

Error! No text of specified style in document.

Compare between:

[16 Nov 2006, 01-b0-05] and [13 Dec 2006, 01-c0-05]

Western Australia

An Act relating to the assessment and collection of tax upon land.

page 1

s. 1

Part 1 — Preliminary

Short title

This Act may be cited as the Land Tax Assessment Act 2002^{+} .

Commencement

This Act comes into operation on the day on which the Taxation Administration Act 2003 comes into operation⁴.

Relationship with other Acts

The Taxation Administration Act 2003 and the Land Tax Act 2002 are to be read with this Act as if they formed a single Act.

Meaning of terms used in this Act

The Glossaries at the end of this Act and the Taxation Administration Act 2003 respectively define or affect the meaning of some of the words and expressions used in this Act, and also affect the operation of other provisions.

Part 2 — Land tax liability and assessment

Division 1 Liability to land tax

5. Taxable land

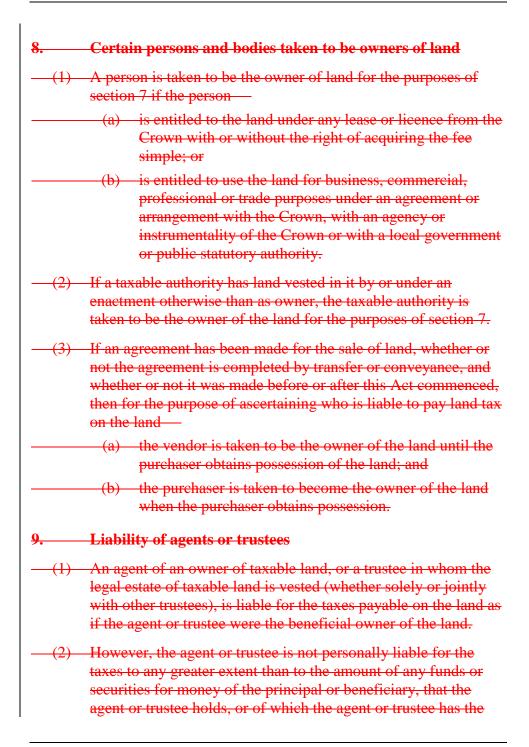
Land tax is payable, in accordance with the land tax Acts, for each financial year for all land in the State except land that is exempt under section 17.

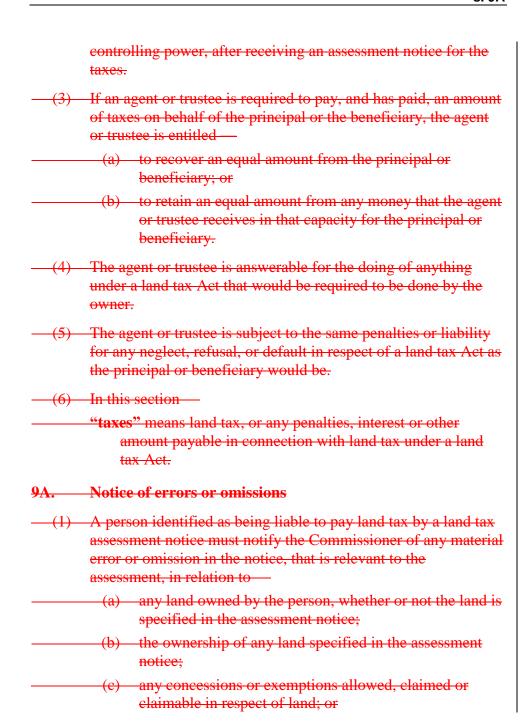
6. Time for payment of land tax

- (1) Land tax payable on an original assessment is due for payment on the 49th day after the date of the assessment notice.
- (2) Land tax payable on a reassessment is due for payment on the date specified in the assessment notice in accordance with the *Taxation Administration Act 2003*.

7. Liability to pay land tax

- (1) Land tax payable on land for an assessment year is payable by the person who is or was the owner of the land at midnight on 30 June in the previous financial year.
- (2) However, if a person or a taxable authority is taken under section 8 to be the owner of the land at that time, the land tax is payable by the person or the taxable authority respectively.
- (3) If a person and a taxable authority are each taken under section 8(1) and (2) respectively to be an owner of the land at that time, the land tax is payable by the taxable authority.
- (4) Joint owners of land are jointly and severally liable for land tax payable on the land regardless of each of the joint owner's respective interests in, or use of, the land.
- (5) A person or taxable authority who is liable to pay land tax is also liable to pay any additional taxes, interest, penalties or charges payable under a land tax Act in relation to the land tax.



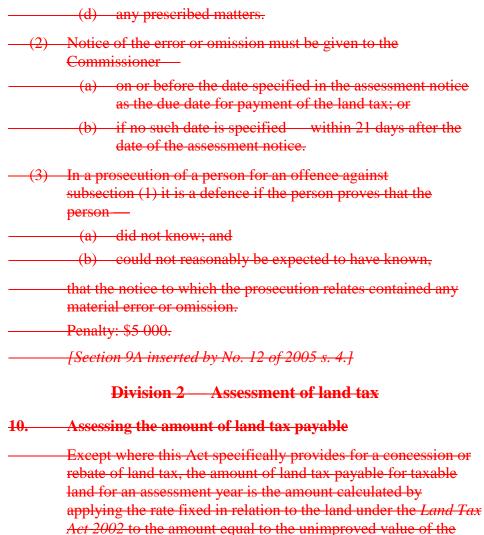


Error! No text of specified style in document.

Part 2 Land tax liability and assessment

Division 2 Assessment of land tax

s. 10



land according to the valuation in force under the Valuation of Land Act 1978 at midnight on 30 June in the previous financial year.

s. 11

- (1) If a person owns 2 or more lots or parcels of taxable land, land tax is payable on the aggregated unimproved value of all the taxable land owned by the person.
- However, if a trustee owns 2 or more lots or parcels of taxable land held, in severalty, in trust for different persons, then the land tax payable for each lot or parcel is assessed separately unless another provision of this Act specifically requires the land tax to be assessed on the lots or parcels jointly.
- If a trustee owns taxable land held in trust for another person and is also the beneficial owner of other land, the land tax payable on the land held in trust is assessed separately from the land tax payable on the land held beneficially, unless for any reason the land tax payable on the trust land and the beneficially held land is liable to be jointly assessed independently of this subsection.

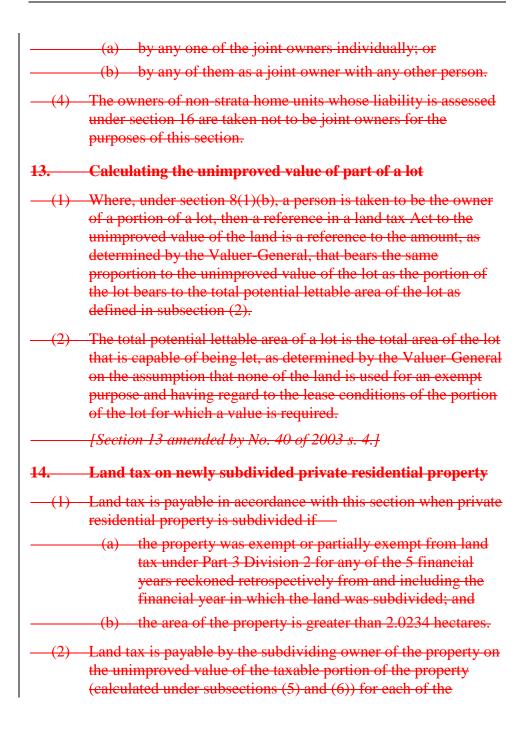
Assessing land tax payable by joint owners

- (1) The land tax payable on land owned jointly by 2 or more persons is assessed as if the land were owned by one person.
- When determining the extent (if any) to which the land is exempt or subject to a concession, the following matters are to be taken into account
- (a) each joint owner's use of the land by virtue of which the land is exempt or subject to a concession (whether or not the use is common to any of the other joint owners);
- (b) each joint owner's interest in the land by virtue of which the land is exempt or subject to a concession (whether or not the interest is common to any of the other joint owners).
- The assessment for the land is to be kept separate and distinct from an assessment for any land that is owned

Part 2 Land tax liability and assessment

Division 2 Assessment of land tax

s. 13

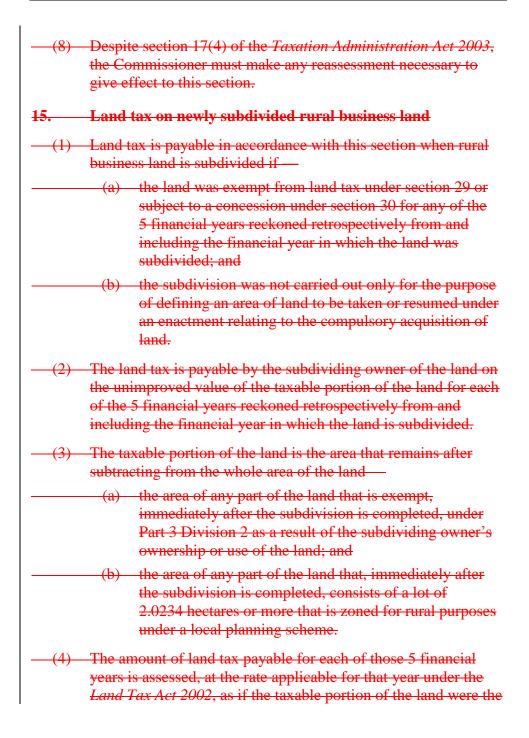


Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05] Extract from www.slp.wa.gov.au, see that website for further information

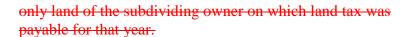


- The amount of land tax payable for each of those 5 financial years is assessed, at the rate applicable for that year under the Land Tax Act 2002, as if the taxable portion of the property were the only land of the subdividing owner on which land tax was payable for that year.
- However, if land tax has already been levied on any part of the taxable portion of the property under another provision of this Act for any of those 5 financial years, then
 - (a) if a partial exemption did not apply to that part of the taxable portion for the year under Part 3 Division 2 no land tax is payable under subsection (2) on that part for that year; or
 - (b) if a partial exemption applied to that part of the taxable portion, or an interest in it, for that year under Part 3 Division 2 land tax is payable for that year under subsection (2) on the part of the property to which the partial exemption applied.
- The taxable portion of the property is the portion that remains after subtracting from the whole area of the property the greater of the following areas
- (a) the area of the lot or parcel or portion of land on which the private residence was situated at the time of the subdivision;
- (b) 2.0234 hectares.
- (6) The unimproved value of the taxable portion of the property is the amount that bears to the unimproved value of the whole of the property the same proportion as the area of the taxable portion bears to the whole area of the property.
- (7) Nothing in this section affects the liability of any person to pay land tax on the taxable portion of the property for any financial year after that in which the land is subdivided.

s. 15



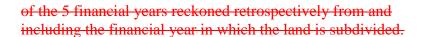
Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05] Extract from www.slp.wa.gov.au, see that website for further information



- (5) If an amount of land tax has already been charged on any part of the taxable portion of the land under another provision of this Act for any of those 5 financial years, the amount of land tax payable for that year under this section is reduced by the amount already charged.
- (6) The unimproved value of the taxable portion of the land is the amount that bears to the unimproved value of the whole of the land the same proportion as the area of the taxable portion bears to the whole area of the land.
- (7) Nothing in this section affects the liability of any person for land tax on the taxable portion of the land for any financial year after that in which the land is subdivided.
- (8) Despite section 17(4) of the *Taxation Administration Act 2003*, the Commissioner must make any reassessment necessary to give effect to this section.
- [Section 15 amended by No. 38 of 2005 s. 15.]

15A. Land tax on newly subdivided dwelling park land

- (1) Land tax is payable in accordance with this section when land is subdivided if —
- (a) the land was subject to a concession under section 39B for any of the 5 financial years reckoned retrospectively from and including the financial year in which the land was subdivided; and
- (b) the subdivision was not carried out only for the purpose of defining an area of land to be taken or resumed under an enactment relating to the compulsory acquisition of land.
- (2) The land tax is payable by the subdividing owner of the land on the unimproved value of the taxable portion of the land for each

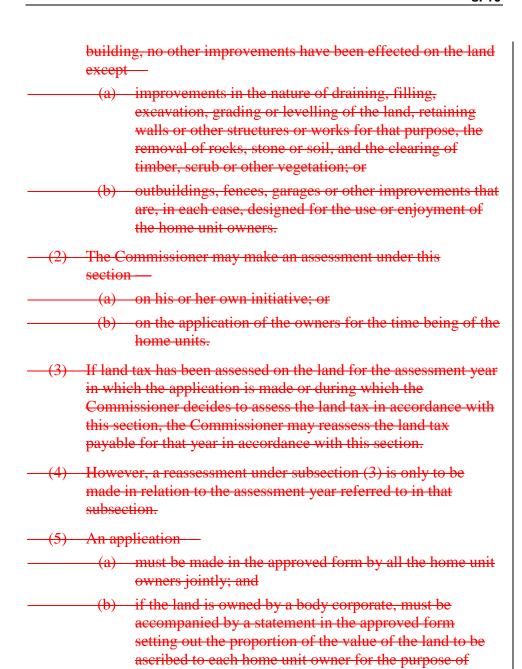


- The taxable portion of the land is the area that remains after subtracting from the whole area of the land the area of any part of the land that, immediately after the subdivision is completed, is dwelling park land under section 39A(2) as a result of the subdividing owner's use of the land.
- The amount of land tax payable for each of those 5 financial years is assessed, at the rate applicable for that year under the Land Tax Act 2002, as if the taxable portion of the land were the only land of the subdividing owner on which land tax was payable for that year.
- The amount of land tax payable under this section on any part of the taxable portion of the land for any of those 5 financial years is reduced by the amount already charged on that part for that year.
- The unimproved value of the taxable portion of the land is the amount that bears to the unimproved value of the whole of the land the same proportion as the area of the taxable portion bears to the whole area of the land.
- Nothing in this section affects the liability of any person for land tax on the taxable portion of the land for any financial year after that in which the land is subdivided.
- Despite section 17(4) of the *Taxation Administration Act* 2003, the Commissioner must make any reassessment necessary to give effect to this section.

[Section 15A inserted by No. 10 of 2005 s. 6.]

16. Assessing land tax on non-strata home units

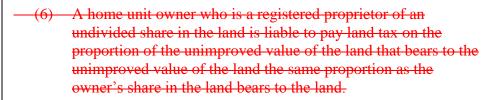
The Commissioner may assess the amount of land tax payable on land on which a building containing non-strata home units is situated in accordance with this section if, apart from the



calculating the amount of land tax payable by the owner.

Division 2 Assessment of land tax

s. 16

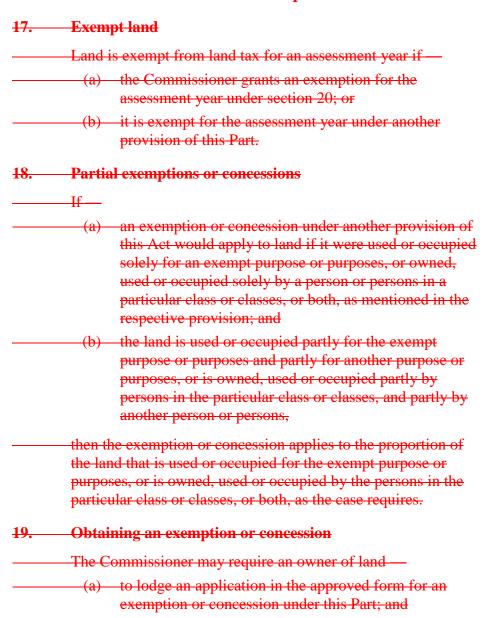


- A home unit owner who is a shareholder in the body corporate that owns the land is liable to pay land tax on the proportion of the unimproved value of the land that bears to the unimproved value of the land the same proportion as the proportion of the value of the land ascribed to the owner in the statement under subsection (5)(b) bears to the total interests of all the shareholders in the land.
- If the owner of a home unit is liable to pay land tax assessed on a proportion of the unimproved value of the land under subsection (6) or (7), and is also the owner of any other land, then the part of the value of the land on which the home unit is erected is taken to be land for the purposes of a land tax Act and is taken to have the value assessed under the respective subsection.
- If the Commissioner decides to assess or reassess the amount of land tax payable on the land under this section for an assessment year, land tax on the land is to be assessed under this section for each subsequent assessment year unless the Commissioner revokes the decision under subsection (10).
- The Commissioner may revoke the decision
 - on his or her own initiative; or
 - on receiving a joint application for revocation from all the home unit owners for the time being.

Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05] page 14 Extract from www.slp.wa.gov.au, see that website for further information

Part 3 — Exemptions, concessions and rebates

Division 1 General provisions

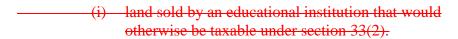


Part 3 Exemptions, concessions and rebates

Division 1 General provisions

s. 20

	(b) to give the Commissioner any information vowner's knowledge or control that is relevant deciding whether or not the land is eligible to exemption or concession.	nt to
20.	Commissioner's power to exempt land	
(1)	A taxpayer may apply to the Commissioner for an econcession or further concession for any of the following the fol	
	(a) any proportion of private residential propert by an individual for a purpose that is not an purpose, where the private residential prope to some extent under section 21, 22 or 23 be use by the individual as his or her primary reprovided in the respective section;	exempt exempt exause of its
	(b) land that is not exempt under section 23 for assessment year because it was exempt under section in the previous financial year, or because derived rent or income in the assessment assessment.	er that cause the
	(c) land used as holding paddocks for stock that exempt under section 29 only because it is not that purpose in the course of carrying on a roof a kind referred to in section 29;	ot used for
	(d) land that is not exempt under section 29 becoperation of section 29(3) or (4);	ause of the
	(e) land that is subject to a concession under sec	etion 30;
	(f) land that is not exempt under section 42 becoperation of section 42(3) or (4);	ause of the
	(g) Crown land of which a person is taken to be under section 8(1) and which is not otherwise an exemption or concession;	
	(h) land sold by a religious body that would oth taxable under section 32(2);	erwise be



- (2) The Commissioner may grant the exemption, concession or further concession for the whole or part of the land if the Commissioner is satisfied that there are reasonable grounds for doing so.
- (3) If the Commissioner refuses to grant the exemption or concession, the applicant may appeal to the Minister against the Commissioner's decision.
- (4) An appeal may be made within 60 days after the date on which notice of the Commissioner's decision was issued, or within any further time allowed by the Minister for reasonable cause shown by the applicant.
- (5) The obligation to pay, or the right to receive and recover land tax, is not affected by any appeal to the Minister.
- (6) The Minister is to consider the appeal with all reasonable dispatch, and may either disallow it or, if the applicant satisfies the Minister that there are reasonable grounds for doing so, allow it wholly or in part.
- (7) The Minister is to give notice of the Minister's decision on the appeal to the applicant.
- (8) The Commissioner is to make any reassessment necessary to give effect to a decision of the Commissioner or the Minister under this section.

Division 2 Private residential property

21. Private residential property owned by individuals

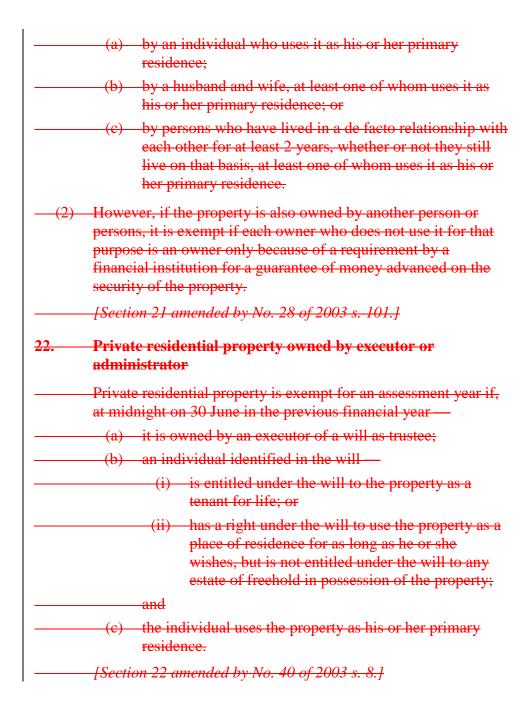
— (1) Private residential property (except property held in trust) is exempt for an assessment year if, at midnight on 30 June in the financial year before the assessment year, it is owned—

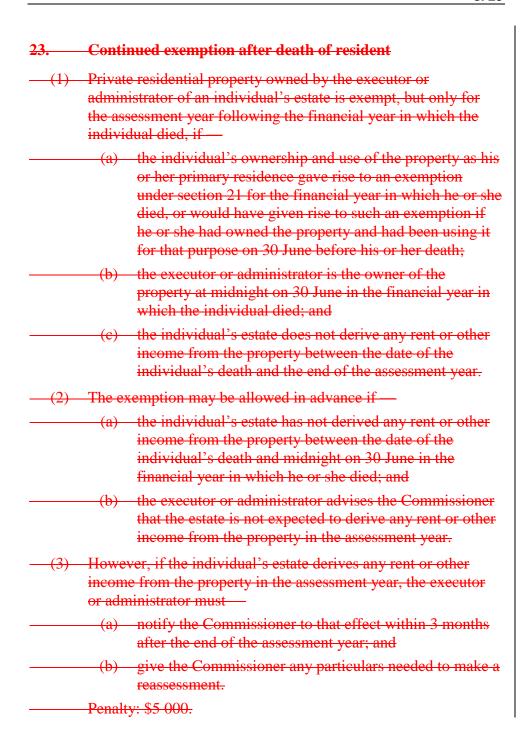
page 17

Part 3 Exemptions, concessions and rebates

Division 2 Private residential property

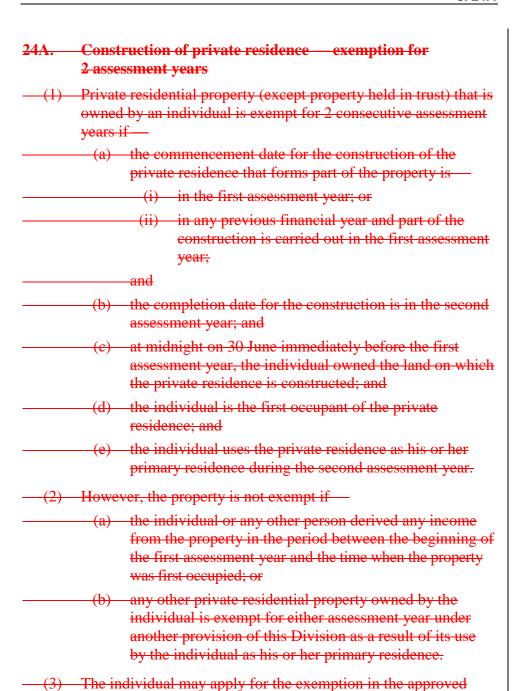
s. 22





(4) -	If the Commissioner is notified, or otherwise becomes aware, that the estate has derived rent or income from the property in the assessment year, the Commissioner is to make a reassessment accordingly.	
24.	Construction of private residence — exemption for one assessment year	
(1)	Private residential property (except property held in trust) that is owned by an individual is exempt for an assessment year if	
	(a) the construction of the private residence that forms part of the property is completed during the assessment year;	
	(b) at midnight on 30 June in the previous financial year the individual owned the land on which the private residence is constructed;	
	(c) the individual is the first occupant of the private residence; and	
	(d) the individual uses the private residence as his or her primary residence during the assessment year.	
(2)	However, the property is not exempt if —	
	(a) the individual or any other person derived any income from the property in the period between the beginning of the assessment year and the time when the property was first occupied; or	
	(b) any other private residential property owned by the individual is exempt for the assessment year under another provision of this Division as a result of its use by the individual as his or her primary residence.	
(3)		
	give effect to this section.	
	Section 24 amended by No. 31 of 2006 s. 20.1	

Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05] Extract from www.slp.wa.gov.au, see that website for further information



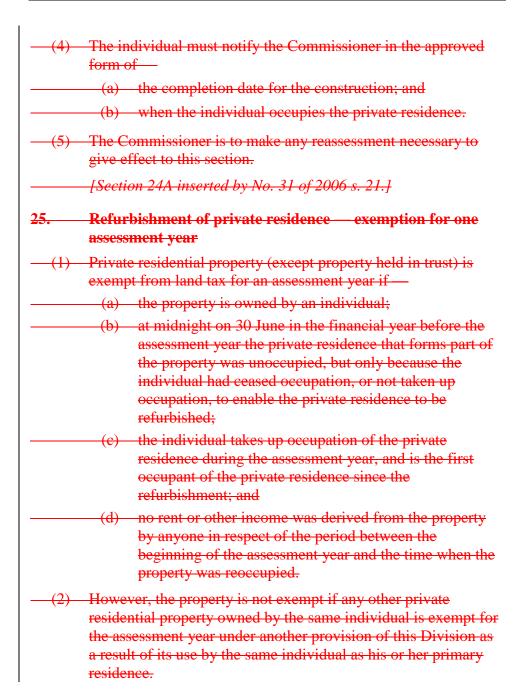
Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05]

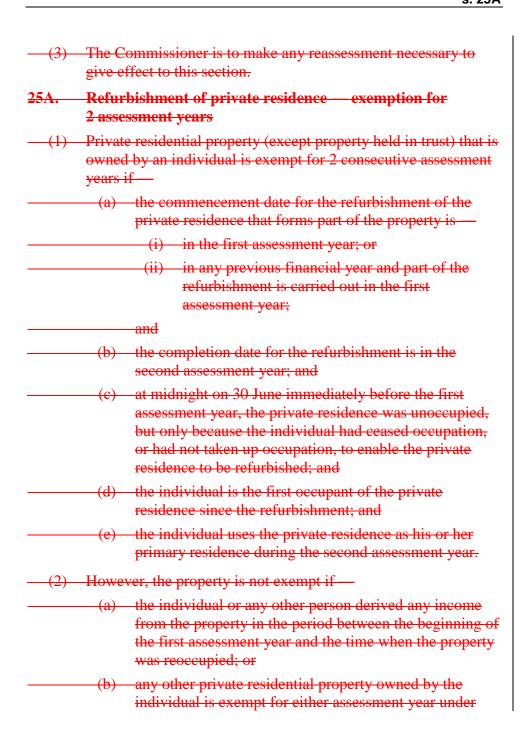
form after the commencement date for the construction.

Part 3 Exemptions, concessions and rebates

Division 2 Private residential property

s. 25

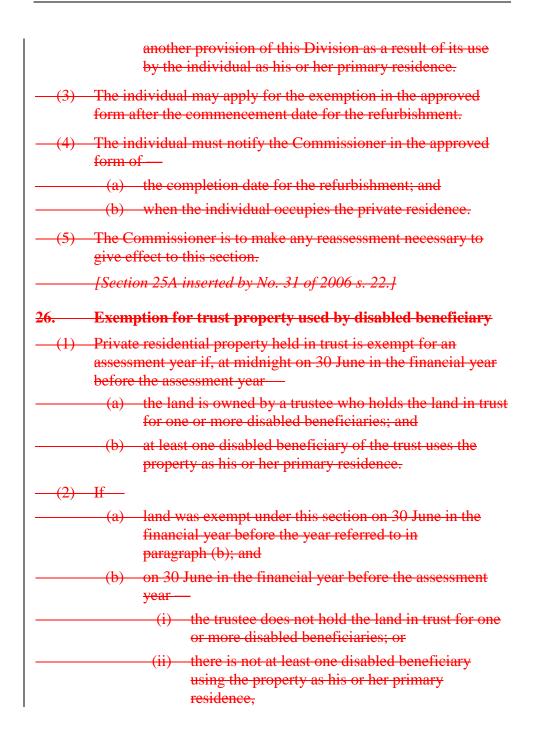




Part 3 Exemptions, concessions and rebates

Division 2 Private residential property

s. 26



page 24 Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05]

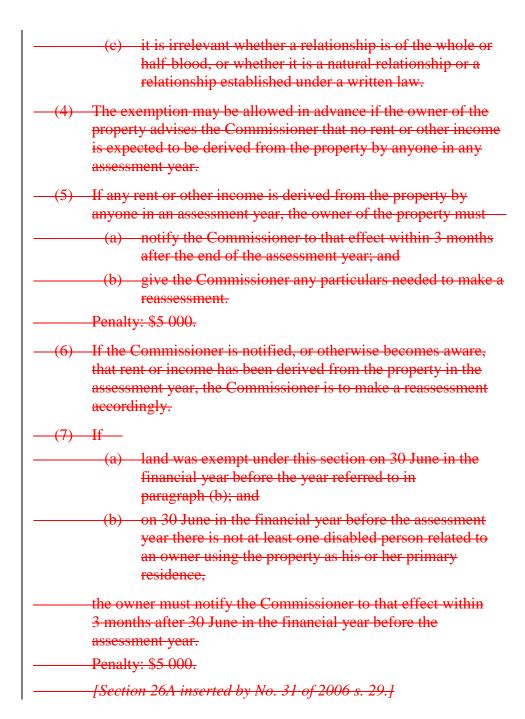
Extract from www.slp.wa.gov.au, see that website for further information

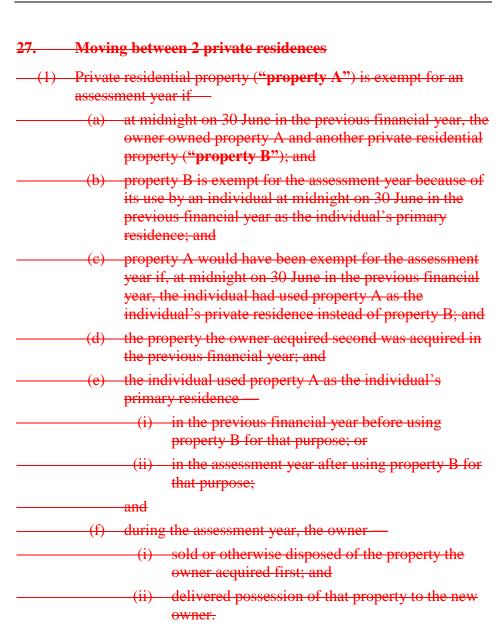
	the trustee must notify the Commissioner to that effect within 3 months after 30 June in the financial year before the assessment year.
	Penalty: \$5 000.
	[Section 26 amended by No. 31 of 2006 s. 28.]
26A.	Exemption for property in which disabled relative resides
(1)	—In this section —
	"disabled person" means a person who has a disability as defined in section 3 of the <i>Disability Services Act 1993</i> and has been independently assessed by an appropriate assessor as requiring full-time care.
(2)	Private residential property is exempt for an assessment year if—
	(a) at midnight on 30 June in the financial year before the assessment year—
	(i) a disabled person uses the property as his or her primary residence; and
	(ii) it is owned by one or more individuals, at least one of whom is related to the disabled person;
	and
	(b) no rent or other income is derived from the property by anyone in the assessment year.
(3)	For the purposes of subsection (2)(a)(ii)
	(a) the following persons are related to a disabled person
	(i) a parent or grandparent of the disabled person;
	(ii) a brother or sister of the disabled person;
	and
	(b) an illegitimate person is to be treated as the legitimate child of that person's parents; and

Part 3 Exemptions, concessions and rebates

Division 2 Private residential property

s. 26A



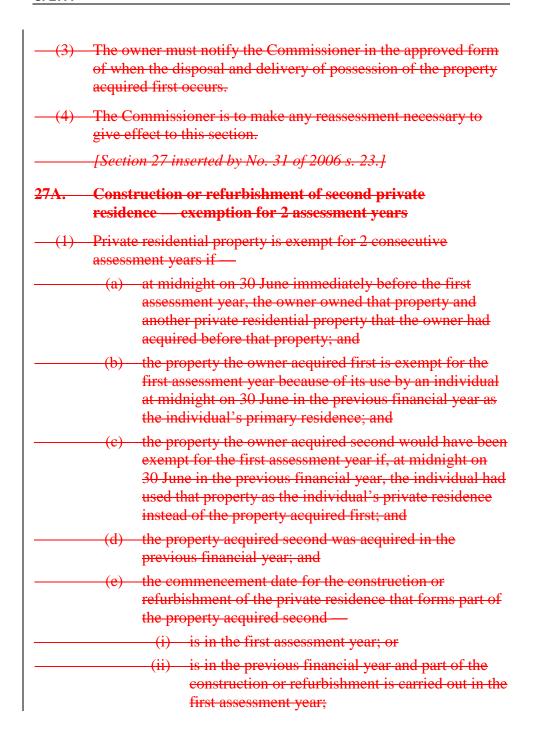


(2) However, property A is not exempt if, while the owner owned both properties, the owner or any other person derived income from the property that was not being used as the individual's primary residence.

Part 3 Exemptions, concessions and rebates

Division 2 Private residential property

s. 27A



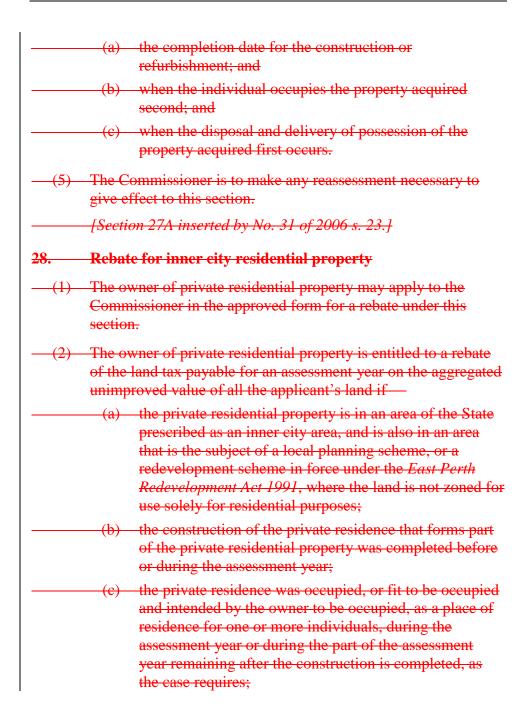
Extract from www.slp.wa.gov.au, see that website for further information

	and	
(f)	the completion date for the construction or refurbishment of the private residence that forms part of the property acquired second is in the second assessment year; and	
(g)	in the case of the refurbishment of the private residence that forms part of the property acquired second—at midnight on 30 June immediately before the first assessment year, the private residence was unoccupied, but only because the individual had not taken up occupation to enable the private residence to be refurbished; and	
——————————————————————————————————————	the individual is the first occupant of the private residence that forms part of the property acquired second since its construction or refurbishment; and	
(i)	the individual uses the private residence that forms part of the property acquired second as his or her primary residence during the second assessment year; and	
(j)	by the end of the second assessment year, the owner	
	(i) has sold or otherwise disposed of the property acquired first; and	
	(ii) has delivered possession of that property to the new owner.	
the o deriv	However, the property acquired second is not exempt if, while the owner owned both properties, the owner or any other person derived income from the property that was not being used as the individual's primary residence.	
after	owner may apply for the exemption in the approved form the commencement date for the construction or bishment.	
— (4) The of	owner must notify the Commissioner in the approved form	

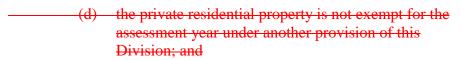
Part 3 Exemptions, concessions and rebates

Division 2 Private residential property

s. 28



Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05] Extract from www.slp.wa.gov.au, see that website for further information



- (e) the aggregated unimproved value of all the applicant's taxable land is greater than it would have been if the private residential property had been in an area zoned solely for residential purposes.
- (3) The amount of the rebate is calculated using the following formula—

R = (LT - RE)

-----where

LT is greater than RE;

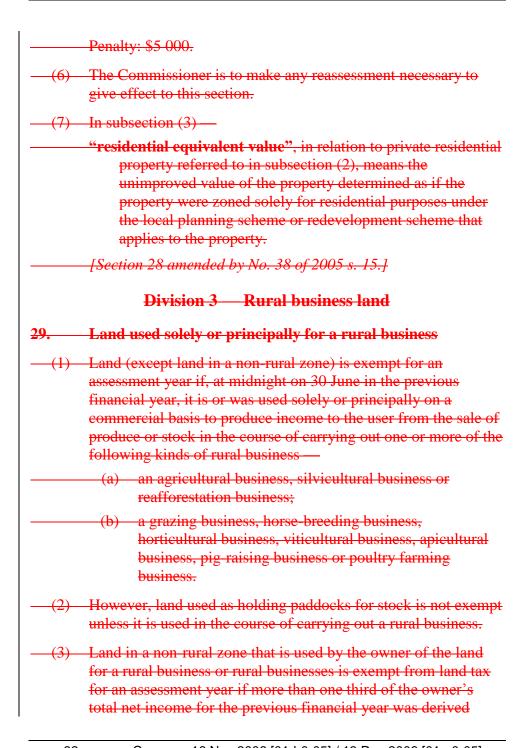
R is the rebate;

- —LT ("land tax") is the land tax levied on the aggregated unimproved value of all the taxable land owned by the applicant;
- RE ("residential equivalent") is the amount of land tax that would be payable for the assessment year on the aggregated unimproved value of all the taxable land owned by the applicant if the private residential property were valued at its residential equivalent value as defined in subsection (7).
- (4) The Commissioner may, by notice served on an applicant, relieve the applicant from the obligation to apply for a rebate for each assessment year and may, by further notice, reimpose that obligation upon the applicant.
- (5) If the private residential property ceases to comply with subsection (1)(a), (b), (c) or (d), or the area of the property is reduced, the owner must notify the Commissioner to that effect before the beginning of the next assessment year, or within 3 months of the day on which compliance stopped or the property was reduced in area, whichever is later.

Part 3 Exemptions, concessions and rebates

Division 3 Rural business land

s. 29



from the owner's carrying out a business or businesses of that kind in the State.

- However, even if subsection (3) does not apply to land in a non-rural zone used for a silvicultural business or reafforestation business or both, the land is exempt for an assessment year if
 - (a) it is at least 100 hectares in area; and
 - (b) at midnight on 30 June in the previous financial year it is fully stocked for the purposes of the business or businesses.

[Section 29 amended by No. 66 of 2003 s. 109.]

30. Concessional rates for other rural business land

If land of a kind referred to in section 29(3) or (4) is not exempt only because less than one third of the owner's total net income for a financial year was derived from carrying out a rural business or rural businesses of that kind in the State, or because the land is less than 100 hectares in area, then the land tax on the land is payable at 50% of the rate imposed for the assessment year by the Land Tax Act 2002.

Division 4 — Crown land and other land used for public purposes

Land owned by the Crown or other public authorities

- (1) Land owned by, or vested in, the Crown, an agency or instrumentality of the Crown, a local government or another public statutory authority (except a taxable authority) is exempt for an assessment year unless, at midnight on 30 June in the financial year before the assessment year, there is a person or a taxable authority who or which is taken under section 8(1) or (2) respectively to be the owner of the land for the purposes of section 7.
- (2) Despite subsection (1) and section 7, corridor land within the meaning of section 3 of the Rail Freight System Act 2000 is

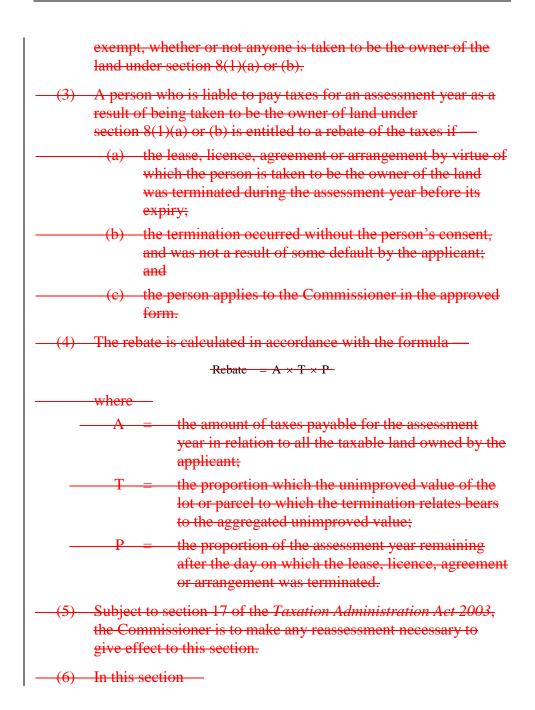
Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05]

page 33

Part 3 Exemptions, concessions and rebates

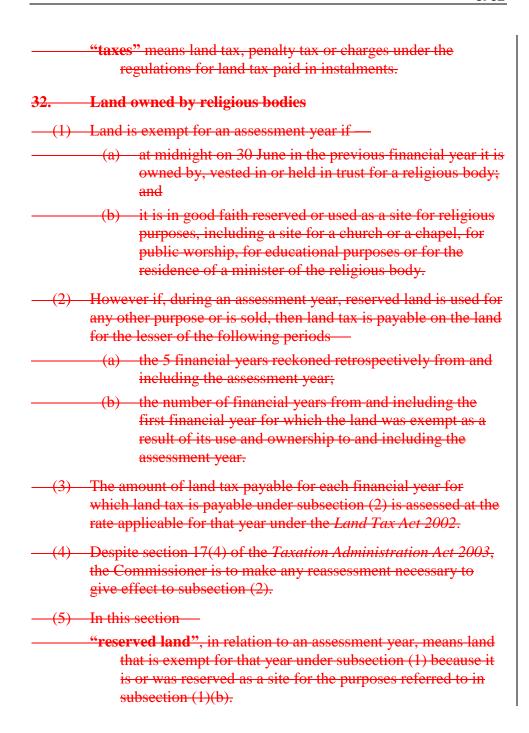
Division 4 Crown land and other land used for public purposes

s. 31



page 34 Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05]

Extract from www.slp.wa.gov.au, see that website for further information



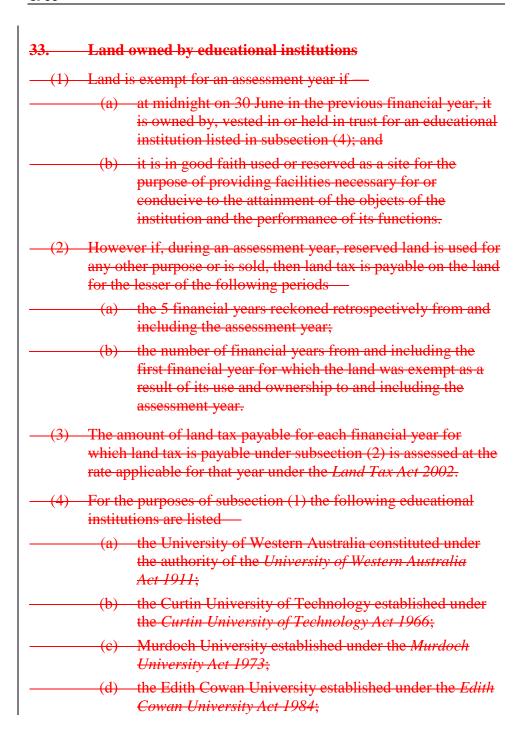
Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05]

page 35

Part 3 Exemptions, concessions and rebates

Division 4 Crown land and other land used for public purposes

s. 33





- (f) a college, hostel, or hall of residence affiliated with an educational institution referred to in paragraph (a), (b), (c), (d) or (e) that has as its objects the provision of residence, or education and residence, for enrolled students of the body or institution, and that is not carried on for the purpose of private profit or gain.
- (5) Despite section 17(4) of the *Taxation Administration Act* 2003, the Commissioner is to make any reassessment necessary to give effect to subsection (2).
- (6) In this section—
- "reserved land", in relation to an assessment year, means land that is exempt for that year under subsection (1) because it is or was reserved as a site for the purposes referred to in subsection (1)(b).

34. Land used for public or religious hospitals

Land is exempt for an assessment year if, at midnight on 30 June in the previous financial year, it is used solely for the purposes of a public hospital or a hospital conducted by or on behalf of a religious body.

35. Mining tenements

Land is exempt for an assessment year if a mining tenement as defined in the *Mining Act 1978* is in force for the land at midnight on 30 June in the previous financial year, unless the land is owned in fee simple.

36. Land used for various public purposes

Land is exempt for an assessment year if

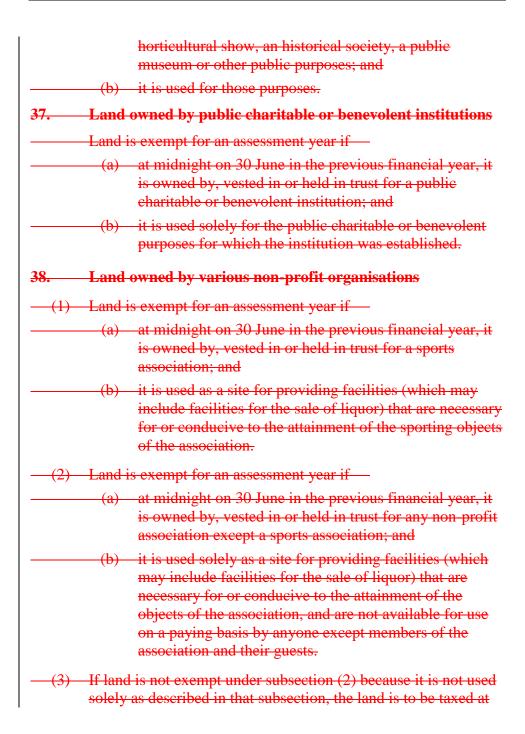
(a) at midnight on 30 June in the previous financial year, it is dedicated to, or vested in trustees for, the purposes of a zoological garden, an agricultural, pastoral or

page 37

Part 3 Exemptions, concessions and rebates

Division 4 Crown land and other land used for public purposes

s. 37



page 38

Land used for non-permanent residences

the concessional rate of 50% of the rate imposed by the Land Tax Act 2002 if at least half of the area equal to the sum of the

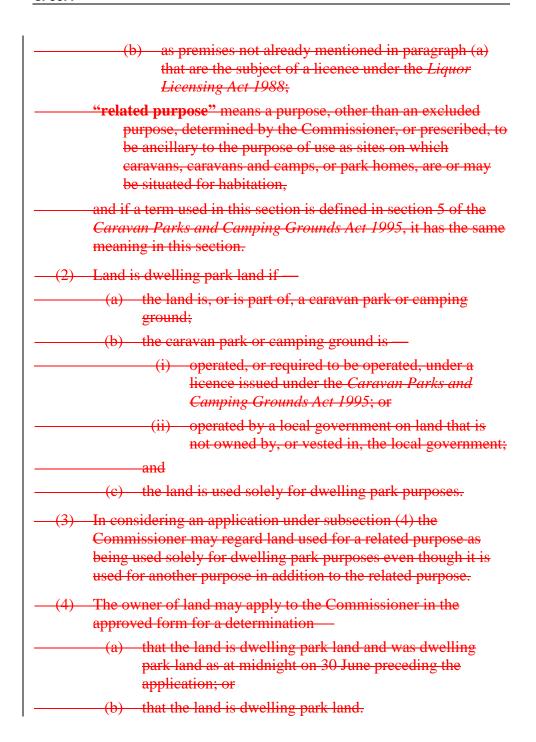
area of the land and the area of any part of a building on the land that is capable of being let is used as described. Land used for retirement villages Land used for a retirement village within the meaning of the Retirement Villages Act 1992 is exempt for an assessment year (to any extent that it is not exempt under another provision of this Part) if, at midnight on 30 June in the previous financial year (a) the residential premises in the village are occupied, or available for occupation, under a residence contract within the meaning of the Retirement Villages Act 1992; all approvals necessary for the village under Part XV of the Local Government (Miscellaneous Provisions) Act 1960 are in force at that time. **Division 4A** Land used for non-permanent residences [Heading inserted by No. 10 of 2005 s. 7.] 39A. Land to which section 39B applies (1) In this section "dwelling park land" has the meaning given by subsection (2); "dwelling park purposes" means (a) the purpose of use as sites on which caravans, caravans and camps, or park homes, are or may be situated for habitation; and (b) any related purpose or purposes; "excluded purpose" means the purpose of use (a) as a hotel, motel, hostel, lodging house or boarding

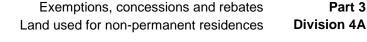
Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05]

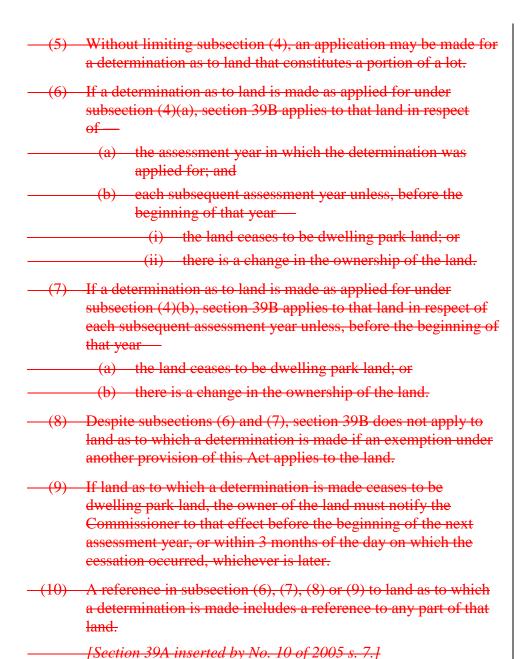
house; or

Part 3 **Division 4A** Exemptions, concessions and rebates Land used for non-permanent residences

s. 39A







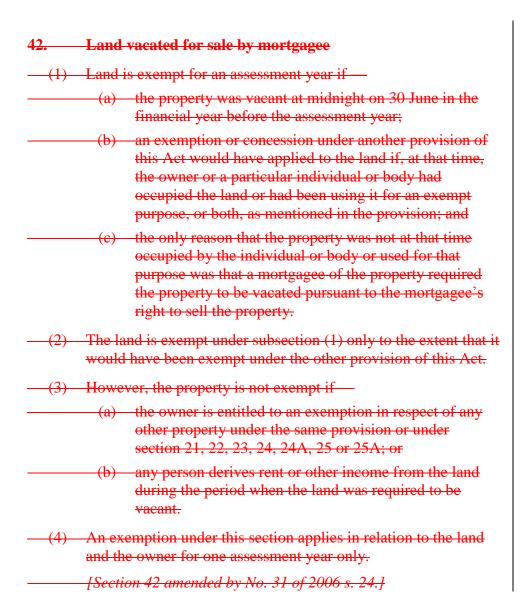
Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05] page 41 Error! No text of specified style in document.

Part 3 Exemptions, concessions and rebates

Division 5 Other exemptions and concessions

s. 39B

Concessional rates for land to which this section applies (1) If this section applies to land in respect of an assessment year, then the land tax on the land is payable at 50% of the rate imposed for the assessment year by the Land Tax Act 2002. The Commissioner is to make any reassessment necessary to give effect to this section in respect of an assessment year referred to in section 39A(6)(a). (3) Section 18 does not apply to a concession under this section. [Section 39B inserted by No. 10 of 2005 s. 7.] **Division 5** Other exemptions and concessions 40. Land owned by veteran's surviving partner or mother Land is exempt for an assessment year to the extent of the first \$10 000 of the value of the land on which land tax would otherwise be payable if, at midnight on 30 June in the previous financial year, the owner of the land is a war widow or war widower, as defined in section 5E of the Veteran's Entitlements Act 1986 of the Commonwealth: or a 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 of the Commonwealth. Land under a conservation covenant Land that is used solely or principally for the conservation of native vegetation is exempt for an assessment year if the land is the subject of a conservation covenant that was in force at midnight on 30 June in the financial year before the assessment year. [Section 41 inserted by No. 12 of 2004 s. 4.]



Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05] page 43

s. 43

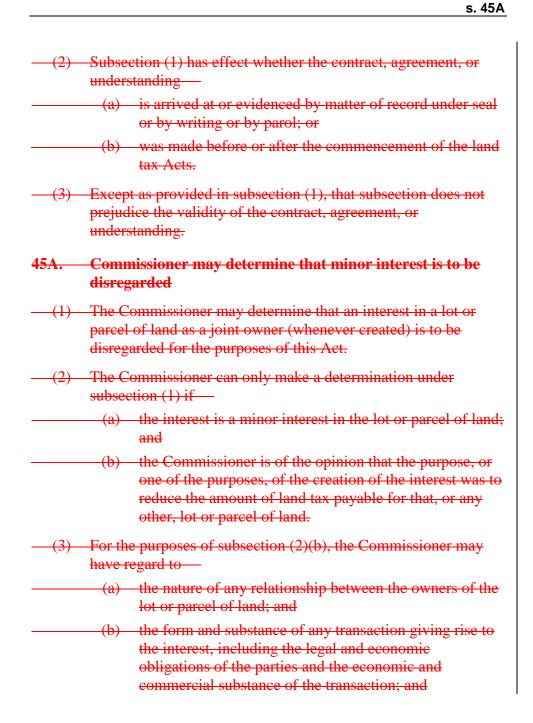
Part 4 — Miscellaneous Information to be given by occupier or person in possession The Commissioner or an investigator may request an occupier of land or a person in possession of land to-(a) disclose the name of the owner of the land or of the person entitled to receive the rents and profits of the land; and give any other information in the possession or control of the occupier or person that is required for the purposes of a land tax Act. A person who does not comply with a request commits an offence. Penalty: \$5 000. **Application of Act to university land** This Act has effect despite any provision to the contrary in any of the following Acts (a) the *University of Western Australia Act 1911*; (b) the Curtin University of Technology Act 1966; (c) the Murdoch University Act 1973;

45. Contracts ineffective to alter incidence of land tax

(d) the Edith Cowan University Act 1984.

(1) A contract, agreement or understanding that has or purports to have or might have the effect of removing, qualifying or altering the operation of an assessment or exemption, or of in any way affecting the incidence of an assessment or land tax or displacing the benefit of any exemption, is wholly void and inoperative as against the Commissioner so far as the contract, agreement, or understanding purports or is intended to have or might have that effect.

page 44 Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05]



page 45

	(c) the lack of consideration, or the amount or value and source of the consideration, for the transaction giving rise to the interest; and
	(d) whether any professional advice was received in relation to the transaction giving rise to the interest; and
	(e) the way in which the transaction giving rise to the interest was entered into or carried out; and
	(f) any other matter the Commissioner considers relevant.
(4)	On making a determination under subsection (1) in respect of a lot or parcel of land, the Commissioner must give to the owner of the lot or parcel of land a notice setting out the determination and the reasons for the determination.
(5)	In any review proceedings that relate to a determination under subsection (1) in respect of an interest in 5% or less of a lot or parcel of land, the onus of establishing that none of the purposes of the creation of the interest was to reduce the amount of land tax payable for that, or any other, lot or parcel lies on the taxpayer.
	[Section 45A inserted by No. 31 of 2006 s. 30.]
45B.	Effect of determination under section 45A
	If the Commissioner makes a determination under section 45A that an interest in a lot or parcel of land is an interest that is to be disregarded
	(a) the owner of the interest is to be taken not to be an owner of the lot or parcel of land for the purposes of this Act; and
	(b) the land tax payable on the land is to be assessed, and is payable, as if the land were wholly owned by the owner of the land who does not have an interest in the land in respect of which such a determination has been made.
	IS action ASD inserted by No. 21 of 2006 a 20.1

page 46 Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05]

46. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to this Act.
- (2) Regulations may
 - (a) require any agency or instrumentality of the Crown, or a local government or any other public authority to furnish to the Commissioner details of any land owned by or vested in it and which any other person is entitled to use for a business, commercial, professional, or trade purpose under an agreement or arrangement with it;
- (b) provide for the payment, in the circumstances specified in the regulations, of the full amount of land tax less a discount at a rate prescribed by the regulations;
- (c) provide that land tax may be paid in instalments, the first of the instalments to be due and payable within 49 days after the date of the assessment notice;
- (d) provide, when land tax is paid in instalments under the regulations, for the imposition of a charge at a rate prescribed by the regulations;
- (e) provide, when an instalment is not paid under the regulations when it is due, that the full amount of unpaid land tax is due and payable; and
- (f) provide for matters necessary or expedient for the payment of land tax in instalments.
- (3) Regulations may create offences and provide, in respect of an offence so created, for the imposition of a fine not exceeding \$5 000.

47. Transitional provisions

Schedule 1 contains transitional provisions relating to amendments made to this Act.

Part 4 Miscellaneous

s. 46

[Section 47 inserted by No. 31 of 2006 s. 25.]

Schedule 1 — Transitional provisions

[s. 47]

[Heading inserted by No. 31 of 2006 s. 26.]

Division 1 — Provision for Revenue Laws Amendment Act 2006

[Heading inserted by No. 31 of 2006 s. 26.]

1. Application of sections 24A, 25A and 27A

Private residential property is exempt under section 24A, 25A or 27A (as inserted by Part 4 Division 2 of the Revenue Laws Amendment Act 2006) if the completion date for the construction or refurbishment of the private residence that forms part of the property is on or after 1 July 2006.

[Clause 1 inserted by No. 31 of 2006 s. 26.]

Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05]

Glossary

[s. 4]

1. Definitions

Unless the contrary intention appears —

- "agent" includes every person who, in Western Australia, for or on behalf of any other person (the principal)
 - (a) has the control or disposal of any real or personal property owned by the principal, or the control, receipt, or disposal of any rents or proceeds derived from the property; or
 - (b) directly or indirectly, whether by negotiation or in any other way, sells or disposes of any property, or offers any property for sale or disposition, or solicits or procures the sale or disposition of the property;
- "aggregated unimproved value", in relation to 2 or more lots or parcels of land, means the amount equal to the sum of the unimproved values of each taxable lot or parcel;
- "approved" means approved by the Commissioner;
- "assessment" means assessment of land tax;
- "assessment year", in relation to land tax, means the financial year for which the land tax is, or is to be, assessed;

"building contract" —

- (a) means a contract under which a builder undertakes to construct or refurbish a private residence from the inception of the building work to the completion of that work; and
- (b) if, for any reason, the work to be carried out under such a contract is not completed — includes any further contract under which the work is to be completed;
- "clause" means a clause of this Glossary;
- "commencement date", for the construction or refurbishment of a private residence, means
 - (a) if the residence is to be constructed or refurbished under a building contract the date when the contract is made; or

Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05] Extract from www.slp.wa.gov.au, see that website for further information

Glossary

- if the residence is to be constructed or refurbished by an (b) owner-builder — the date when the building licence for the construction or refurbishment is issued under Part XV of the Local Government (Miscellaneous Provisions) Act 1960;
- "completion date", for the construction or refurbishment of a private residence, means the date when the construction or refurbishment is completed to the point where the residence is ready for occupation;

"conservation covenant" means a covenant that —

- restricts or prohibits certain activities on the land that could degrade the environmental value of the land;
- is permanent and registered on the title to the land (if (b) registration is possible); and
- (c) is approved in writing by, or is entered into under a program approved in writing by, the Minister to whom the administration of the Conservation and Land Management Act 1984 is for the time being committed by the Governor;
- "disabled beneficiary", in relation to land held in trust, means a person who has a beneficial interest in the trust, whether the interest is contingent or otherwise, and who
 - has a disability as defined in section 3 of the *Disability* Services Act 1993 and has been independently assessed by an appropriate assessor as requiring full-time care;
 - (b) is mentally incapacitated; or
 - is a minor who is an orphan; (c)
- "exempt", in relation to land, means exempt from land tax;
- "exempt purpose", in relation to land, means a purpose for which the land is used or reserved and by virtue of which the land is exempt;
- "grazing business", in relation to the use of land, includes its use on a commercial basis to produce income to the user from the grazing of cattle, sheep, pigs or goats for the sale of the stock, its natural increase, or its natural product but, except for a horse-breeding business, does not include the grazing, agistment, breeding or training of horses;

Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05]

"home unit" means —

- a strata title home unit (as defined below); or
- a non-strata home unit (as defined below); (b)
- "horse-breeding business", in relation to the use of land, means its use on a commercial basis to produce income to the user from the rearing or breeding of horses for sale;
- "improvements", in relation to land, means all works actually effected to the land, whether above or below the surface, and includes fixtures, but does not include machinery, whether fixed to land or not;
- "joint owners" means persons who own land jointly or in common, whether as partners or otherwise;
- "land" includes all tenements and all interests in land;
- "land tax" means tax imposed under the Land Tax Act 2002;
- "land tax Act" means
 - (a) this Act:
 - (b) the Land Tax Act 2002; or
 - the Taxation Administration Act 2003, to the extent that it relates to land tax;
- "local planning scheme" has the meaning given to that term in the Planning and Development Act 2005 section 4;
- "lot" has the meaning given in clause 2;
- "metropolitan region" has the same meaning as it has in the Planning and Development Act 2005;
- "non-profit association" means a society, club or association that is not carried on for the purpose of profit or gain to its individual members:
- "non-rural zone", in relation to the location of land, has a meaning affected by clause 4;
- "non-strata home unit" means a part of a building, being a building that -
 - (a) contains 2 or more such parts, each of which is designed for use as a self-contained unit for living purposes; and

- (b) is erected on land that is owned
 - (i) by 2 or more persons as tenants in common, each of whom is the registered proprietor under the *Transfer of Land Act 1893* of one or more undivided shares in the whole of the land and is lawfully entitled, under an agreement entered into between the person or his or her predecessor in title and all other owners of undivided shares in the land or their predecessors in title, to the exclusive right to occupy a specified home unit in the building; or
 - (ii) by a body corporate in which all issued shares are owned by 2 or more persons, each of whom is entitled by ownership of shares in the body corporate to the exclusive right to occupy a specified home unit in the building;

"owner" —

- (a) in relation to land (except an interest in a home unit), means a person who is entitled to the land for any estate of freehold in possession;
- (b) in relation to an interest in a strata title home unit, means the proprietor of the lot as defined in the *Strata Titles Act 1985*;
- (c) in relation to a non-strata home unit, means a person who is entitled to an exclusive right to occupy the home unit because the person
 - is a shareholder in the body corporate which owns the land on which the building containing the home unit is erected; or
 - (ii) is the registered proprietor of an undivided share in the land on which the building containing the home unit is erected:

or

(d) in relation to any liability to pay land tax for land (including an interest in a home unit), if a person or body is taken to be the owner of the land under section 8, means the person or body;

- "owner-builder" means an owner of private residential property who constructs or refurbishes a private residence that forms part of that property without entering into a building contract;
- "parcel" means 2 or more lots of land that are treated as a single property under clause 2;
- "primary residence", in relation to an individual, means the individual's sole or principal place of residence;
- "private residence" means a building or part of a building that was occupied, or fit to be occupied and intended by the owner to be occupied, as a place of residence of one or more individuals, except a building or part of a building that is
 - used as a hotel, motel, hostel, lodging house or boarding house;
 - (b) ordinarily used for holiday accommodation;
 - (c) used as an educational institution, college, hospital or nursing home;
 - (d) used as a club;
 - used as a home for aged or disabled persons by an eligible (e) organisation within the meaning of the *Aged or Disabled* Persons Care Act 1954 of the Commonwealth; or
 - prescribed or of a prescribed class; (f)

"private residential property" means —

- a lot of land on which there is a private residence; (a)
- a parcel of land on which there is a private residence (b) constructed so that part of the residence stands on each of the lots of land that constitute the parcel;
- an interest in a home unit; or (c)
- for the purposes of sections 24, 24A, 27, 27A and 28 a (d) lot of land on which a private residence is being or has been constructed;
- "public statutory authority" means a body established or continued in existence by or under an enactment;
- "registered" means registered in the office of the Department within the meaning of the Transfer of Land Act 1893, the Registry of Deeds, the Forests Department ², or the Department of Mines ³

Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05]

- under the provisions of any Act for the registration of titles to land, deeds, and other instruments;
- "reserved land", for the purposes of section 32 or 33, has the meaning given in the respective section;
- "retirement village" has the same meaning as in the *Retirement Villages Act 1992*;
- **"rural business"**, in relation to land, means the use of the land on a commercial basis to produce income to the user from the sale of produce or stock in the course of carrying out a business of a kind referred to in section 29(1)(a) or (b);
- "rural business land" means land on which a rural business has been or is being carried on;
- "sport" includes any game;
- "sports association" means a non-profit association whose principal object is to provide facilities for its members to engage in any form of sport;
- "strata scheme" has the same meaning as in the *Strata Titles*Act 1985;
- "survey-strata scheme" has the same meaning as in the *Strata Titles*Act 1985;
- "strata title home unit" means a lot in a strata scheme, or survey-strata scheme, that is registered under the *Strata Titles Act 1985*;
- "subdivided", in relation to land, has the meaning given in clause 3;
- "subdividing owner", in relation to land, means
 - (a) the owner of the land on the day on which the land is subdivided; or
 - (b) if the ownership of the land changes on that day the first owner on that day;
- "taxable land" means land on which land tax is payable under section 5;
- "taxable authority" means
 - (a) the Government Employees Superannuation Board within the meaning of the *State Superannuation Act 2000*; or

Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05]

page 55

- any other body established or continued under or by an (b) enactment that is prescribed for the purposes of this paragraph;
- "taxes", for the purposes of section 9 or 31, has the meaning given in the respective section;
- "total net income", in relation to the owner of a rural business, has the meaning given in clause 5;
- "trustee", in relation to land, means
 - a person in whom the legal estate of the land is vested (whether solely or jointly with other trustees), and whether appointed or constituted trustee by act of parties, or by order or declaration of a court or by operation of law:
 - an executor or administrator, guardian, committee of (b) management, receiver or liquidator having the administration or control of the land; and
 - a person having or taking upon himself or herself the administration or control of land effected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control, or management of the land of a person who is under a legal disability;

"unimproved value", in relation to land —

- (a) has the same meaning as in the Valuation of Land Act 1978; and
- (b) in relation to part of a lot, has the meaning given in section 13.

[Clause 1 amended by No. 40 of 2003 s. 6; No. 12 of 2004 s. 5; No. 12 of 2005 s. 5; No. 38 of 2005 s. 15; No. 31 of 2006 s. 27.]

2. Lots and parcels of land

- (1) A reference to a lot of land is a reference to a defined portion of land —
 - (a) that is depicted on a plan or diagram publicly exhibited in the public office of the Department of Land Administration ⁴, or deposited in the Department within the meaning of the Transfer of Land Act 1893 or Registry of Deeds and for which a separate Crown grant, certificate of Crown land title,

Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05] Extract from www.slp.wa.gov.au, see that website for further information

Glossary

- qualified certificate of Crown land title, or certificate of title has been or can be issued, registered or depicted on a subdivisional plan or diagram, whether so exhibited or deposited or not; and
- (b) that is approved by the Town Planning Board or the Western Australian Planning Commission, as the case requires, (whether the approval was given before or after the commencement of the *Town Planning and Development Act Amendment Act 1956*).
- (2) A reference to a lot of land includes a reference to the whole of any land that is the subject of
 - (a) a Crown grant issued under the *Land Act 1933*⁵;
 - (b) a certificate of Crown land title, or qualified certificate of Crown land title, created and registered under the *Transfer of Land Act 1893*;
 - (c) a certificate of title registered under the *Transfer of Land Act 1893*;
 - (d) a survey into a location or lot under section 27(2) of the *Land Administration Act 1997*;
 - (e) a part-lot shown on a plan of subdivision or diagram deposited in the Department of Land Administration ⁴, or the Department within the meaning of the *Transfer of Land Act 1893* or Registry of Deeds;
 - (f) a conveyance registered under the *Registration of Deeds Act 1856*;
 - (g) a lot depicted on a strata plan; or
 - (h) an entitlement to occupy a non-strata home unit.
- (3) If 2 or more lots of land in the same ownership have common boundaries, the Commissioner may treat the lots as a single property for valuation and assessment if it is appropriate to do so.
- (4) However, for the purpose of determining the use of a lot or parcel of private residential property, 2 or more lots of land are not to be treated as a single private residential property unless the Commissioner is satisfied that the lot or lots on which the private residence is constructed and each other lot are established, and used by the

Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05]

individuals who reside there, as one integrated area that constitutes the place of residence.

3. Subdivided land

- (1) Land is subdivided when
 - (a) a plan of subdivision of the land is approved by the Western Australian Planning Commission for the purposes of section 135 of the *Planning and Development Act 2005*;
 - (b) a transfer, conveyance, lease or mortgage of any land is approved by the Commission under section 147(1) of that Act or an application for the creation and registration of a certificate of title is approved by it under section 147(2) of that Act and the effect of the approval is to allow a dealing with a part of the land which is less than a whole lot;
 - (c) on an application for review under section 251 of that Act, the State Administrative Tribunal gives an approval referred to in paragraph (a) or (b);
 - (d) any plan required to be accompanied by a certificate under section 25 of the *Strata Titles Act 1985* is approved by the Commission; or
 - (e) a statement is endorsed on a plan under section 25B of the *Strata Titles Act 1985*.
- (2) An approval referred to in subclause (1) is conclusively presumed to have been given on the date appearing in the approval as endorsed on the plan, instrument or application referred to in that paragraph.

[Clause 3 amended by No. 55 of 2004 s. 584; No. 38 of 2005 s. 15.]

4. Land in a non-rural zone

Land is in a non-rural zone if the land is in the metropolitan region, or is outside the metropolitan region but is not in an area zoned for rural purposes under a local planning scheme.

[Clause 4 amended by No. 38 of 2005 s. 15.]

Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05] Extract from www.slp.wa.gov.au, see that website for further information

5. Total net income of rural business owners

- (1) For the purposes of sections 29 and 30, the total net income of the owner of a rural business is the amount equal to
 - if the owner is an individual the individual's gross income from all sources less the expenses of earning the income;
 - if the owner is 2 or more individuals the sum of the gross (b) incomes from all sources of all the individuals less the respective expenses of earning the incomes; or
 - if the owner is a body corporate 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.
- If the ownership of the land changes during a financial year, the (2) percentage of the total net income derived from the business or businesses by a person during the financial year is calculated by reference to the total net income derived by the person during the part of the year for which the person owned the land.

Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05]

Notes

This is a compilation of the Land Tax Assessment Act 2002 and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
Land Tax Assessment Act 2002	52 of 2002	20 Mar 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 27 Jun 2003 p. 2383)
Acts Amendment (Equality of Status) Act 2003 Pt. 34	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
Business Tax Review (Assessment) Act 2003 s. 4-8 ⁶	40 of 2003	30 Jun 2003	1 Jul 2003 (see s. 2(1) and (2) and <i>Gazette</i> 27 Jun 2003 p. 2383)
Business Tax Review (Assessment) Act (No. 2) 2003 s. 109	66 of 2003	5 Dec 2003	1 Jul 2003 (see s. 2(5) and <i>Gazette</i> 27 Jun 2003 p. 2383)
Revenue Laws Amendment and Repeal Act 2004 Pt. 2	12 of 2004	29 Jun 2004	1 Jul 2004 (see s. 2(2))
State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 69 ⁷	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
Revenue Laws Amendment Act (No. 3) 2005 Pt. 3	10 of 2005	29 Aug 2005	1 Jul 2005 (see s. 2(2))
Revenue Laws Amendment Act (No. 2) 2005 Pt. 2 (s. 3-5)	12 of 2005	30 Aug 2005	s. 5: 1 Jul 2003 (see s. 2(2)); s. 3 and 4: 30 Aug 2005 (see s. (2(1))
Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
Revenue Laws Amendment Act 2006 Pt. 4 (s. 19-30)	31 of 2006	4 Jul 2006	s. 20-27 and 29 and 30: 1 Jul 2006 (see s. 2(5)); s. 19 and 28: 4 Jul 2006 (see s. 2(1))

Reprint 1: The Land Tax Assessment Act 2002 as at 11 Aug 2006 (includes amendments listed above)

Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05] page 60

On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
Land Information Authority Act 2006 s. 142 ⁸	60 of 2006	16 Nov 2006	To be proclaimed (see s. 2(1))
<u>Liquor and Gaming</u> <u>Legislation Amendment</u> <u>Act 2006 s. 114 ⁹</u>	73 of 2006	13 Dec 2006	To be proclaimed (see s. 2(2))

- Under the Conservation and Land Management Act 1984 s. 151(a) a reference in any written law to the Forests Department is read as a reference to the Department of Conservation and Land Management unless the context is such that it would be incorrect or inappropriate.
 - Under the Public Sector Management Act 1994 the names of departments may be changed. At the time of this compilation the former Department of Conservation and Land Management is called the Department of Environment and Conservation.
- 3 Under the Alteration of Statutory Designations Order 2003 a reference in any law to the Department of Mines is to be read and construed as a reference to the Department of Industry and Resources.
- Under the Public Sector Management Act 1994 the names of departments may be changed. At the time this compilation was prepared, the former Department of Land Administration was called the Department of Land Information.
- 5 Repealed by the Land Administration Act 1997 s. 281.
- 6 The Business Tax Review (Assessment) Act 2003 s. 7 and s. 10 read as follows:

7. Financial years before the commencement day

- Despite the amendments effected by this Part, the *Land Tax* Assessment Act 2002, as in force immediately before the commencement day, continues to apply in relation to land tax payable for financial years that commence before the commencement day.
- In this section —

Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05]

page 61

"commencement day" means the day on which this Part comes into operation.

10. Requirement to reassess

The Commissioner of State Revenue must make any reassessment necessary to give effect to the amendments effected by this Part.

The State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 5, the State Administrative Tribunal Act 2004 s. 167 and 169, and the State Administrative Tribunal Regulations 2004 r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

On the date as at which this compilation was prepared, the *Land Information Authority Act 2006* s. 142 had not come into operation. It reads as follows:

"

142. Land Tax Assessment Act 2002 amended

- (1) The amendments in this section are to the *Land Tax Assessment Act 2002*.
- (2) The Glossary is amended in clause 1 in the definition of "registered" by deleting "Department within the meaning of the *Transfer of Land Act 1893*, the Registry of Deeds" and inserting instead —

"

Western Australian Land Information Authority established by the *Land Information Authority Act 2006* section 5

,

- (3) The Glossary is amended in clause 2 as follows:
 - (a) in subclause (1)(a), by deleting "publicly exhibited in the public office of the Department of Land Administration, or deposited in the Department within the meaning of the *Transfer of Land Act 1893* or Registry of Deeds" and inserting instead —

"

deposited with the Western Australian Land Information Authority established by the *Land Information Authority Act 2006* section 5

,

(b) in subclause (2)(e), by deleting "in the Department of Land Administration, or the Department within the

Compare 16 Nov 2006 [01-b0-05] / 13 Dec 2006 [01-c0-05]

meaning of the Transfer of Land Act 1893 or Registry of Deeds;" and inserting instead —

۲,

with the Western Australian Land Information Authority established by the Land Information Authority Act 2006 section 5;

On the date as at which this compilation was prepared, the Liquor and Gaming Legislation Amendment Act 2006 s. 114 had not come into operation. It reads as follows:

114. Amendments relating to the amended title of the *Liquor* Licensing Act 1988

The Acts listed in the first column of the Table to this section are amended in the corresponding provisions listed in the second column by deleting "Liquor Licensing Act 1988" and inserting instead —

Liquor Control Act 1988 ".

Table

Land Tax Assessment Act 2002	s. 39A(1) ("excluded purpose", para. (b))
<u></u>	