pay land tax	7(4)
Buyer in possession liable	17	Certain persons and bodies taken to be owners of land	8(3)(b)
Seller to remain liable until delivery of possession	18	Certain persons and bodies taken to be owners of land	8(3)(a)
Certain public authorities to be treated as owners	18A	Certain persons and bodies taken to be owners of land	8(2)
Assessment of certain home unit owners	19	Assessing tax on non-strata home units	16
Agents, trustees etc., how chargeable	20	Liability of agents or trustees	9
Agents, trustees etc., how chargeable	20(2)	Assessing tax on 2 or more lots with the same ownership	11(2) and (3)
Exemptions and concessions for specified land	21	Exempt land	17
Power of Commissioner to exempt land	22	Commissioner's power to exempt land	20
Rebates	23	Exemption during renovation of private residence	25
Rebate where lease etc. terminated before expiry	23AA	Land owned by the Crown or other public authorities	31(3), (4) and (5)
Rebate for inner city residential land	23AB	Rebate for inner-city residential property	28
Concessional unimproved value for certain subdivided land	23A	Concessional value for newly subdivided land	41
Requirement for lodgement of returns	24	No equivalent section	N/A
Additional tax for late returns and omissions in returns	25	Penalty tax for contravention of taxation Act	26 TAA
Unimproved value of land	26	Calculating the unimproved value of part of a lot	13
Assessment to be made	27	Official assessments	15 TAA
Notice of assessment	28	Assessment notices	23 TAA
Particulars in notice	29	Form of assessment notice	24 TAA
Assessment in certain cases	30	Official assessments	15 TAA

OLD SECTION	OLD SECTION NUMBER	NEW SECTION	NEW SECTION NUMBER
Amendment of assessments	31	Reassessments	16 TAA
Validity of assessment	32	No equivalent provision	N/A
Evidentiary provision	33	Evidentiary value of assessment notice and Evidentiary status of copies and reproductions of documents	111 & 112 TAA
Assessment of trustees	34	Liability of agents and trustees	9
Objection to assessment	35	Right to object	34 TAA
Appeal against assessment	36	Right of appeal	40 TAA
Objections or appeal	37	Objections to land valuations	32 TAA
Liability to pay land tax not affected by objection or appeal	37A	Continuing obligation to pay assessed tax	33 TAA
Amendment of assessment consequent on objection or appeal	37B	Consideration of objections and Appeal hearings	37 & 43
When tax payable	38	Time for payment of land tax	6
Penalty for late payment	39	Penalty tax for late payment	27 TAA
Land tax and penalty a debt due to Her Majesty	40	Recovery of unpaid tax	60 TAA
Tax recoverable by the Commissioner	41	Recovery of unpaid tax	60 TAA
Procedure in Local Court	42	No equivalent provision	N/A
Mode of service when defendant absent	43	Service of court process	109 TAA
Commissioner may appear by public officer	44	Appointed representatives for court proceedings	12 TAA
To be a first charge on the land	45	Charge on land to secure land tax	68 TAA
Prohibition in dealing in land	46	Prohibition on dealing with certain charged land	70 TAA
Bona fide purchaser for value and his successors in title	47	Certificate of land tax secured by charge	72 TAA
Certificates as to land tax charges	48	Certificate of land tax secured by charge and Release of land from charge	72 & 73 TAA
Construction of section 48	49	Certificate of land tax secured by charge	72 TAA

OLD SECTION	OLD SECTION NUMBER	NEW SECTION	NEW SECTION NUMBER
Power of sale	50	Orders for sale of land	77 TAA
Application of proceeds of sale	51	Orders for sale of land	77 TAA
Duties and liabilities of a representative of a body corporate	52	No equivalent provision	N/A
Offence by occupier or person in possession	53	Information to be given by occupier or person in possession	43
Penalty for making false returns, etc.	54	No equivalent provision	N/A
Penalty for obstructing officers	55	Obstructing or misleading an investigator	99 TAA
Requirements of Commissioner to be complied with	56	No specific equivalent	N/A
Contracts affecting assessments, incidence of assessment etc., void	57	Contracts ineffective to alter incidence of tax	45
General penalty	58	General penalty provision	96 TAA
Extended time for laying complaints	59	Time for commencing prosecutions	102 TAA
Immunity of Commissioner and persons authorized by him	60	Exemption from personal liability	117 TAA
Evidentiary provisions	61	No equivalent provision	N/A
Regulations	62	Regulations	46
Schedule – Part I			
Crown etc.	1	Land owned by the Crown or other public authorities	31
Religious land	2	Land owned by religious bodies	32
Educational land	3	Land owned by educational institutions	33
Public hospitals etc.	4	Land used for public or religious hospitals	34
Mining tenements	5	Mining tenements	35
Public purposes	6	Land used for various public purposes	36
Charities, public benevolent	7	Land owned by public	37

OLD SECTION	OLD SECTION NUMBER	NEW SECTION	NEW SECTION NUMBER
institutions		charitable or benevolent institutions	
Non-profit associations	7A	Land owned by various non-profit organizations	38
Retirement villages	7B	Land used for retirement villages	39
War widows	8	Land owned by veteran's surviving partner or mother	40
Natural person principal place of residence (PPR) exemption (sole person)	9(a)(i)	Private residential property owned by individuals	21(1)(a)
Natural person PPR exemption (multiple owners)	9(a)(ii)	Private residential property owned by individuals	21(1)(a) & s10 Interpretation Act
Natural person PPR exemption (husband and wife)	9(a)(iii)	Private residential property owned by individuals	21(1)(b)
Natural person and guarantor	9(a)(iv)	Private residential property owned by individuals	21(2)
Natural person PPR exemption (not all owners reside)	9(a)(v)	Partial exemptions or concessions, Private residential property owned by individuals	18, 21(1)
Company – all shareholders reside	9(a)(vi)	No equivalent	N/A
Company – some shareholders reside	9(a)(vii)	No equivalent	N/A
Company and natural persons – all reside	9(a)(viii)	No equivalent for company – Individual's portion covered above	N/A and 18, 21(1)
Company and natural persons – some reside	9(a)(ix)	No equivalent for company – Individual's portion covered above	N/A and 18, 21(1)
Executor for natural person beneficiary with right to reside	9(a)(x)	Private residential property owned by executor or administrator	22 & s10 Interpretation Act
Executor for natural person beneficiary with right to reside and others	9(a)(xi)	Partial exemptions or concessions, Private residential property owned by executor or administrator	18, 22 & s10 Interpretation

OLD SECTION	OLD SECTION NUMBER	NEW SECTION	NEW SECTION NUMBER
			Act
Executor on death of resident	9(a)(xii)	Continued exemption after death of resident	23 & s10 Interpretation Act
Executor on death of resident and others	9(a)(xiii)	Partial exemptions or concessions, Continued exemption after death of resident	18, 23 & s10 Interpretation Act
New home construction	9(a)	New private residences	24 & s10 Interpretation Act
Refurbishment of residence	9(b)(vi)	Exemptions during renovation of private residence	25 & s10 Interpretation Act
Mortgagee sale	9A	Land vacated for sale by mortgagee	42 & s10 Interpretation Act
Land over 2.0234 hectares	10	Not specifically identified except on subdivision	N/A
Home units	11	" private residential property"	Glossary
Primary production exemption	12	Land used solely or principally for a rural business	29
Primary production concession	12	Concessional rates for other rural business land	30
Schedule Part II	(b)	Land owned by non-profit organisations	38
Schedule Part III	1	Partial exemptions	18
Schedule Part III	2	Obtaining an exemption or concession	19
Schedule Part III	3	Obtaining an exemption or concession	19
Schedule Part III	4	No equivalent provision	N/A
Schedule Part III	5	No equivalent provision	N/A

**REVERSED CONVERSION TABLE - LAND TAX ASSESSMENT BILL 2001 TO LAND TAX
ASSESSMENT ACT 1976**

NEW SECTION	NEW SECTION NUMBER	OLD SECTION	OLD SECTION NUMBER
Short title	1	Short title	1
Commencement	2	Commencement	2
Relationship with other Acts	3	No equivalent	N/A
Meaning of terms used in this Act	4	No equivalent	N/A
Taxable land	5	Payable by owner	15(1)
Time for payment of land tax	6	When tax payable	38
Liability to pay land tax	7(1)	Date of charge	14
Liability to pay land tax	7(2)	Interpretation – paragraphs (b) and (c) of definition of “owner”	5
Liability to pay land tax	7(3)	Schedule – Part I	1(d)
Liability to pay land tax	7(4)	Joint owners	16(2)(b)
Liability to pay land tax	7(5)	Interpretation – definition of “land tax”	5
Certain persons and bodies taken to be owners of land	8(1)	Interpretation – paragraphs (b) and (c) of definition of “owner”	5
Certain persons and bodies taken to be owners of land	8(2)	Certain public authorities to be treated as owners	18A
Certain persons and bodies taken to be owners of land	8(3)	Buyer in possession liable, Seller to remain liable until delivery of possession	17, 18
Liability of agents and trustees	9	Agents, trustees etc. how chargeable, Assessment of trustees	20, 34
Assessing the amount of land tax payable	10	Land tax	13
Assessing land tax on 2 or more lots with the same ownership	11	Payable by owner	15
Assessing land tax payable by joint owners	12	Joint owners	16
Calculating the unimproved value of part of a lot	13	Interpretation – paragraph (c) of definition of “unimproved value”	5 and 5(3)
Land tax on newly subdivided	14	Liability of owner who	15A

NEW SECTION	NEW SECTION NUMBER	OLD SECTION	OLD SECTION NUMBER
private residential property		subdivides certain exempt land	
Land tax on newly subdivided rural business land	15	Further provision relating to the subdivision of land previously exempt or taxed concessionally	15B
Assessing land tax on non-strata home units	16	Assessment of certain home unit owners	19
Exempt land	17	Exemptions and concessions for specified land	21
Partial exemptions or concessions	18	Schedule - Part III and various exemptions in Part 1	Item 1 Schedule (Pt III)
Obtaining an exemption or concession	19	Schedule - Part III	Item 2, 3 Schedule (Pt III)
Commissioner's power to exempt land	20	Power of Commissioner to exempt land	22
Private residential property owned by individuals	21	Part 1 Schedule and extent covered by partial exemption combinations	9(a)(i), (ii), (iii), (iv), (v), (viii), (ix), (xi), (xiii)
Private residential property owned by executor or administrator	22	Part 1 Schedule and extent covered by partial exemption combinations	9(a)(x), (xi)
Continued exemption after death of resident	23	Part 1 Schedule and extent covered by partial exemption combinations	(xii), (xiii)
New private residences	24	Part 1 Schedule	9(a) & (b)(v)
Exemptions during renovation of private residence	25	Part 1 Schedule	9(a) & 9(b)(vi)
Exemption for trust property used by disabled beneficiary	26	New – Budget amendment	N/A
Rebate if moving from one residence to another	27	Rebates	23
Rebate for inner city residential property	28	Rebate for inner city residential land	23AB

NEW SECTION	NEW SECTION NUMBER	OLD SECTION	OLD SECTION NUMBER
Land used solely or principally for a rural business	29	Part I Schedule	12(c)(i) & (ii)
Concessional rates for other rural business land	30	Part I Schedule	12(c)(iii)
Land owned by the Crown or other public authorities	31	Part I Schedule, Rebate where lease etc. terminated before expiry	1, 23AA
Land owned by religious bodies	32	Part I Schedule	2
Land owned by educational institutions	33	Part I Schedule	3
Land used for public or religious hospitals	34	Part I Schedule	4
Mining tenements	35	Part I Schedule	5
Land used for various public purposes	36	Part I Schedule	6
Land owned by public charitable or benevolent institutions	37	Part I Schedule	7
Land owned by various non-profit organisations	38	Part I Schedule, Part II Schedule	7A
Land used by retirement villages	39	Part I Schedule	7B
Land owned by veteran's surviving partner or mother	40	Part I Schedule	8
Concessional value for newly subdivided land	41	Concessional unimproved value for certain subdivided land	23A
Land vacated for sale by mortgagee	42	Part I Schedule	9A
Information to be given by occupier or person in possession	43	Offence by occupier or person in possession	53
Application of Act to university land	44	Interpretation	5(2)
Contracts ineffective to alter incidence of land tax	45	Contracts affecting assessments, incidence of assessment etc., void	57
Regulations	46	Regulations	62
" agent"	Glossary	" agent"	5
" aggregated unimproved value"	Glossary	No previous definition	N/A
" approved"	Glossary	No previous definition	N/A

NEW SECTION	NEW SECTION NUMBER	OLD SECTION	OLD SECTION NUMBER
" assessment "	Glossary	No previous definition	N/A
" assessment year "	Glossary	" year of assessment "	5
" clause "	Glossary	No previous definition	N/A
" concessional unimproved value "	Glossary	No previous definition	N/A
" disabled beneficiary "	Glossary	No previous definition	N/A
" exempt "	Glossary	" exempt land "	5
" exempt purpose "	Glossary	" exempt purpose "	5
" grazing business "	Glossary	Part I Schedule	12(a)
" home unit "	Glossary	Assessment of certain home unit owners	19(1)
" horse-breeding business "	Glossary	Part I Schedule	12(a)
" improvements "	Glossary	Assessment of certain home unit owners	19(1)
" joint owners "	Glossary	" joint owners "	5
" land "	Glossary	" land "	5
" land tax "	Glossary	" land tax "	5
" land tax Act "	Glossary	No previous definition	N/A
" lot "	Glossary	" lot "	5
" metropolitan region "	Glossary	" metropolitan region "	5
" non-profit association "	Glossary	Part I Schedule, Part II Schedule	7A
" non-rural zone "	Glossary	" relevant land "	15B(1)
" non-strata home unit "	Glossary	Definition of " home unit "	19(1)
" original lot "	Glossary	No previous definition	N/A
" owner "	Glossary	" owner "	5
" parcel "	Glossary	" parcel "	5
" primary residence "	Glossary	No previous definition	N/A
" private residence "	Glossary	No previous definition	N/A
" private residential property "	Glossary	No previous definition	N/A
" public statutory authority "	Glossary	" public statutory authority "	5
" registered "	Glossary	" registered "	5
" reserved land "	Glossary	No previous definition	N/A
" retirement village "	Glossary	No equivalent	N/A

NEW SECTION	NEW SECTION NUMBER	OLD SECTION	OLD SECTION NUMBER
" rural business"	Glossary	Part I Schedule – definition of " business"	12(a)(i)
" rural business land"	Glossary	No previous definition	N/A
" sport"	Glossary	Part I Schedule – definition of " sport"	7A(a)
" sports association"	Glossary	Part I Schedule – definition of " sports association"	7A(a)
" strata scheme"	Glossary	No previous definition	N/A
" survey strata scheme"	Glossary	No previous definition	N/A
" strata title home unit"	Glossary	No previous definition	N/A
" subdivided"	Glossary	Liability of owner who subdivides certain exempt land, Further provision relating to the subdivision of land previously exempt or taxed concessionally	15A(1)(b), 15B(1)(b)
" subdividing owner"	Glossary	Definition of " owner"	15A(1)(a), 15B(1)(a)
" taxable land"	Glossary	No previous definition	N/A
" taxable authority"	Glossary	" public statutory authority"	5
" taxes"	Glossary	No previous definition	N/A
" total net income"	Glossary	Part I Schedule – Definition of " total net income"	12(a)
" town planning scheme"	Glossary	" town planning scheme"	5
" trustee"	Glossary	" trustee"	5
" unimproved value"	Glossary	" unimproved value"	5
Lots and parcels of land	Glossary	" lot" , " parcel"	5
Subdivided land	Glossary	Various	15A, 15B, 23A
Land in a non-rural zone	Glossary	" relevant land"	15B(1)
Total net income of rural business owners	Glossary	Part I Schedule – " total net income"	Clause 12(a)

