

**This document has a retrospective amendment effective from 1 Jul 2003, see the *Land Tax Assessment Amendment Act 2018* s. 2(a) and Pt. 2. The effect of this retrospective amendment has not been included in this document. To see the provision as amended by the retrospective amendment see the document as at 26 Apr 2018.**

**This document has a retrospective amendment effective from 1 Jul 2003, see the *Taxation Legislation Amendment Act 2015* Pt. 3 Div. 2. The effect of this retrospective amendment has not been included in this document. To see the provision as amended by the retrospective amendment see the document as at 25 Feb 2015.**

Western Australia

## **Land Tax Assessment Act 2002**



## Land Tax Assessment Act 2002

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Western Australia

## **Land Tax Assessment Act 2002**

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

## **Part 1 — Preliminary**

**1. Short title**

This Act may be cited as the *Land Tax Assessment Act 2002*.

**2. Commencement**

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

**3. 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.

**4. 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 49<sup>th</sup> 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.

**8. Certain persons and bodies taken to be owners of land**

- (1) A person is taken to be the owner of land for the purposes of section 7 if the person —
  - (a) is entitled to the land under any lease or licence from the Crown with or without the right of acquiring the fee simple; or
  - (b) is entitled to use the land for business, commercial, professional or trade purposes under an agreement or arrangement with the Crown, with an agency or instrumentality of the Crown or with a local government or public statutory authority.
- (2) If a taxable authority has land vested in it by or under an enactment otherwise than as owner, the taxable authority is taken to be the owner of the land for the purposes of section 7.
- (3) If an agreement has been made for the sale of land, whether or not the agreement is completed by transfer or conveyance, and whether or not it was made before or after this Act commenced, then for the purpose of ascertaining who is liable to pay land tax on the land —
  - (a) the vendor is taken to be the owner of the land until the purchaser obtains possession of the land; and
  - (b) the purchaser is taken to become the owner of the land when the purchaser obtains possession.

**9. Liability of agents or trustees**

- (1) An agent of an owner of taxable land, or a trustee in whom the legal estate of taxable land is vested (whether solely or jointly with other trustees), is liable for the taxes payable on the land as if the agent or trustee were the beneficial owner of the land.
- (2) However, the agent or trustee is not personally liable for the taxes to any greater extent than to the amount of any funds or securities for money of the principal or beneficiary, that the agent or trustee holds, or of which the agent or trustee has the

controlling power, after receiving an assessment notice for the taxes.

- (3) If an agent or trustee is required to pay, and has paid, an amount of taxes on behalf of the principal or the beneficiary, the agent or trustee is entitled —
  - (a) to recover an equal amount from the principal or beneficiary; or
  - (b) to retain an equal amount from any money that the agent or trustee receives in that capacity for the principal or beneficiary.
- (4) The agent or trustee is answerable for the doing of anything under a land tax Act that would be required to be done by the owner.
- (5) The agent or trustee is subject to the same penalties or liability for any neglect, refusal, or default in respect of a land tax Act as the principal or beneficiary would be.
- (6) In this section —

**“taxes”** means land tax, or any penalties, interest or other amount payable in connection with land tax under a land tax Act.

**9A. Notice of errors or omissions**

- (1) A person identified as being liable to pay land tax by a land tax assessment notice must notify the Commissioner of any material error or omission in the notice, that is relevant to the assessment, in relation to —
  - (a) any land owned by the person, whether or not the land is specified in the assessment notice;
  - (b) the ownership of any land specified in the assessment notice;
  - (c) any concessions or exemptions allowed, claimed or claimable in respect of land; or

- (d) any prescribed matters.
- (2) Notice of the error or omission must be given to the Commissioner —
  - (a) on or before the date specified in the assessment notice as the due date for payment of the land tax; or
  - (b) if no such date is specified — within 21 days after the date of the assessment notice.
- (3) In a prosecution of a person for an offence against subsection (1) it is a defence if the person proves that the person —
  - (a) did not know; and
  - (b) could not reasonably be expected to have known,

that the notice to which the prosecution relates contained any material error or omission.

Penalty: \$5 000.

*[Section 9A inserted by No. 12 of 2005 s. 4.]*

### **Division 2 — Assessment of land tax**

#### **10. Assessing the amount of land tax payable**

Except where this Act specifically provides for a concession or rebate of land tax, the amount of land tax payable for taxable land for an assessment year is the amount calculated by applying the rate fixed in relation to the land under the *Land Tax Act 2002* to the amount equal to the unimproved value of the land according to the valuation in force under the *Valuation of Land Act 1978* at midnight on 30 June in the previous financial year.

#### **11. Assessing land tax on 2 or more lots with the same ownership**

- (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.

- (2) 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.
- (3) 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.

**12. 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.
- (2) 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).
- (3) The assessment for the land is to be kept separate and distinct from an assessment for any land that is owned —
  - (a) by any one of the joint owners individually; or
  - (b) by any of them as a joint owner with any other person.
- (4) The owners of non-strata home units whose liability is assessed under section 16 are taken not to be joint owners for the purposes of this section.

**13. Calculating the unimproved value of part of a lot**

- (1) Where, under section 8(1)(b), a person is taken to be the owner of a portion of a lot, then a reference in a land tax Act to the unimproved value of the land is a reference to the amount, as determined by the Valuer-General, that bears the same proportion to the unimproved value of the lot as the portion of the lot bears to the total potential lettable area of the lot as defined in subsection (2).
- (2) The total potential lettable area of a lot is the total area of the lot that is capable of being let, as determined by the Valuer-General on the assumption that none of the land is used for an exempt purpose and having regard to the lease conditions of the portion of the lot for which a value is required.

*[(3) repealed]*

*[Section 13 amended by No. 40 of 2003 s. 4.]*

**14. Land tax on newly subdivided private residential property**

- (1) Land tax is payable in accordance with this section when private residential property is subdivided if —
  - (a) the property was exempt or partially exempt from land tax under Part 3 Division 2 for any of the 5 financial years reckoned retrospectively from and including the financial year in which the land was subdivided; and
  - (b) the area of the property is greater than 2.0234 hectares.
- (2) Land tax is payable by the subdividing owner of the property on the unimproved value of the taxable portion of the property (calculated under subsections (5) and (6)) for each of the 5 financial years reckoned retrospectively from and including the financial year in which the land is subdivided.
- (3) 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.

- (4) 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.
- (5) 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.
- (8) Despite section 17(4) of the *Taxation Administration Act 2003*, the Commissioner must make any reassessment necessary to give effect to this section.

**15. Land tax on newly subdivided rural business land**

- (1) Land tax is payable in accordance with this section when rural business land is subdivided if —
  - (a) the land was exempt from land tax under section 29 or subject to a concession under section 30 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 of the 5 financial years reckoned retrospectively from and including the financial year in which the land is subdivided.
- (3) The taxable portion of the land is the area that remains after subtracting from the whole area of the land —
  - (a) the area of any part of the land that is exempt, immediately after the subdivision is completed, under Part 3 Division 2 as a result of the subdividing owner's ownership or use of the land; and
  - (b) the area of any part of the land that, immediately after the subdivision is completed, consists of a lot of 2.0234 hectares or more that is zoned for rural purposes under a local planning scheme.
- (4) 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.
- (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 of the 5 financial years reckoned retrospectively from and including the financial year in which the land is subdivided.
- (3) 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.

- (4) 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.
- (5) 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.
- (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 15A inserted by No. 10 of 2005 s. 6.]*

**16. Assessing land tax on non-strata home units**

- (1) 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 building, no other improvements have been effected on the land except —
  - (a) improvements in the nature of draining, filling, excavation, grading or levelling of the land, retaining walls or other structures or works for that purpose, the

removal of rocks, stone or soil, and the clearing of timber, scrub or other vegetation; or

- (b) outbuildings, fences, garages or other improvements that are, in each case, designed for the use or enjoyment of the home unit owners.
- (2) The Commissioner may make an assessment under this section —
- (a) on his or her own initiative; or
  - (b) on the application of the owners for the time being of the home units.
- (3) If land tax has been assessed on the land for the assessment year in which the application is made or during which the Commissioner decides to assess the land tax in accordance with this section, the Commissioner may reassess the land tax payable for that year in accordance with this section.
- (4) However, a reassessment under subsection (3) is only to be made in relation to the assessment year referred to in that subsection.
- (5) An application —
- (a) must be made in the approved form by all the home unit owners jointly; and
  - (b) if the land is owned by a body corporate, must be accompanied by a statement in the approved form setting out the proportion of the value of the land to be ascribed to each home unit owner for the purpose of calculating the amount of land tax payable by the owner.
- (6) A home unit owner who is a registered proprietor of an undivided share in 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 owner's share in the land bears to the land.

**Land Tax Assessment Act 2002**

**Part 2** Land tax liability and assessment

**Division 2** Assessment of land tax

**s. 16**

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- (7) 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.
- (8) 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.
- (9) 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).
- (10) The Commissioner may revoke the decision —
- (a) on his or her own initiative; or
  - (b) on receiving a joint application for revocation from all the home unit owners for the time being.

## **Part 3 — Exemptions, concessions and rebates**

### **Division 1 — General provisions**

#### **17. Exempt land**

Land is exempt from land tax for an assessment year if —

- (a) the Commissioner grants an exemption for the assessment year under section 20; or
- (b) it is exempt for the assessment year under another provision of this Part.

#### **18. Partial exemptions or concessions**

If —

- (a) an exemption or concession under another provision of this Act would apply to land if it were used or occupied solely for an exempt purpose or purposes, or owned, used or occupied solely by a person or persons in a particular class or classes, or both, as mentioned in the respective provision; and
- (b) the land is used or occupied partly for the exempt purpose or purposes and partly for another purpose or purposes, or is 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 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, as the case requires.

#### **19. Obtaining an exemption or concession**

The Commissioner may require an owner of land —

- (a) to lodge an application in the approved form for an exemption or concession under this Part; and

- (b) to give the Commissioner any information within the owner's knowledge or control that is relevant to deciding whether or not the land is eligible for an exemption or concession.

**20. Commissioner's power to exempt land**

- (1) A taxpayer may apply to the Commissioner for an exemption, concession or further concession for any of the following land —
  - (a) any proportion of private residential property that is used by an individual for a purpose that is not an exempt purpose, where the private residential property is exempt to some extent under section 21, 22 or 23 because of its use by the individual as his or her primary residence as provided in the respective section;
  - (b) land that is not exempt under section 23 for an assessment year because it was exempt under that section in the previous financial year, or because the estate derived rent or income in the assessment year;
  - (c) land used as holding paddocks for stock that is not exempt under section 29 only because it is not used for that purpose in the course of carrying on a rural business of a kind referred to in section 29;
  - (d) land that is not exempt under section 29 because of the operation of section 29(3) or (4);
  - (e) land that is subject to a concession under section 30;
  - (f) land that is not exempt under section 42 because of the operation of section 42(3) or (4);
  - (g) Crown land of which a person is taken to be the owner under section 8(1) and which is not otherwise subject to an exemption or concession;
  - (h) land sold by a religious body that would otherwise be taxable under section 32(2);

- (i) land sold by an educational institution that would otherwise be taxable under section 33(2).
- (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 —

- (a) by an individual who uses it as his or her primary residence;
  - (b) by a husband and wife, at least one of whom uses it as his or her primary residence; or
  - (c) by persons who have lived in a de facto relationship with each other for at least 2 years, whether or not they still live on that basis, at least one of whom uses it as his or her primary residence.
- (2) However, if the property is also owned by another person or persons, it is exempt if each owner who does not use it for that purpose is an owner only because of a requirement by a financial institution for a guarantee of money advanced on the security of the property.

*[Section 21 amended by No. 28 of 2003 s. 101.]*

**22. Private residential property owned by executor or administrator**

Private residential property is exempt for an assessment year if, at midnight on 30 June in the previous financial year —

- (a) it is owned by an executor of a will as trustee;
  - (b) an individual identified in the will —
    - (i) is entitled under the will to the property as a tenant for life; or
    - (ii) has a right under the will to use the property as a place of residence for as long as he or she wishes, but is not entitled under the will to any estate of freehold in possession of the property;
- and
- (c) the individual uses the property as his or her primary residence.

*[Section 22 amended by No. 40 of 2003 s. 8.]*



**23. Continued exemption after death of resident**

- (1) Private residential property owned by the executor or administrator of an individual's estate is exempt, but only for the assessment year following the financial year in which the individual died, if —
  - (a) the individual's ownership and use of the property as his or her primary residence gave rise to an exemption under section 21 for the financial year in which he or she died, or would have given rise to such an exemption if he or she had owned the property and had been using it for that purpose on 30 June before his or her death;
  - (b) the executor or administrator is the owner of the property at midnight on 30 June in the financial year in which the individual died; and
  - (c) the individual's estate does 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.
- (2) The exemption may be allowed in advance if —
  - (a) the individual's estate has not derived any rent or other income from the property between the date of the individual's death and midnight on 30 June in the financial year in which he or she died; and
  - (b) the executor or administrator advises the Commissioner that the estate is not expected to derive any rent or other income from the property in the assessment year.
- (3) However, if the individual's estate derives any rent or other income from the property in the assessment year, the executor or administrator must —
  - (a) notify the Commissioner to that effect within 3 months after the end of the assessment year; and
  - (b) give the Commissioner any particulars needed to make a reassessment.

Penalty: \$5 000.

- (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. New private residences**

- (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) The Commissioner is to make any reassessment necessary to give effect to this section.

*[Section 24 amended by No. 31 of 2006 s. 20.]*

**24A. Construction of private residence — exemption for 2 assessment years**

- (1) Private residential property (except property held in trust) that is owned by an individual is exempt for 2 consecutive assessment years if —
  - (a) the commencement date for the construction of the private residence that forms part of the property is —
    - (i) in the first assessment year; or
    - (ii) in any previous financial year and part of the construction is carried out in the first assessment year;
  - and
  - (b) the completion date for the construction is in the second assessment year; and
  - (c) at midnight on 30 June immediately before the first assessment year, the individual owned the land on which the private residence is constructed; and
  - (d) the individual is the first occupant of the private residence; and
  - (e) the individual uses the private residence as his or her primary residence during the second 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 first 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 either assessment year under another provision of this Division as a result of its use by the individual as his or her primary residence.
- (3) The individual may apply for the exemption in the approved form after the commencement date for the construction.

- (4) The individual must notify the Commissioner in the approved form of —
  - (a) the completion date for the construction; and
  - (b) when the individual occupies the private residence.
- (5) The Commissioner is to make any reassessment necessary to give effect to this section.

*[Section 24A inserted by No. 31 of 2006 s. 21.]*

**25. Exemptions during renovation of private residence**

- (1) Private residential property (except property held in trust) is exempt from land tax for an assessment year if —
  - (a) the property is owned by an individual;
  - (b) at midnight on 30 June in the financial year before the assessment year the private residence that forms part of the property was unoccupied, but only because the individual had ceased occupation, or not taken up occupation, to enable the private residence to be refurbished;
  - (c) the individual takes up occupation of the private residence during the assessment year, and is the first occupant of the private residence since the refurbishment; and
  - (d) no rent or other income was derived from the property by anyone in respect of the period between the beginning of the assessment year and the time when the property was reoccupied.
- (2) However, the property is not exempt if any other private residential property owned by the same individual is exempt for the assessment year under another provision of this Division as a result of its use by the same individual as his or her primary residence.
- (3) The Commissioner is to make any reassessment necessary to give effect to this section.

**25A. Refurbishment of private residence — exemption for 2 assessment years**

- (1) Private residential property (except property held in trust) that is owned by an individual is exempt for 2 consecutive assessment years if —
- (a) the commencement date for the refurbishment of the private residence that forms part of the property is —
    - (i) in the first assessment year; or
    - (ii) in any previous financial year and part of the refurbishment is carried out in the first assessment year;
  - and
  - (b) the completion date for the refurbishment is in the second assessment year; and
  - (c) at midnight on 30 June immediately before the first assessment year, the private residence was unoccupied, but only because the individual had ceased occupation, or had not taken up occupation, to enable the private residence to be refurbished; and
  - (d) the individual is the first occupant of the private residence since the refurbishment; and
  - (e) the individual uses the private residence as his or her primary residence during the second 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 first assessment year and the time when the property was reoccupied; or
  - (b) any other private residential property owned by the individual is exempt for either assessment year under another provision of this Division as a result of its use by the individual as his or her primary residence.

- (3) The individual may apply for the exemption in the approved form after the commencement date for the refurbishment.
- (4) The individual must notify the Commissioner in the approved form of —
  - (a) the completion date for the refurbishment; and
  - (b) when the individual occupies the private residence.
- (5) The Commissioner is to make any reassessment necessary to give effect to this section.

*[Section 25A inserted by No. 31 of 2006 s. 22.]*

**26. Exemption for trust property used by disabled beneficiary**

Private residential property held in trust is exempt for an assessment year if, at midnight on 30 June in the financial year before the assessment year —

- (a) the land is owned by a trustee who holds the land in trust for one or more disabled beneficiaries; and
- (b) at least one disabled beneficiary of the trust uses the property as his or her primary residence.

**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 *Disability Services Act 1993* 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
  - (c) it is irrelevant whether a relationship is of the whole or half-blood, or whether it is a natural relationship or a relationship established under a written law.
- (4) The exemption may be allowed in advance if the owner of the property advises the Commissioner that no rent or other income is expected to be derived from the property by anyone in any assessment year.
- (5) If any rent or other income is derived from the property by anyone in an assessment year, the owner of the property must —
- (a) notify the Commissioner to that effect within 3 months after the end of the assessment year; and
  - (b) give the Commissioner any particulars needed to make a reassessment.
- Penalty: \$5 000.
- (6) If the Commissioner is notified, or otherwise becomes aware, that rent or income has been derived from the property in the assessment year, the Commissioner is to make a reassessment accordingly.
- (7) If —

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

the owner 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 26A inserted by No. 31 of 2006 s. 29.]*

**27. Moving between 2 private residences**

- (1) Private residential property (“**property A**”) is exempt for an assessment year if —
  - (a) at midnight on 30 June in the previous financial year, the owner owned property A and another private residential property (“**property B**”); and
  - (b) property B is exempt for the assessment year because of its use by an individual at midnight on 30 June in the previous financial year as the individual’s primary residence; and
  - (c) property A would have been exempt for the assessment year if, at midnight on 30 June in the previous financial year, the individual had used property A as the individual’s private residence instead of property B; and
  - (d) the property the owner acquired second was acquired in the previous financial year; and
  - (e) the individual used property A as the individual’s primary residence —
    - (i) in the previous financial year before using property B for that purpose; or



- (ii) in the assessment year after using property B for that purpose;
- and
- (f) during the assessment year, the owner —
  - (i) sold or otherwise disposed of the property the owner acquired first; and
  - (ii) delivered possession of that property to the new owner.
- (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.
- (3) The owner must notify the Commissioner in the approved form of when the disposal and delivery of possession of the property acquired first occurs.
- (4) The Commissioner is to make any reassessment necessary to give effect to this section.

*[Section 27 inserted by No. 31 of 2006 s. 23.]*

**27A. Construction or refurbishment of second private residence — exemption for 2 assessment years**

- (1) Private residential property is exempt for 2 consecutive assessment years if —
  - (a) at midnight on 30 June immediately before the first assessment year, the owner owned that property and another private residential property that the owner had acquired before that property; and
  - (b) the property the owner acquired first is exempt for the first assessment year because of its use by an individual at midnight on 30 June in the previous financial year as the individual's primary residence; and
  - (c) the property the owner acquired second would have been exempt for the first assessment year if, at midnight on

30 June in the previous financial year, the individual had used that property as the individual's private residence instead of the property acquired first; and

- (d) the property acquired second was acquired in the previous financial year; and
- (e) the commencement date for the construction or refurbishment of the private residence that forms part of the property acquired second —
  - (i) is in the first assessment year; or
  - (ii) is in the previous financial year and part of the construction or refurbishment is carried out in the first assessment year;

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
- (h) 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.
- (2) 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.
- (3) The owner may apply for the exemption in the approved form after the commencement date for the construction or refurbishment.
- (4) The owner must notify the Commissioner in the approved form of —
  - (a) the completion date for the construction or refurbishment; and
  - (b) when the individual occupies the property acquired second; and
  - (c) when the disposal and delivery of possession of the property acquired first occurs.
- (5) The Commissioner is to make any reassessment necessary to give effect to this section.

*[Section 27A inserted by No. 31 of 2006 s. 23.]*

**28. Rebate for inner city residential property**

- (1) The owner of private residential property may apply to the Commissioner in the approved form for a rebate under this section.
- (2) The owner of private residential property is entitled to a rebate of the land tax payable for an assessment year on the aggregated unimproved value of all the applicant's land if —
  - (a) the private residential property is in an area of the State prescribed as an inner city area, and is also in an area that is the subject of a local planning scheme, or a redevelopment scheme in force under the *East Perth*

*Redevelopment Act 1991*, where the land is not zoned for use solely for residential purposes;

- (b) the construction of the private residence that forms part of the private residential property was completed before or during the assessment year;
  - (c) the private residence was occupied, or fit to be occupied and intended by the owner to be occupied, as a place of residence for one or more individuals, during the assessment year or during the part of the assessment year remaining after the construction is completed, as the case requires;
  - (d) the private residential property is not exempt for the assessment year under another provision of this Division; and
  - (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.  
Penalty: \$5 000.
- (6) The Commissioner is to make any reassessment necessary to give effect to this section.
- (7) In subsection (3) —  
**“residential equivalent value”**, in relation to private residential property referred to in subsection (2), means the unimproved value of the property determined as if the property were zoned solely for residential purposes under the local planning scheme or redevelopment scheme that applies to the property.

*[Section 28 amended by No. 38 of 2005 s. 15.]*

### **Division 3 — Rural business land**

#### **29. Land used solely or principally for a rural business**

- (1) Land (except land in a non-rural zone) is exempt for an assessment year if, at midnight on 30 June in the previous financial year, it is or was used solely or principally on a commercial basis to produce income to the user from the sale of produce or stock in the course of carrying out one or more of the following kinds of rural business —
- (a) an agricultural business, silvicultural business or reforestation business;

- (b) a grazing business, horse-breeding business, horticultural business, viticultural business, apicultural business, pig-raising business or poultry farming business.
- (2) However, land used as holding paddocks for stock is not exempt unless it is used in the course of carrying out a rural business.
- (3) Land in a non-rural zone that is used by the owner of the land for a rural business or rural businesses is exempt from land tax for an assessment year if more than one third of the owner's total net income for the previous financial year was derived from the owner's carrying out a business or businesses of that kind in the State.
- (4) However, even if subsection (3) does not apply to land in a non-rural zone used for a silvicultural business or reforestation 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**

**31. 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 exempt, whether or not anyone is taken to be the owner of the land under section 8(1)(a) or (b).
- (3) A person who is liable to pay taxes for an assessment year as a result of being taken to be the owner of land under section 8(1)(a) or (b) is entitled to a rebate of the taxes if —
  - (a) the lease, licence, agreement or arrangement by virtue of which the person is taken to be the owner of the land was terminated during the assessment year before its expiry;
  - (b) the termination occurred without the person's consent, and was not a result of some default by the applicant; and
  - (c) the person applies to the Commissioner in the approved form.
- (4) The rebate is calculated in accordance with the formula —

$$\text{Rebate} = A \times T \times P$$

where —

- A = the amount of taxes payable for the assessment year in relation to all the taxable land owned by the applicant;
- T = the proportion which the unimproved value of the lot or parcel to which the termination relates bears to the aggregated unimproved value;
- P = the proportion of the assessment year remaining after the day on which the lease, licence, agreement or arrangement was terminated.

(5) Subject to section 17 of the *Taxation Administration Act 2003*, the Commissioner is to make any reassessment necessary to give effect to this section.

(6) In this section —

“taxes” means land tax, penalty tax or charges under the regulations for land tax paid in instalments.

### **32. Land owned by religious bodies**

(1) Land is exempt for an assessment year if —

- (a) at midnight on 30 June in the previous financial year it is owned by, vested in or held in trust for a religious body; and
- (b) it is in good faith reserved or used as a site for religious purposes, including a site for a church or a chapel, for public worship, for educational purposes or for the residence of a minister of the religious body.

(2) However if, during an assessment year, reserved land is used for any other purpose or is sold, then land tax is payable on the land for the lesser of the following periods —

- (a) the 5 financial years reckoned retrospectively from and including the assessment year;
- (b) the number of financial years from and including the first financial year for which the land was exempt as a



result of its use and ownership to and including the assessment year.

- (3) The amount of land tax payable for each financial year for which land tax is payable under subsection (2) is assessed at the rate applicable for that year under the *Land Tax Act 2002*.
- (4) Despite section 17(4) of the *Taxation Administration Act 2003*, the Commissioner is to make any reassessment necessary to give effect to subsection (2).
- (5) 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).

**33. Land owned by educational institutions**

- (1) Land is exempt for an assessment year if —
  - (a) at midnight on 30 June in the previous financial year, it is owned by, vested in or held in trust for an educational institution listed in subsection (4); and
  - (b) it is in good faith used or reserved as a site for the purpose of providing facilities necessary for or conducive to the attainment of the objects of the institution and the performance of its functions.
- (2) However if, during an assessment year, reserved land is used for any other purpose or is sold, then land tax is payable on the land for the lesser of the following periods —
  - (a) the 5 financial years reckoned retrospectively from and including the assessment year;
  - (b) the number of financial years from and including the first financial year for which the land was exempt as a result of its use and ownership to and including the assessment year.

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- (3) The amount of land tax payable for each financial year for which land tax is payable under subsection (2) is assessed at the rate applicable for that year under the *Land Tax Act 2002*.
- (4) For the purposes of subsection (1) the following educational institutions are listed —
- (a) the University of Western Australia constituted under the authority of the *University of Western Australia Act 1911*;
  - (b) the Curtin University of Technology established under the *Curtin University of Technology Act 1966*;
  - (c) Murdoch University established under the *Murdoch University Act 1973*;
  - (d) the Edith Cowan University established under the *Edith Cowan University Act 1984*;
  - (e) any bona fide educational institution not carried on for the purpose of private profit or gain;
  - (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 horticultural show, a historical society, a public museum or other public purposes; and
- (b) it is used for those purposes.

**37. Land owned by public charitable or benevolent institutions**

Land is exempt for an assessment year if —

- (a) at midnight on 30 June in the previous financial year, it is owned by, vested in or held in trust for a public charitable or benevolent institution; and
- (b) it is used solely for the public charitable or benevolent purposes for which the institution was established.

**38. Land owned by various non-profit organisations**

(1) Land is exempt for an assessment year if —

- (a) at midnight on 30 June in the previous financial year, it is owned by, vested in or held in trust for a sports association; and

- (b) it is used as a site for providing facilities (which may include facilities for the sale of liquor) that are necessary for or conducive to the attainment of the sporting objects of the association.
- (2) Land is exempt for an assessment year if —
- (a) at midnight on 30 June in the previous financial year, it is owned by, vested in or held in trust for any non-profit association except a sports association; and
  - (b) it is used solely as a site for providing facilities (which may include facilities for the sale of liquor) that are necessary for or conducive to the attainment of the objects of the association, and are not available for use on a paying basis by anyone except members of the association and their guests.
- (3) If land is not exempt under subsection (2) because it is not used solely as described in that subsection, the land is to be taxed at 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.

**39. 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*; and
- (b) 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 house; or
- (b) as premises not already mentioned in paragraph (a) that are the subject of a licence under the *Liquor Licensing Act 1988*;

**“related purpose”** means a purpose, other than an excluded purpose, determined by the Commissioner, or prescribed, to be ancillary to the purpose of use as sites on which caravans, caravans and camps, or park homes, are or may be situated for habitation,

and if a term used in this section is defined in section 5 of the *Caravan Parks and Camping Grounds Act 1995*, it has the same meaning in this section.

(2) Land is dwelling park land if —

- (a) the land is, or is part of, a caravan park or camping ground;
- (b) the caravan park or camping ground is —
  - (i) operated, or required to be operated, under a licence issued under the *Caravan Parks and Camping Grounds Act 1995*; or

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- (ii) operated by a local government on land that is not owned by, or vested in, the local government;
  - and
  - (c) the land is used solely for dwelling park purposes.
- (3) In considering an application under subsection (4) the Commissioner may regard land used for a related purpose as being used solely for dwelling park purposes even though it is used for another purpose in addition to the related purpose.
- (4) The owner of land may apply to the Commissioner in the approved form for a determination —
- (a) that the land is dwelling park land and was dwelling park land as at midnight on 30 June preceding the application; or
  - (b) that the land is dwelling park land.
- (5) Without limiting subsection (4), an application may be made for a determination as to land that constitutes a portion of a lot.
- (6) If a determination as to land is made as applied for under subsection (4)(a), section 39B applies to that land in respect of —
- (a) the assessment year in which the determination was applied for; and
  - (b) each subsequent assessment year unless, before the beginning of that year —
    - (i) the land ceases to be dwelling park land; or
    - (ii) there is a change in the ownership of the land.
- (7) If a determination as to land is made as applied for under subsection (4)(b), section 39B applies to that land in respect of each subsequent assessment year unless, before the beginning of that year —
- (a) the land ceases to be dwelling park land; or
  - (b) there is a change in the ownership of the land.

- (8) Despite subsections (6) and (7), section 39B does not apply to land as to which a determination is made if an exemption under another provision of this Act applies to the land.
- (9) If land as to which a determination is made ceases to be dwelling park land, the owner of the land must notify the Commissioner to that effect before the beginning of the next assessment year, or within 3 months of the day on which the cessation occurred, whichever is later.
- (10) A reference in subsection (6), (7), (8) or (9) to land as to which a determination is made includes a reference to any part of that land.

*[Section 39A inserted by No. 10 of 2005 s. 7.]*

**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*.
- (2) 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) a war widow or war widower, as defined in section 5E of the *Veteran's Entitlements Act 1986* of the Commonwealth; or

- (b) 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.

**41. 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.]*

**42. Land vacated for sale by mortgagee**

- (1) Land is exempt for an assessment year if —
  - (a) the property was vacant at midnight on 30 June in the financial year before the assessment year;
  - (b) an exemption or concession under another provision of this Act would have applied to the land if, at that time, the owner or a particular individual or body had occupied the land or had been using it for an exempt purpose, or both, as mentioned in the provision; and
  - (c) the only reason that the property was not at that time occupied by the individual or body or used for that purpose was that a mortgagee of the property required the property to be vacated pursuant to the mortgagee's right to sell the property.
- (2) The land is exempt under subsection (1) only to the extent that it would have been exempt under the other provision of this Act.
- (3) However, the property is not exempt if —
  - (a) the owner is entitled to an exemption in respect of any other property under the same provision or under section 21, 22, 23, 24, 24A, 25 or 25A; or



- (b) any person derives rent or other income from the land during the period when the land was required to be vacant.
- (4) An exemption under this section applies in relation to the land and the owner for one assessment year only.

*[Section 42 amended by No. 31 of 2006 s. 24.]*

## **Part 4 — Miscellaneous**

### **43. Information to be given by occupier or person in possession**

- (1) 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
  - (b) 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.
- (2) A person who does not comply with a request commits an offence.  
Penalty: \$5 000.

### **44. 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*;
- (d) the *Edith Cowan University Act 1984*.

### **45. Contracts ineffective to alter incidence of land tax**

- (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.

- (2) Subsection (1) has effect whether the contract, agreement, or understanding —
  - (a) is arrived at or evidenced by matter of record under seal or by writing or by parol; or
  - (b) was made before or after the commencement of the land tax Acts.
- (3) Except as provided in subsection (1), that subsection does not prejudice the validity of the contract, agreement, or understanding.

**45A. Commissioner may determine that minor interest is to be disregarded**

- (1) The Commissioner may determine that an interest in a lot or parcel of land as a joint owner (whenever created) is to be disregarded for the purposes of this Act.
- (2) The Commissioner can only make a determination under subsection (1) if —
  - (a) the interest is a minor interest in the lot or parcel of land; and
  - (b) the Commissioner is of the opinion that the purpose, or one 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 of land.
- (3) For the purposes of subsection (2)(b), the Commissioner may have regard to —
  - (a) the nature of any relationship between the owners of the lot or parcel of land; and
  - (b) the form and substance of any transaction giving rise to the interest, including the legal and economic obligations of the parties and the economic and commercial substance of the transaction; and

**s. 45B**

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- (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.

*[Section 45B inserted by No. 31 of 2006 s. 30.]*

**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.

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



## **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



- (b) if the residence is to be constructed or refurbished by an 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 —

- (a) restricts or prohibits certain activities on the land that could degrade the environmental value of the land;
- (b) is permanent and registered on the title to the land (if 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 —

- (a) 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
- (c) is a minor who is an orphan;

**“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;

**“home unit”** means —

- (a) a strata title home unit (as defined below); or
- (b) a non-strata home unit (as defined below);

**“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
- (c) 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 —
    - (i) 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 —

- (a) 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;
- (e) used as a home for aged or disabled persons by an eligible organisation within the meaning of the *Aged or Disabled Persons Care Act 1954* of the Commonwealth; or
- (f) prescribed or of a prescribed class;

**“private residential property”** means —

- (a) a lot of land on which there is a private residence;
- (b) a parcel of land on which there is a private residence constructed so that part of the residence stands on each of the lots of land that constitute the parcel;
- (c) an interest in a home unit; or
- (d) for the purposes of sections 24, 24A, 27, 27A and 28 — a 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, or the Department of Mines

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

**cl. 2**

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- (b) any other body established or continued under or by an 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) 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;
- (b) an executor or administrator, guardian, committee of management, receiver or liquidator having the administration or control of the land; and
- (c) 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.

*[(c) deleted]*

*[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, 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, 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*;
  - (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, 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

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. 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.]*

**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 —



- (a) if the owner is an individual — the individual's gross income from all sources less the expenses of earning the income;
  - (b) if the owner is 2 or more individuals — the sum of the gross incomes from all sources of all the individuals less the respective expenses of earning the incomes; or
  - (c) 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.
- (2) If the ownership of the land changes during a financial year, the 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.

*[Glossary amended by No. 40 of 2003 s. 6; No. 12 of 2004 s. 5; No. 55 of 2004 s. 584; No. 38 of 2005 s. 15.]*

## Notes

<sup>1</sup> 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.

### Compilation table

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

<sup>2</sup> The *Business Tax Review (Assessment) Act 2003* s. 7 and s. 10 read as follows:

“

**7. Financial years before the commencement day**

(1) 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.

(2) In this section —  
“**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.

”

<sup>3</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administration 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.

