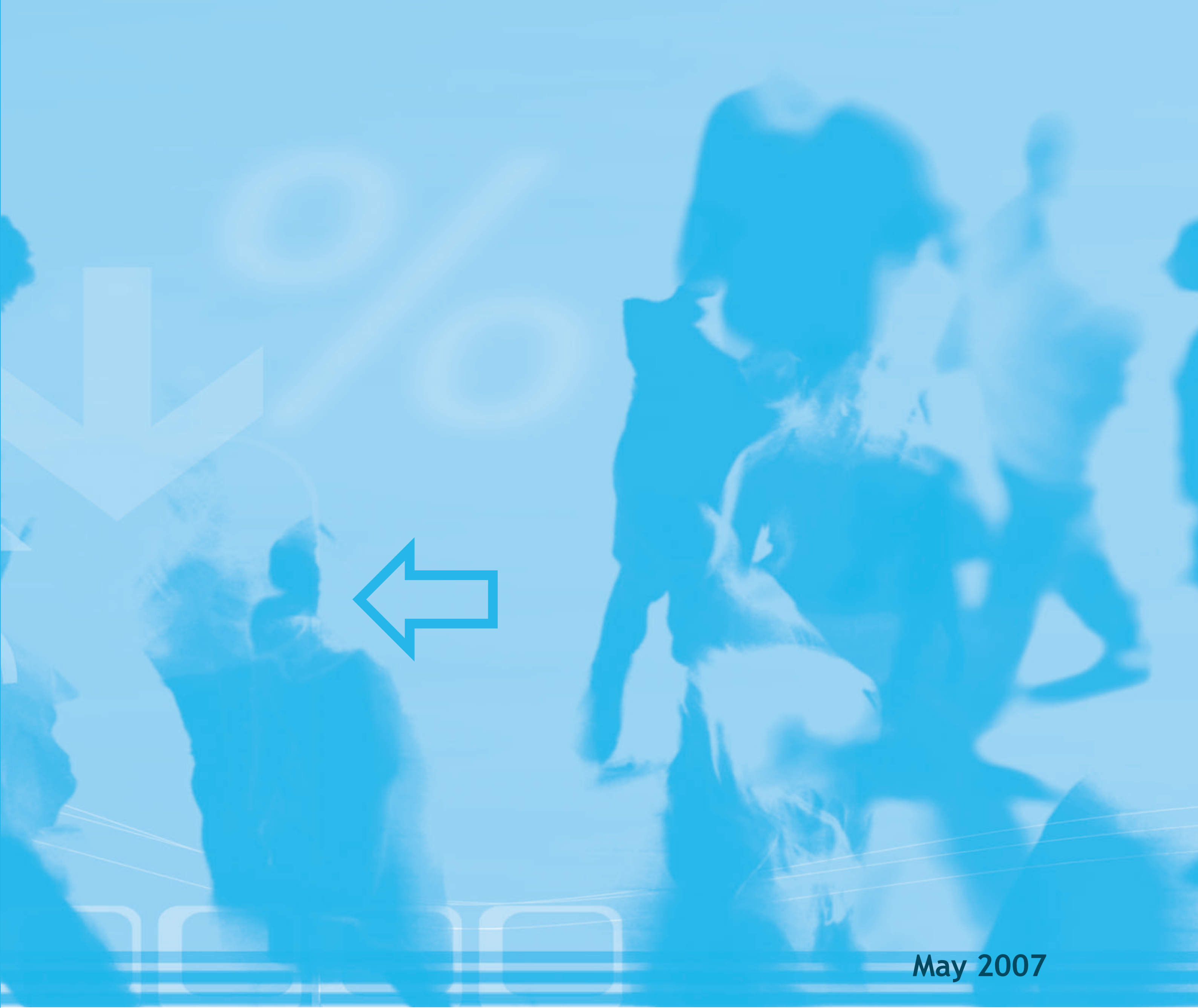


May 2007

State Tax Review

Final Report

Department of Treasury and Finance
Government of Western Australia

State Tax Review

Final Report

May 2007

Department of **Treasury and Finance**
Government of **Western Australia**

Further information or enquiries related to the Final Report may be obtained from the following officers:

Mark Altus	Director – Revenue and Intergovernmental Relations	(08) 9222 9156
Brendan Cullen	Acting Assistant Director – Revenue Policy Branch	(08) 9222 9801
Jakub Wszola	Project Officer – State Tax Review	(08) 9222 9916

ISBN978-0-7307-4558-7

STATE TAX REVIEW

FINAL REPORT

Table of Contents

Acronyms

ACAA-WA	Aged Care Association Australia - Western Australia
AICWA	Australian Institute of Conveyancers Western Australian Division Inc.
APPEA	Australian Petroleum Production and Exploration Association
APRA	Australian Prudential Regulation Authority
ATO	Australian Taxation Office
BTR	Business Tax Review
CCI	Chamber of Commerce and Industry of Western Australia
CGC	Commonwealth Grants Commission
CIAWA	Caravan Industry Association of Western Australia
CME	Chamber of Minerals and Energy of Western Australia
COTA	Council on the Ageing
DET	Department of Education and Training
DMF	Discretionary Mutual Funds
DEC	Department of Environment and Conservation
DPI	Department for Planning and Infrastructure
DOFI	Direct Offshore Foreign Insurers
DSC	Disability Services Commission
DTF	Department of Treasury and Finance
ESL	Emergency Services Levy
FHOG	First Home Owner Grant
GST	Goods and Services Tax
HIA	Housing Industry Association
ICA	Insurance Council of Australia
ICAA	Institute of Chartered Accountants Australia
IGA	Intergovernmental Agreement on the Reform of Commonwealth – State Financial Relations
MRIT	Metropolitan Region Improvement Tax
MTA	Motor Trade Association of Western Australia
OSR	Office of State Revenue
PAYG	Pay As You Go
PPL	Perth Parking Levy
PPR	Principal Place of Residence
RAC	Royal Automobile Club
REIWA	Real Estate Institute of Western Australia
SAT	State Administrative Tribunal
SBDC	Small Business Development Corporation
TAA	Taxation Administration Act 2003
UDIA	Urban Development Institute of Australia
WACOSS	Western Australian Council of Social Services
WAPC	Western Australian Planning Commission
WAFF	Western Australian Farmers Federation
WST	Wholesale Sales Tax

Executive Summary

Introduction

The commitment to undertake a State Tax Review in consultation with the Western Australian community was announced by the Government in the May 2005 State Budget. The purpose, objectives and timing of the Review were detailed in the Terms of Reference, released by the Treasurer on 5 July 2005 and reproduced in Appendix C of this Report.

The Review has been undertaken in two stages, each coordinated by the Department of Treasury and Finance (DTF). Stage 1 was completed with the release of the Interim Report on 1 June 2006. It contained the DTF's analysis and preliminary findings on issues raised in 136 public submissions, using a Public Reference Group as a 'sounding board', together with a foreword from the Treasurer that further defined the scope of reforms that the Government would be prepared to consider.

Taxation measures announced by the Government in March 2006 and in the 2006-07 State Budget took into account the early priorities for tax reform that emerged during Stage 1 of the Review. These included the abolition of stamp duties on the hire of goods (from 1 January 2007), mortgages (staged abolition by 1 July 2008) and non-real property transfers (from 1 July 2010), together with an extension of the land tax exemption period for the construction of new homes (to two assessment years) and a land tax concession for parents providing independent accommodation for disabled children.

Feedback on the Interim Report

Stage 2 of the Review has involved the receipt of public feedback on the Interim Report, and further consultation with the Reference Group.

- 29 public responses were received in Stage 2. These are listed in Appendix A and are available on the State Tax Review website (www.statetaxreview.wa.gov.au).

- The Reference Group is chaired by Mr Jonathan Ilbery (Partner, Jackson McDonald). Full membership of the Reference Group for Stage 2 is included in Appendix B.

This report contains final DTF recommendations on taxation relief and reform priorities and the range of issues raised in the Review. It is intended to be a succinct 'summary and conclusion' document and should be read in conjunction with the more detailed Interim Report on specific issues (including its Technical Appendices).

The Chair of Reference Group has been invited by the Treasurer to provide a separate report to him on the Group's views on the Final Report, consistent with its role not only as a 'sounding board' but also a source of independent advice for the Government.

Summary of Final Recommendations

Priorities for Taxation Relief (Chapter 1)

The priority ranking for taxation relief (from highest to lowest) is reducing conveyance duty (including by increasing the first home buyer exemption and the thresholds of the general scale), investing in reform of the land tax scale, reducing insurance duty by adopting a GST-exclusive base, reducing motor vehicle duty for light vehicles (and introducing an exemption for caravans) and reducing the payroll tax rate.

Taxation Reform Priorities (Chapter 2)

2.2 Scope for Visionary Reform

To lay the groundwork for more informed community debate on further fundamental reform of the State tax system in the future (which needs to occur in a national context), the Government should consider enlisting a small independent 'alliance' of business, community and union leaders, ex-politicians and academics to help improve public awareness of the general Commonwealth-State relations environment in which States operate (and the scope for fairer returns to Western Australia that could also be in the national interest).

2.3 Stamp Duty on Conveyances

2.3.1 Implement the Landholder Model

A landholder model should be introduced to improve the equity and efficiency of the State's taxation regime, while at the same time reducing compliance and administration costs. To the extent that this reform measure would be revenue positive, its implementation should coincide with a reduction in conveyance duty rates commensurate with the additional revenue otherwise raised. The extent of the rate reduction would be determined following further consultation with industry groups once they have had the benefit of examining the detail of the model as part of the exposure draft of the Stamp Act rewrite legislation.

2.3.2 Broaden the Corporate Reconstruction Concession Provisions

In conjunction with any implementation of the landholder model, it is considered appropriate to extend the corporate reconstruction exemption to unit trusts, subject to it being supported by a general anti-avoidance provision to prevent abuse of the exemption. This matter should be progressed as part of the Stamp Act rewrite project.

2.3.3 Concession for Trusts Established for a Family Member with a Disability

Stamp duty relief should be introduced for property gifted to the trustee of a Special Disability Trust as defined by section 1209L of the *Social Security Act 1991*.

2.3.4 Ensuring Equitable Application of Stamp Duty to Petroleum Titles

The Treasurer should consider writing to the Commonwealth Treasurer seeking his endorsement for increasing and expanding the 1.5% registration fee on petroleum title transfers to equate it with conveyance duty (including by imposing an equivalent fee on transfers of indirect interests).

2.3.5 Extend Farm-In Concession to a Right to Extract Minerals

Extending the farm-in concession to a right to extract minerals is supported and should be progressed as part of the Stamp Act rewrite project, along with appropriate rules to protect the integrity of the exemption.

2.3.6 Extend Family Farm Exemption to Allow Related Entities to Farm the Land

Extending the availability of the family farm exemption to situations where a related family entity intends to continue to use the farming property for the purposes of primary production should be progressed as a part of the Stamp Act rewrite.

2.3.7 Abolish Stamp Duty on Nuisance Deeds

General abolition of nominal duty on deeds (except those deeds to be specified as being chargeable, for wider anti-avoidance purposes) should be progressed as part of the Stamp Act rewrite project.

2.3.8 Abolish Stamp Duty on Non-Real Conveyances

Even if bringing forward the abolition of stamp duty on non-real business assets to 1 July 2008 to coincide with the commencement of the Stamp Act rewrite legislation cannot be accommodated in the Government's priorities, amendments to effect the subsequent abolition should be included in that legislation.

2.3.9 Abolish the Principal Place of Residence and Small Business Concession

The principal place of residence (PPR) and small business conveyance duty concession should be abolished and the minor savings used to fund a reduction in general conveyance duty rates.

2.3.10 Reassess Stamp Duty where the Consideration Paid for the Purchase of the Property is Reduced

Allowing stamp duty to be assessed (or reassessed where applicable) on a lower amount where the consideration for property has been reduced prior to the property being transferred should be progressed as a part of the Stamp Act rewrite.

2.3.11 Provide a Stamp Duty Exemption for Certain Transfers of Property Upon the Dissolution of a Marriage or De Facto Relationship

Extending the availability of the personal relationship concession for transfers of superannuation property upon the dissolution of a marriage or de facto relationship should be progressed as a part of the Stamp Act rewrite project. However, an exemption for transfers of other property in and out of trust structures is not warranted.

2.4 Land Tax

2.4.1 Reduce the Progressivity of the Land Tax Scale

The Government should commit to a strategy of flattening the land tax scale in order to reduce inherent bracket creep and the problems caused by aggregation provisions in the absence of grouping provisions.

2.4.2 Introduce a Scheme to Allow the Deferral of Land Tax on Non-Income Producing Property

A land tax deferral scheme for owners of non-income producing residential property, subject to certain qualifying conditions, should be introduced with effect from 30 June 2008.

2.4.3 Provide a Land Tax Exemption for Private Aged Care Providers

A land tax exemption should be provided to private aged care facilities.

2.4.4 Introduce a Principal Place of Residence Exemption for Individuals who have a Future Right to a Property Under the Terms of a Will

A PPR exemption should be introduced in certain circumstances for individuals who have a future right to a property under the terms of a will.

2.4.5 Removing Taxation Barriers for People with Disabilities

The requirement that no rent or other income be derived from property occupied by a relative with a disability as their primary residence, in order for the exemption/concessions to apply, should be removed.

The definition of a disabled person and a disabled beneficiary for the purposes of the exemption/concessions should be widened by the adoption of the Commonwealth criteria for the person to be eligible to receive a disability support pension.

2.5 Payroll Tax

2.5.1 Payroll Tax Consistency Project

Western Australia should continue to support the process currently underway to implement increased interstate consistency in the 'administration' of payroll tax.

2.6 Stamp Duty on Insurance

2.6.1 Engage with the Commonwealth on the Treatment of Discretionary Mutual Funds and Direct Offshore Foreign Insurers

The Treasurer should write to the Commonwealth Treasurer on the proposed treatment of Discretionary Mutual Funds (DMFs) and the importance of the Commonwealth progressing its reforms in this area. Subject to such reform and appropriate industry consultation, the insurance duty base should be broadened to include DMFs and to rationalise the treatment of Direct Offshore Foreign Insurers (DOFIs).

2.7 Stamp Duty on Motor Vehicle Transfers

2.7.1 Introduce a Single Rate for all Heavy Vehicles

The single flat stamp duty rate of 3% for new heavy vehicles should be extended to all used heavy vehicles, in the interest of fairness and simplifying the tax system.

2.7.2 Anti-Avoidance Provision for the Transfer of Motor Vehicles Registered in Other Jurisdictions

An anti-avoidance provision is required that will address the concern relating to the registration of vehicles in other States, for use in Western Australia, to assist with the protection of Western Australia's revenue base.

2.7.3 Imposition of Motor Vehicle Transfer Duty – New Vehicles

No change to the list price basis of calculating duty for motor vehicles or to the dealers' exemption is recommended at this time. However, the period for determining a new car should be reduced to two months and further examination of the appropriate treatment of multiple list prices will be undertaken by the Office of State Revenue (OSR).

2.8 Tax Administration

2.8.1 Introduce a General Anti-Avoidance Provision into the Stamp Act

The introduction of a general anti-avoidance provision in relation to stamp duty is required to protect the State's duty base and to mitigate the use of avoidance schemes. This measure should be progressed as a part of the Stamp Act rewrite.

2.8.2 Provide the Commissioner of State Revenue with the Power to Make a Compromise Assessment in Certain Circumstances

A compromise assessment power should be introduced, subject to certain conditions.

As the compromise assessment power requires the Commissioner to have the general administration of the taxation Acts, amendments to provide the general administration of those Acts to the Commissioner are also supported.

2.8.3 Reinstate the Onus of Proof on the Taxpayer for Appeals under the Taxation Administration Act

The Commissioner of State Revenue should prepare a report to the Treasurer recommending whether the onus of proof should be reinstated on the taxpayer when the State Administrative Tribunal (SAT) is reviewing an objection decision of the Commissioner, with the report to reflect the views of the SAT President and the other options available.

2.8.4 Amend the Taxation Administration Act to Enable the Commissioner of State Revenue to Place a Memorial on Mining Tenements and Clarify Memorials for Increasing Amounts of Land Tax

The *Taxation Administration Act 2003* (TAA) (and other legislation as required) should be amended to allow the Commissioner to place a memorial over mining tenements and to clarify that a single memorial should suffice for both the original amount of land tax that remains unpaid and for subsequent liabilities.

2.8.5 Introduce Legislative Measures to Support Verbal Approval for Extensions of Time to Pay Land Tax of One Month or Less

The TAA and the SAT regulations should be amended to allow verbal approval of requests for extensions of time of one month or less to pay land tax.

2.8.6 Introduce Measures to Improve the Administration of Small Tax Credits

A mechanism should be introduced to improve the administration and refund of small tax credits to taxpayers, subject to further consideration of the most appropriate mechanism.

2.9 Other Issues

2.9.1 Abolish the On-Road Diesel Subsidy

The Treasurer should write to the Commonwealth Treasurer to seek agreement to the abolition of the on-road diesel subsidy from 1 July 2008, with the expenditure savings to be used to fund taxation reform.

Tax Reform Options Requiring Further Examination (Chapter 3)

3.1 Metropolitan Region Improvement Tax

3.1.1 Incorporate Metropolitan Region Improvement Tax into the Land Tax Scale

Further examination of the hypothecation arrangements under the Metropolitan Region Improvement Tax (MRIT), including options for absorbing MRIT into the land tax scale over the longer-term, should be undertaken in consultation with the Western Australian Planning Commission (WAPC) and the Department for Planning and Infrastructure (DPI).

3.2 Land Tax

3.2.1 Provide a Land Tax Concession for Conservation and Protection of Land

The Department of Treasury and Finance should continue to liaise with the Department of Environment and Conservation (DEC) on its investigation of financial disincentives to conservation activities.

3.3 Perth Parking Levy

3.3.1 Abolish the Perth Parking Levy

The Government should commission an independent review of the Perth Parking Levy (PPL).

3.4 Other Issues

3.4.1 Review of Tax Exemptions and Concessions (including Means Testing)

The Government should consider extending any future review of social concessions to State tax concessions, including an examination of whether better and more cost effective targeting could be achieved by means testing, but having regard for the significant resources required to undertake such a review and associated cost/benefit issues.

3.4.2 Avoidance Disclosure Requirement

An avoidance disclosure requirement in relation to stamp duty should be considered to protect the State's duty base and to mitigate the use of avoidance schemes.

Tax Reform Proposals Not Supported (Chapter 4)

4.1 Stamp Duty on Conveyances

4.1.1 Lodgement and Payment Provisions

The preliminary findings of the Interim Report should be supported.

4.1.2 Exploration Licences

Exploration licences should continue to be specifically taxable in the same manner as land for stamp duty purposes, both in relation to direct transfers and indirectly as part of the proposed landholder regime.

4.1.3 Abolish Stamp Duty on Real Non-Residential Conveyances

An across-the-board reduction in conveyance duty rates and increases in thresholds, funded from both the Budget surplus and a broadening of the stamp duty base in respect of indirect acquisitions of business property (and other possible revenue-positive tax reform measures), should be preferred to the full abolition of stamp duty on conveyances of real business property.

4.1.4 Impose Conveyance Duty on GST-Exclusive Prices

An overall rate reduction has a higher priority than excluding the Goods and Services Tax (GST) component of the purchase price when calculating the stamp duty payable. However, further work could be undertaken on the administrative and compliance aspects of this proposal should the Government wish to pursue this matter in the longer term.

4.1.5 Stamp Duty Concession for House and Land Packages

A general reduction in conveyance duty rates should be preferred to a concession for house and land packages.

4.1.6 Stamp Duty Concession for Sustainable Housing

There should be no specific taxation concession for ‘sustainable housing’.

4.1.7 Mortgage Backed Security Exemption

No changes to the Stamp Act in respect of mortgage backed securities are proposed at this time.

4.1.8 Exemption for Associations that Transfer from the Associations Incorporation Act 1987 to Another Act

Any further consideration of any stamp duty relief for associations transferring from the Associations Incorporation Act to another Act should be deferred pending public comments on and refinement of the *Associations Incorporation Bill 2006*.

4.2 Land Tax

4.2.1 Abolition of Aggregation

The aggregation provisions should be retained. However, concerns over the impact of progressivity on owners of multiple taxable properties (including avoidance incentives and associated problems in the absence of grouping provisions) should be addressed by flattening the land tax scale over time. Alternative ways of achieving this are modelled in Chapter 2.4.

4.2.2 Increase Land Tax Concession for Caravan Parks to 100%

The land tax concession for caravan park operators should be kept at 50%.

4.2.3 Remove Five-Year Claw Back of Land Tax when Land is Subdivided

While acknowledging the possible inequity in the specific circumstances quoted by the Urban Development Institute of Australia (UDIA), the removal of the five year land tax claw back arrangements for the subdivision of land that was recently exempt or concessionally taxed in the hands of the previous owner should not be a priority.

4.2.4 Reintroduce the Land Tax Developers’ Concession

The land tax developers’ concession should not be reintroduced.

4.3 Payroll Tax

4.3.1 Introduce a Labour Services Tax

Western Australia should not pursue the introduction of a broader labour services tax in isolation from other jurisdictions.

4.3.2 Establish a Skills Shortage Training Fund

Hypothecating payroll tax revenue should not be the preferred means for boosting funding for vocational training.

4.4 Stamp Duty on Motor Vehicle Transfers

4.4.1 Stamp Duty Rebate for Fuel Efficient and Safer Vehicles

Stamp duty arrangements are not the preferred means for promoting the use of safer or more fuel efficient/low-emission vehicles, or improving road safety more generally.

4.4.2 Stamp Duty Exemption for Written-Off or Stolen Vehicles

Although offering equity benefits, a stamp duty exemption for the replacement of written-off vehicles should not be introduced, as it would benefit only a small number of taxpayers and require complex administrative arrangements.

4.4.3 Stamp Duty Exemption for Tractor Based Mobile Cranes

Special purpose vehicles that use public roads should remain subject to stamp duty.

4.5 Tax Administration

4.5.1 Indexation of All Tax Thresholds

Annual review as part of the budget process should be preferred to general indexation of taxation thresholds.

4.5.2 Remove the Right of Client to Sue a Lawyer for not Giving Tax Avoidance Advice

It is recommended that no further action be taken in respect of this issue.

4.5.3 Examine the Need for Private Binding Ruling System

A private binding rulings system is not supported. Instead, the Commissioner of State Revenue should examine and report to the Treasurer on initiatives that would improve the scope and effectiveness of the current public rulings regime.

4.6 Emergency Services Levy

4.6.1 Abolition of the Emergency Services Levy

The Emergency Services Levy (ESL) should be retained.

4.7 Other Issues

4.7.1 Greater Transparency in Budget Decision Making

While the objectives are supported, the formation of an external Budget Reference Group to be involved in the budget process is not considered necessary.

4.7.2 Examine Impact of Insurance Duty on Take-Up of Insurance

A reduction in insurance duty remains a relatively high priority on economic efficiency grounds. This could be achieved through levying insurance duty on a GST-exclusive basis, as recommended in Chapter 1 on Priorities for Taxation Relief.

1. Priorities for Taxation Relief

The Terms of Reference for the State Tax Review included the objective of providing genuine, aggregate tax relief to the Western Australian community, within the constraints of the community's demand for services and infrastructure and the requirement for responsible financial management. As in the case of the Interim Report, the Final Report makes no recommendations on the amount of tax relief, only the priorities.

The major remaining taxes in Western Australia are stamp duties on property conveyances, policies of insurance and motor vehicle licences, payroll tax and land tax. Various taxes are also collected on a diverse range of gambling activities, but these could be considered to provide 'externality' benefits additional to general revenue raising to fund community services.

Apart from last year's measures, the Interim Report identified reductions in stamp duties on property conveyances, motor vehicle licence transfers and insurance premiums as the highest priorities, on the basis of the State Tax Review principles of competitiveness, equity and efficiency, and the related principles of simplicity and revenue stability.

Tax relief should be seen as a sub-set of a broader tax reform agenda. In this regard, other potential changes in the tax mix and in the design of individual taxes that would make the tax system fairer and help promote the State's long term economic growth, are addressed in Chapter 2.

Stage 2 Feedback

In the context of a persistent view in feedback that the Government can afford to provide further relief in all areas of taxation, there was generally more support for reducing conveyance duty than other State taxes. However, the business community continues to place its highest priority on payroll tax relief.

Relevant feedback from Reference Group members, who were invited during Stage 2 to nominate their preferred tax relief packages for a range of hypothetical funding 'envelopes', is noted in the following analysis.

Stage 2 Analysis

1.1 Final Rankings

The final ranking of further tax relief measures (from highest to lowest) is broadly consistent with that identified in the Interim Report.

- Cutting stamp duty on property conveyances should be the highest priority, including increasing the first home buyer exemption threshold and increasing the thresholds of the general conveyance duty scale.
  - This finding is based primarily on tax principle grounds, including the economic benefits, rather than improvements in housing affordability. As noted in the Interim Report, conveyance duty distorts investment decisions. It is a disincentive to transactions that unlock the full productive potential of property, likely to be a particular issue in the context of Western Australia's comparative economic advantage in capital-intensive industries.
    - Consistent with this, some economic modelling[1] suggests that reductions in stamp duty should focus more on business than residential property conveyances. However, reductions in residential conveyance duty would help lower a barrier to inter-State population mobility and therefore to addressing Western Australia's current skills shortages.
    - Furthermore, it is unclear to what extent the available economic modelling takes account of hard-to-measure welfare losses from stamp duty distorting households' choice of home tenure, size and location. Distinguishing between business and residential conveyance duty (although encouraged under the GST Agreement) also raises definitional issues and associated complexities.
    - In addition, all classes of conveyance duty are volatile, complicating sound fiscal management for State governments. The recent review of the international competitiveness of the national tax system, commissioned by the Federal Treasurer[2], also found that Australia's reliance on these kinds of property transaction taxes was unusually high (unlike in the case of local government rates or land taxes).
  - Reducing conveyance duty would only marginally reduce housing stress relative to measures to free up constraints on the supply of housing or to boost the welfare safety net. Nonetheless, a significant increase in the exemption threshold for first home buyers could form part of any broader housing affordability package.
    - To the extent that the increase makes it easier for existing higher income tenants to move into their own homes, a flow-on benefit will be the freeing up of rental

---

[1] *Axing the Alcabala: A Program for a 21st Century State Tax System* (2004), Access Economics.

[2] International Comparison of Australia's Taxes (2006).

housing for lower income households, who are likely to be in even greater need of assistance than those close to being able to afford to purchase a home.

- First home buyers have been disadvantaged by Western Australia's surging house prices relative to trade-up buyers, and the value of the exemption introduced in 2004 has been eroded. The Perth median house price has increased from $275,000 to around $450,000 (December quarter 2006) since the threshold was last adjusted.

  - However, it is considered more appropriate to benchmark the exemption threshold to Western Australia's first home buyer median house price than the full median price for Perth or the State. Based on First Home Owner Grant (FHOG) data, this price is currently about $342,500 State-wide or $365,000 for Perth (December quarter 2006).

  - Housing market activity has started to moderate since the release of the Interim Report (e.g. total sales have dropped, the stock of dwellings for sale has increased and construction delays fallen), lessening the risk that increasing the threshold will further drive up house prices, with no improvement in affordability for first home buyers.

  - Accordingly, it is proposed that the first home buyer stamp duty exemption threshold for houses be lifted from the current $250,000 (phasing out at $350,000) to $375,000 (phasing out at $500,000), and that the exemption threshold for vacant land be increased from $150,000 (phasing out at $200,000) to $250,000 (phasing out at $350,000), with these thresholds to be reviewed as part of future annual budget processes.

- The thresholds of the general conveyance duty scale have remained unchanged since at least 1982, driving substantial bracket creep and increases in transaction costs even for trade-up home buyers who have benefited from increases in the value of an existing home. Thus, delivering tax relief through an increase in the thresholds ranks above a general reduction in rates (although across-the-board increases in the thresholds and reductions in rates would have broadly equivalent effects).

  - Some Reference Group members supported increasing the thresholds to fully offset the growth in property prices since 1982. However, the cost of this degree of relief may significantly reduce the scope for tax relief in other priority areas. The cost of an across-the-board increase of 15% is included in Table 1.

- Reducing insurance stamp duty by adopting a GST-exclusive base (equivalent to almost a 10% cut, or reducing the stamp duty rate from 10.0% to 9.1%) should be the next priority.

  - For an equivalent amount of taxation, available modelling ranks stamp duty on insurance as the next most economically damaging after conveyance duty. Furthermore, to the extent that households are discouraged from insuring adequately, governments may subsequently incur higher welfare costs.

    - A small number of Reference Group members allocated a high priority to abolishing insurance duty, before reductions in conveyance duty.

  - A GST-exclusive base would benefit all insurance policy holders, representing a broad cross-section of the community. Insurance industry representatives have also indicated that they would not be concerned about any additional compliance burden, notwithstanding that national insurers would be required to adjust their systems to only apply a GST-exclusive base for stamp duty purposes in Western Australia.

  - While adopting a GST-exclusive base for other stamp duties also has strong support in the community (in terms of eliminating the ‘tax on tax’ effect), in each case it would not deliver benefits to significant categories of taxpayers (i.e. those who do not pay the GST on certain transactions, such as buyers of established homes and buyers of motor vehicles privately), and would raise potential administrative difficulties.

- Reducing motor vehicle stamp duty for light vehicles is also considered to be a higher priority than cuts in other State taxes (i.e. in payroll tax or land tax, except in the context of reforming the land tax scale as outlined below).

  - Like other stamp duties, motor vehicle duty is an economically damaging transaction tax, and the rates of duty for medium/high priced light vehicles in Western Australia are the most uncompetitive of all the State’s taxes.

    - Most Reference Group members considered that relief is a priority in this area on the latter grounds. While there is no general statistical evidence of a detrimental impact on sales, including for luxury vehicles sales which are reported to be booming (although some dealers have claimed lost sales), this may be masked by the current strength of the Western Australian economy.

    - On balance, there are considered to be grounds for adjusting the motor vehicle duty scale to target the largest number of new vehicle purchasers (i.e. those up to $50,000 in value, involving a $10,000 increase in the current thresholds), while retaining the maximum rate of 6.5% on relatively expensive vehicles (in conjunction with a new anti-avoidance provision, as outlined in Chapter 2).

  - Introducing a caravan exemption in Western Australia would match the treatment of caravans in most other States, and would be a relatively low cost measure.

  - One reason for ranking cuts in motor vehicle duty below cuts in conveyance and insurance duty is that motor vehicle prices have been largely unchanged over the past 10 years, while household and business incomes have risen to the extent that the affordability of purchasing motor vehicles is at historic highs[3]. This is in contrast to the affordability trend in the housing market over the same period.

[3] In addition, while stamp duty rates are relatively high in Western Australia, other statutory motor vehicle costs are relatively low.

- As noted in the Interim Report, economists generally agree that reducing payroll tax will generate significantly smaller economic benefits than equivalent dollar cuts in other State taxes. Despite being at face value a 'tax on employment', payroll tax shares characteristics of a Pay As You Go (PAYG) income tax and its final incidence is similar to that of a consumption tax. Furthermore, payroll tax is income tax deductible.
  - However, while some non-business group members of the Reference Group considered that there was no case for reducing payroll tax, most considered that some relief should be provided after reductions in stamp duties. Furthermore, past narrowing of payroll tax has reduced its theoretical economic merits, and its cascading nature impacts on export industries (unlike Australia's GST).
  - A rate reduction is the preferred method of reducing payroll tax. Maintaining the current exemption threshold ($750,000) will avoid further narrowing of the base, thereby assisting in keeping the rate as low as possible and minimising distortions to economic behaviour.

In the context of much larger reductions in land tax rates (or increases in thresholds) than conveyance duty rates in recent years, the less damaging economic consequences of taxes on the stock of property as opposed to property transactions (accepted by most economists), and existing greater international competitiveness in relation to the former, real reductions in land tax revenue are not considered a priority.

However, as outlined in Section 2.4 on land tax, a high priority is placed on reforming the land tax system, particularly by reducing the current very high degree of progressivity. This currently manifests itself in strong bracket creep and problems caused by 'aggregation' of properties for land tax purposes but not 'grouping' of properties held by related owners, as well as inadequately recognising the final incidence of land tax.

- To achieve significant early reform, it is considered that an essentially equal proportion of any initial tax relief package should be invested in 'flattening' the land tax scale in 2007-08. This could be supplemented in 2007-08 and later years by any growth in land tax in excess of economic growth (on which the current budget forward estimates are broadly based).

1.2 Hypothetical Taxation Relief Packages

Recommendations on the overall amount and timing of taxation relief are outside the scope of the Review. This is a decision for the Government in the context of its overall Budget priorities. However, the hypothetical packages in Table 1 incorporate information on the estimated full-year cost of providing relief in the areas identified in this chapter.

Table 1

TAXATION RELIEF PRIORITY RANKINGS

	2007-08 $m	2008-09 $m	2009-10 $m	2010-11 $m	4 Year $m
1: Around $190 million per annum					
Reducing Conveyance Duty:					
Increase the First Home Buyer Exemption Threshold to $375,000 (phasing out at $500,000)	63	64	69	75	271
Increase the General Scale Thresholds by 15%	58	60	64	64	246
Reform the Land Tax Scale	55	59	63	67	244
Sub-Total	**175**	**183**	**197**	**206**	**761**
2: Additions - Total package around $290 million per annum					
Reducing Insurance Duty:					
Adopt a GST Exclusive Base	29	31	32	34	126
Reducing Motor Vehicle Duty:					
Raise Minimum/Maximum Thresholds by $10,000	56	58	62	65	242
Caravan Exemption	8	8	9	9	33
Sub-Total	**269**	**280**	**299**	**315**	**1,163**
3: Additions - Total package around $360 million per annum					
Reducing Payroll Tax:					
Reduce the Rate by 0.2% (to 5.3%)	63	67	72	78	280
Total	**331**	**347**	**372**	**393**	**1,443**

The Table 1 hypothetical packages should not be interpreted as ranking a cut in payroll tax above higher cuts in stamp duty than those indicated for illustrative costing purposes.

Furthermore, any tax relief above the illustrative totals shown should be applied to the highest priority areas identified in this Review (such as further reducing conveyance duty rates), or to bringing forward the abolition of conveyance duty on non-real business assets from the current scheduled date of 1 July 2010 to 1 July 2008 (see also Chapter 2.3).

1.1 Final Recommendation

The priority ranking for taxation relief (from highest to lowest) is reducing conveyance duty (including by increasing the first home buyer exemption and the thresholds of the general scale), investing in reform of the land tax scale, reducing insurance duty by adopting a GST-exclusive base, reducing motor vehicle duty for light vehicles (and introducing an exemption for caravans) and reducing the payroll tax rate.

2. Taxation Reform Priorities

2.1. Overview of Measures

As noted in Chapter 1, tax relief should be seen as only a sub-set of broader tax reform, where broader reform may not have significant net budgetary implications but improve the fairness of the State tax system and reduce barriers to economic growth. The major reform measures proposed in this chapter include the following.

- Broadening the property stamp duty base to fund an offsetting reduction in conveyance duty rates, by putting indirect acquisitions of property (through shares, units, or partnership interests) on a more consistent and equal footing with direct acquisitions.
  - A flow-on reform could include broadening the current stamp duty concession scheme for corporate reconstructions where the ‘underlying’ ownership of property does not change, as long sought after by elements within the business community.
- Flattening the land tax scale to reduce the steep progressivity and associated concerns about ‘bracket creep’ and ‘aggregation’, particularly in the absence of ‘grouping’ provisions (which enables some taxpayers to avoid the higher marginal rates).
  - Another land tax reform proposal is to allow owners of non-income producing holiday homes to defer paying their bill, particularly as a transitionary option to recognise the unpredictability of increases in liabilities in fast growing regions.
- Continuing to work with the other States and Territories on standardising payroll tax definitions and administration in a range of areas that will reduce compliance costs for the many taxpaying businesses who operate in more than one jurisdiction.
- An array of smaller measures to improve the fairness of stamp duties and land tax (including concessions for the disadvantaged), and to improve the cost-effectiveness of State tax administration from a taxpayer and/or Government perspective.

References are also included to an ongoing rewrite of the Stamp Act as part of the State Tax Review, to accommodate modern business practices. Firstly, however, the scope for what might be considered more fundamental or visionary reform of Western Australia’s tax system is considered.

2.2. Scope for Visionary Reform

Some respondents to the Interim Report expressed disappointment that it lacked vision, intent and commitment to meaningful reform of the State taxation system, or that it proposed tinkering with rates and thresholds rather than real reform and inadequately explained limitations on reform such as Constitutional issues, and/or that the Government should be prepared to lead the national debate on tax reform rather than accept the constraints.

Stage 2 Analysis

The Nature of Tax Reform

The Interim Report said that there were three levels of reform to the State tax system.

- Major changes to the tax mix, involving the introduction of new more efficient and equitable taxes (or the expansion of existing ones) to replace the worst State taxes.
- Reform of existing individual State taxes, such as by broadening the base and lowering the rate/s.
- Using the Budget surplus to abolish nuisance taxes and cut the worst existing taxes, subject to affordability in terms of financial responsibility and the community's relative preferences for improved services and infrastructure.

Recent Tax Reform Nationally and in Western Australia

To a degree the Interim Report focussed on the third category of reform. This reflected community submissions, the origins of the Review in a specific dispute with the Commonwealth under the GST Agreement and rising budget surpluses (which although mainly reflecting the State's surging economic growth also followed earlier rate increases), and only recent higher level reform in the national GST-based tax reform package and State Business Tax Review (BTR).

- In addition, the Treasurer's foreword to the Interim Report explicitly ruled out State Government support for any introduction of a State personal income tax, a broader based or higher rate GST or the creation of a new form of wealth tax (broadening the land tax base to principal places of residence was also ruled out when the Report was released), which were options mentioned in the context of the two higher levels of reform.

Although at the expense of a diminution of the States' fiscal autonomy (see also below), the national reform package as recently as 2000 initiated significant fundamental reform of Australia's tax system by replacing a range of narrow, inefficient and relatively inequitable sales taxes (the Commonwealth's Wholesale Sales Tax (WST)), financial transaction taxes (the States' Financial Institutions Duty and Debits Tax) and stamp duties with a single relatively broad and efficient tax (the GST)[4].

[4] The GST also paid for income tax cuts and increases in social security payments, which together with the exemption for fresh food helped offset the regressive impact of the GST.

The State BTR reported in 2003. A range of base broadening measures helped pay for the abolition of several 'nuisance' stamp duties, namely on cheques, leases, unlisted share transactions, life insurance and workers' compensation insurance, only some of which were listed for review in the GST Agreement. It also introduced reform of the payroll tax scale and effectively kicked off what is now a rewrite of the Stamp Act to accommodate modern business practices, as part of the current State Tax Review.

- As noted earlier, Stage 1 of the current Review has also seen the abolition (or scheduled abolition) of three more stamp duties.

The Current Tax Reform Environment

Although the spate of tax reform immediately preceding the State Tax Review may have reduced the community's appetite for further reform (as opposed to tax cuts) and seen the low hanging tax reform fruit picked, it is clear that further opportunities exist, and that ongoing reform should be a priority to help sustain Western Australia's long term prosperity. Furthermore, the current economic boom potentially provides the where-withal to 'pay' for reforms, as an investment in the State's future.

- This underlies the proposal in this Report to reduce bracket creep and difficulties arising from 'aggregation' but not 'grouping' in the land tax system by investing an up-front sum in 'flattening' the land tax scale, which would provide a fairer, more efficient land tax system (with less need for ad hoc changes to the scale) going forward.

Constraints on Major Reform

Nonetheless, there are constraints on reform which feedback on the Interim Report highlights are still not well understood in the community. Essentially, the scope for major reform of Western Australia's tax system is virtually impossible to disentangle from Australia's unique system of intergovernmental financial relations. As noted in the Interim Report, it also needs to be considered in the context of the labyrinth of Commonwealth, State and local taxes, charges and welfare systems.

Alternatives to current State taxes are limited by the Commonwealth Government's effective monopoly on income tax, and the High Court's interpretation of section 90 of the Australian Constitution (providing an exclusive power to the Commonwealth Government to impose duties of excise) that effectively prohibits State governments from introducing any form of broad based tax on the sale of goods (see also pp 45-49 of the Interim Report).

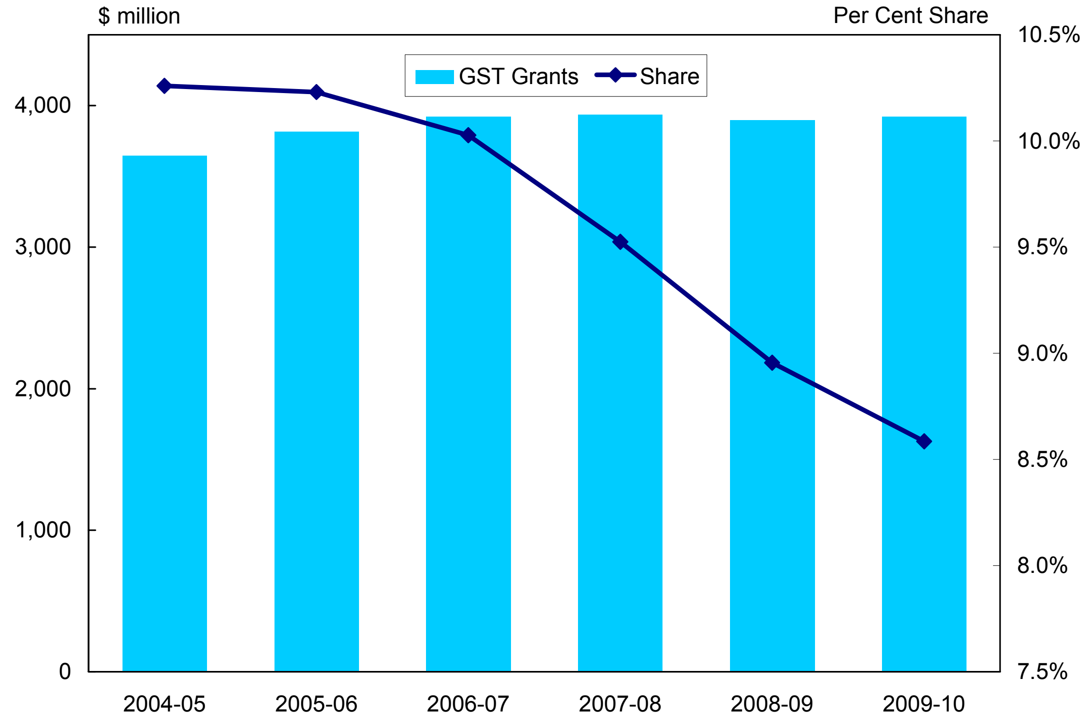
A constraint on major reductions in the worst of the State taxes (e.g. funded by mining royalties) is the Commonwealth Grants Commission's (CGC) recommendations on the sharing of the GST between States, which helps ensure that Western Australia's resource wealth is national wealth. Unless Western Australia's economic growth continues to substantially outpace that of other States, a component of its current large budget surpluses is unsustainable, and should therefore be invested (e.g. in debt reduction and/or capacity-building infrastructure) rather than spent on recurrent tax reduction or expenditure programs.

- As Western Australia's mining royalties and taxes grow relative to other States, so will our share of Commonwealth government grants decline (grants account for about 45%

of the State's budget). Ignoring differences in States' tax and royalty rates (from which the Grants Commission seeks to abstract[5]), Western Australia will effectively get to keep only its national population share of the bounty (about 10%). This has been partly disguised so far by long lags built into the system.

Figure 1

WESTERN AUSTRALIA'S GST REVENUE GRANTS



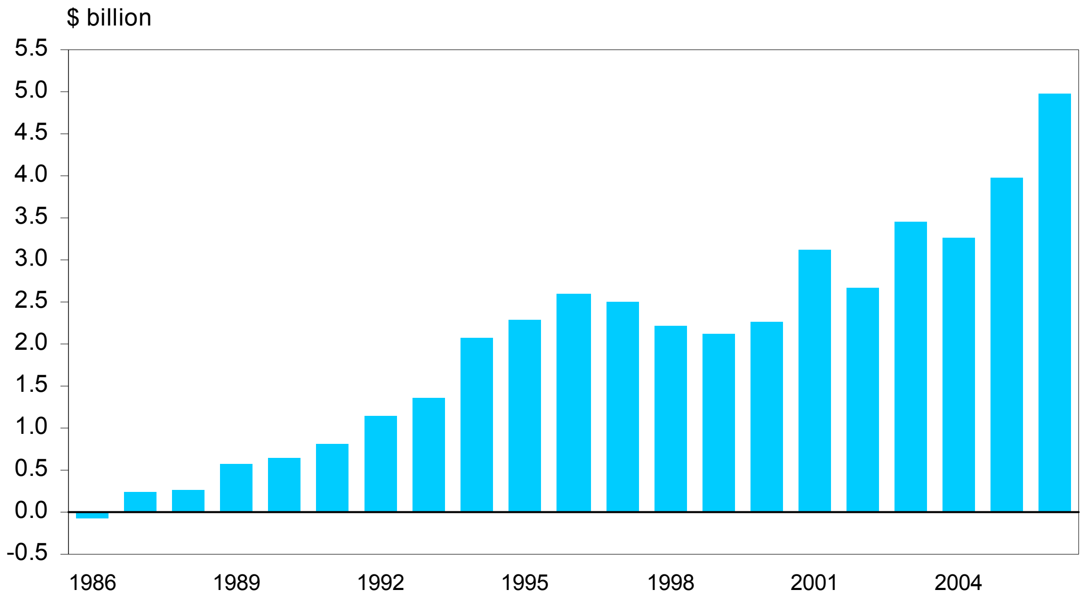
The Grants Commission's equity-based determination of States' GST shares is only one way in which Australia's federal system redistributes resources from the richer States to the poorer. This also occurs through the Commonwealth's other national taxes such as income tax, company tax and Petroleum Resources Rent Tax, and its other expenditure programs (i.e. in addition to grants to the States), such as social security. A booming State economy means relatively more federal taxes and less social security payments locally.

The Commonwealth's dominance of revenue raising in Australia (even if the GST were counted as a State tax, Western Australians pay about three times more in Commonwealth taxes than they do in State taxes), despite the States being responsible for the delivery of most essential services, magnifies this broader 'equalisation' between States. In 2005-06 it is estimated that the Commonwealth took $5 billion more out of Western Australia than it put back in (other jurisdictions except New South Wales and Victoria are net recipients).

[5] The Grants Commission bases its assessments on relative tax 'capacities' in each State, for which it calculates national average tax rates and other policy settings to apply in each State in place of each State's actual tax rates/policy settings.

Figure 2

WESTERN AUSTRALIA'S NET FISCAL SUBSIDY



Mechanisms which assist fiscally weaker States are inherently fair and conducive to a well functioning federation. However, they mean that Western Australia cannot capture or ultimately keep more than a fraction of the fiscal returns from its current boom. Furthermore, the current arrangements in Australia are considered to have a number of deficiencies which work against Western Australia and the long-term national interest. These include disincentives to economic development and barriers to efficient resource allocation, as set out in a recent discussion paper published by the DTF.

www.dtf.wa.gov.au/cms/uploadedFiles/commstate_relations_report_march2006.pdf

Visionary Reform Objectives and Options

The pursuit of a long-term 'stretch' objective of being the lowest taxing State has been suggested as a simple and visionary reform, to help ensure the future competitiveness of the Western Australian economy. However, this would mean giving a greater priority to tax relief than improved services and infrastructure, which are also crucial to the State's competitiveness and highly valued by the community.

Stage 2 feedback in a submission from Western Australian Council of Social Services (WACOSS) (incorporating contributions from UnionsWA and the Council on the Ageing (COTA)) included concern about a 'race to the bottom' if the same 'lowest taxing' objective were adopted by all States. Indeed, there is considerable historical evidence of destructive tax competition in Australia in the narrowing over time of State tax bases.

Forces in the Australian federation only allow a State to tax at below average levels in the long term if it is prepared to provide below-average services/infrastructure or is able to deliver services/infrastructure more efficiently than other States. ‘Natural’ increases in revenue bases from strong economic growth relative to other States do not deliver significant enduring capacity for lower relative taxes because that capacity is shared with other States.

Accordingly, a target of being the most efficient service/infrastructure provider should be preferred. In principle, the Grants Commission process does not ‘penalise’ a State for relative productivity improvements, allowing expenditure savings to be invested in either below average taxes or above average services/infrastructure (although the Commission’s methodology is incapable of adjusting for ‘flow-on’ or ‘induced’ relative economic gains)[6].

Further discussion with Reference Group members identified that truly visionary reform would involve substantially replacing the State’s current array of stamp duties, land and payroll taxes with a broad based, relatively low rate tax (which was therefore relatively non-distortionary and fair) that would grow naturally in line with the State economy (requiring few changes to the rate over time). Ideally, the tax would also be under the State’s control, thereby preserving the State’s financial autonomy and capacity to meet local needs.

Accepting the Commonwealth’s monopoly on income tax as a given, attention tended to gravitate towards either a broad based payroll tax (on the labour component of payments to contractors as well as wages paid to employees) that could ultimately be collected by the Australian Taxation Office (ATO) as an adjunct to PAYG income tax remitted by employers (it was suggested that this could be an ultimate outcome of the payroll tax consistency project)[7], or a State-based consumption tax[8].

However, quite apart from the community’s willingness to accept what would be major incidence shifts (although these have not been modelled) both proposals suffer from practical issues. These include the difficulty of distinguishing the labour component from the other components of charges by contractors, and the High Court having ruled out any State consumption tax levied anywhere in the chain of production and initial distribution of goods (under section 90 of the Constitution).

Another ‘lateral thinking’ proposal was to link reform of State taxes to reform of the Grants Commission process. A system under which Commonwealth taxes were returned to the States on a State-of-origin basis (rather than on the current basis for the GST distribution) and without strings attached would go at least part way to meeting Western Australia’s reform objectives. However, less wealthy States would suffer from reduced ‘fiscal equalisation,’ and the risk of the Commonwealth attaching strings would loom large.

Environmental tax alternatives to current State taxes, such as a carbon tax, were also briefly considered but ruled out on economic and/or practical grounds. For example, a carbon tax may not be suitable at the individual State level and States collectively consider at this stage

6 This includes an inability to adjust for revenue capacity arising from any additional economic growth that might be induced by a low tax regime compared to other States.

7 See also chapters 2.5 and 4.3

8 Improving the State’s royalty returns from its booming mining operations to reduce its reliance on tax revenues was also raised. However, apart from being explicitly out of scope of the Review, a significant constraint would be the high proportion of production ‘protected’ by State Agreement Acts and the administration and compliance costs of an alternative resource rent based system capable of increasing revenue without distorting investment decisions.

that an emissions trading regime (which could include revenue raising from the initial issuing of emission permits) would be a superior alternative for achieving the environmental objectives.

Consistent with the Interim Report findings, this discussion again highlighted the desirability of a national approach to any further fundamental reform of State taxes. It also highlighted the difficulty for any State Government to ‘lead the charge’ without there being a better understanding in the community of the federal environment in which States operate. Raising the profile of Commonwealth-State relations issues could lay the groundwork for more informed community views and debate about further major tax reform.

Accordingly, a strategy for the Government could be to use the release of this report to kick off a more general community awareness campaign on the federalism issues and constraints faced by Western Australian governments. This could extend to initiating the formation of a small independent ‘alliance’ of business, community and union leaders, ex-politicians and academics to continue the community education/debate process (focussing on broader Commonwealth-State relations issues from the DTF discussion paper), and to advise on a strategy to advance the debate in a constructive manner.

In the meantime, this report focuses on what could be considered more pragmatic reforms in the current environment, including cuts in State taxes that would be most in tune with preserving Western Australia’s comparative economic advantages and attractiveness for investment, broadening the conveyance duty base to facilitate further lowering of the rates, modernising the Stamp Act, addressing land tax ‘certainty’ and ‘capacity to pay’ issues, and reducing the payroll tax compliance burden for businesses operating across State borders.

The report also responds to other specific community proposals presented in the context of what might constitute visionary reform, including the application of stamp duty to GST-exclusive bases, indexation of tax scale thresholds, means testing of concessions, a review of all tax exemptions and concessions, abolition of the PPL, introduction of a single uniform rate of stamp duty on all heavy vehicle licence transfers, and pursuing a stretch goal of Western Australia becoming the most tax competitive State (see above).

Notwithstanding the input to date of the Reference Group in its role as a sounding board, the Chair of the Reference Group will have further opportunity to put forward that Group’s views on what could constitute visionary yet pragmatic reform, in responding to the Treasurer on this report. A copy of a report entitled *State Taxation and Fiscal Federalism A Blueprint for Further Reform* published by the Centre for Independent Studies in September 2006 was circulated to Reference Group members. This outlines a reform model similar to one advanced by DTF and the then Western Australian government during the formative stages of the GST-based national tax reforms in 1998 (but was effectively ruled out of scope for the purposes of this Review).

2.2 Final Recommendation

To lay the groundwork for more informed community debate on further fundamental reform of the State tax system in the future (which needs to occur in a national context), the Government should consider enlisting a small independent ‘alliance’ of business, community and union leaders, ex-politicians and academics to help improve public awareness of the general Commonwealth-State relations environment in which States operate (and the scope for fairer returns to Western Australia that could also be in the national interest).

2.3. Stamp Duty on Conveyances

Implement the Landholder Model

This section concerns the stamp duty treatment of indirect acquisitions of property through the acquisition of shares, units or partnership interests in land holding entities.

The preliminary findings of the Interim Report stated that the current differing stamp duty treatment of acquisitions of land depending on the type of entity involved is inequitable and has no clear policy basis. An alternative ‘landholder’ regime would achieve greater consistency of treatment and should be further investigated in Stage 2 of the Review, including consultation with the mining industry, which has expressed particular concern about the existing ‘land-rich’ company provisions.

The further work in Stage 2 was to include analysis of impacts on different business types or industry sectors, the appropriate thresholds for excluding transactions, and the extent of rate reductions that may be facilitated by ‘reinvesting’ any additional revenue from this broadening of the base into the stamp duty scale. Examination of proposals to index or increase the $1 million property value threshold in the existing land-rich company provisions was to be postponed until a decision on the proposed ‘landholder’ regime was made.

Stage 2 Feedback

The Chamber of Commerce and Industry of Western Australia (CCI)

- Supports the proposed landholder model presented in the Interim Report (alongside a reduction in the conveyance rate to ease the overall tax burden).
- However, further investigation is needed to determine the winners/losers from its introduction.

The Law Society

- Difficult to comment on the proposal at this early stage but suggests:
  - a simultaneous review of the rate and concessions to ensure that proposed changes do not place a heavier burden on any sector of the community; and
  - consistency is introduced into the Stamp Act so that the 'look through' approach is reflected broadly, not only to the disadvantage of taxpayers.
  - Stamp duty on goodwill (legal practices) remains an important issue.

The Institute of Chartered Accountants in Australia (ICAA)

- The proposed regime will deliver greater consistency. However, it needs further work.
- Additional revenue raised should be directed towards reducing rates.

The Chamber of Minerals and Energy of Western Australia (CME)

- The adoption of a landholder regime would greatly increase the State's revenue base, contrary to the intention of the IGA.
- The regime would only be supported alongside a significant reduction in the rate of conveyance duty to ensure the mining industry did not assume an even greater share of the State tax contribution.
- The current land-rich provisions already target participants in the resources industry and the introduction of a landholder regime would continue and add to this inequity.
- The policy of moving the stamp duty treatment of partnerships closer to companies and unit trusts is questionable.
- If the proposal is introduced, there should be consistent treatment of entities throughout the Stamp Act.

The UDIA

- The adoption of the proposed regime would greatly increase the State's revenue base contrary to the intention of the IGA and inconsistent with the objective of the Review (to provide genuine tax relief).
- Would only consider a landholder regime in conjunction with a significant reduction in the rate, to ensure that the property industry share of State tax contribution did not increase.

- The Interim Report comments failed to appreciate the difference between an acquisition of an interest in land and an acquisition of an interest in an entity that owns (directly or indirectly) an interest in land.

The Housing Industry Association (HIA)

- Agrees that any unnecessary differential treatment for stamp duty purposes should be aligned.
- Substance of the transaction in question should be examined to ensure equity is being achieved.

The Small Business Development Corporation (SBDC)

- The adoption of a landholder regime that has the effect of applying conveyance duty consistently to companies, trusts and partnerships supports the SBDC's earlier recommendation to bring the treatment of transfers of units into line with the treatment afforded to companies and shareholders.
- If a landholder regime is introduced, it should retain a test that land comprises more than a threshold percentage of the assets of the entity before a liability occurs.
- If the landholder regime is to include tracing provisions similar in effect to those contained in the current land-rich provisions, there should be thresholds applied to relieve administrative burdens and valuation costs.

Stage 2 Analysis

The Interim Report concluded that a landholder model that applies in a consistent manner to companies, trusts and partnerships would be the most desirable means of simplifying the duty treatment of these entities, reducing compliance and administrative costs where possible, and creating a more level playing field for different entities. The issues surrounding the current duty treatment of entities were discussed in detail in the 'Alignment of Duty Treatment of Entities' section of the Technical Appendices to the Interim Report.

While non-residential conveyance duty has been listed for review by the Commonwealth and the States under the GST agreement, this may not occur before the completion of the existing schedule for the abolition of duty on non-real property transfers by all of the States (New South Wales will be the last State to abolish this tax, from 1 July 2012). In the meantime, there would be significant benefits for Western Australian taxpayers in improving the equity and efficiency of the remaining business conveyance duty base.

The following analysis highlights key features of the proposed landholder regime and identifies, at a high level, the major effects likely to flow from its adoption.

Broadening the base and reducing the duty rate

The landholder model has been developed on the basis that it represents a reform measure, rather than a revenue raising measure. While the adoption of a landholder regime will remove some transactions from the existing stamp duty base, in the absence of a compensatory rate adjustment, the net effect would be revenue positive. Accordingly, it is strongly recommended that any additional revenue that is raised as a result of the implementation of the landholder model be directed to an offsetting reduction in conveyance duty rates. Such a broadened base, lower rate regime is consistent with principles of good tax design.

The following discussion identifies at a high level the nature of the taxpayers that would be affected by the implementation of a landholder regime. However, details regarding the types of businesses that would be affected, and the extent of the impacts, are still being ascertained. A consultation process with relevant industry groups is continuing with the aim of obtaining a better understanding of the likely incidence shifts. A number of industry groups have also been asked to provide relevant information to assist with the quantification of the revenue impact. However, this process is unlikely to be finalised until such time as the detail of the legislation is available to those groups in the form of an exposure draft.

Reducing complexity through a more consistent approach across entity types

The landholder regime is to apply stamp duty to the acquisition of certain interests in companies and trusts, and certain partnership interests, where those entities or partnerships have, or are deemed to have, an interest in Western Australian land of more than a certain value. Duty will be applied as if it were an interest in that underlying land and any associated chattels that are being acquired. Companies, trusts and partnerships will be deemed to be entities to which the provisions apply.

The current arrangements applying to companies, trusts and partnerships are illustrated in the diagram included as Figure 3. The complexity of the current arrangements is in stark contrast to the simplicity of the proposed landholder model illustrated in the diagram included as Figure 4.

Not all land holding entities or partnerships will fall within the duty base

It is proposed that a landholder be defined with reference to the value of the interest in Western Australian land held by the entity. Only transactions involving entities that hold Western Australian land valued at $2 million or more would be subject to duty. However, provisions will need to be included to allow land holdings of subsidiary entities to be taken into account to prevent avoidance through manipulating ownership structures. The $2 million threshold would be consistent with the highest threshold of the land-rich provisions of the other jurisdictions. Any higher land value threshold would narrow the duty base and reduce the extent of the overall rate reductions that would otherwise be possible.

Nonetheless, a number of transactions involving partnerships will be removed from the base because of the proposed $2 million threshold. Currently, all transactions involving Western Australian partnership interests are subject to duty regardless of whether that interest involves land in Western Australia, or the value of that land. Therefore, any partnership that does not hold interests in land in Western Australia valued at $2 million or more will no longer be subject to duty.

This will mean, for example, that interests in professional partnerships that hold only goodwill and assets other than land will no longer be dutiable when acquired.

A number of transactions in relation to unit trusts will also be removed from the base as a result of the proposed $2 million land threshold. Currently, all dispositions in private unit trusts, and certain takeovers of public unit trusts, are subject to duty regardless of the value of the Western Australian land held. Under the proposed landholder regime, unit trusts that do not hold $2 million of Western Australian land will no longer be in the duty base.

The land-rich provisions that apply to listed and unlisted companies currently have a land value threshold of $1 million. The introduction of a $2 million threshold will therefore mean that land-rich companies with Western Australian land valued between $1 million and $2 million will no longer be subject to duty.

The current definition of "land" for duty purposes will remain in place

It is not proposed to change the definition of "land" for the purposes of the landholder regime. The current definition of "land" used in relation to the land-rich provisions will be incorporated into the landholder model. This issue is addressed specifically in relation to exploration licences in Chapter 4.

The value of land as a proportion of the value of total property is no longer relevant

The main difference between the proposed landholder model and the current land-rich company provisions is that there would be no testing of the percentage of a company's land to total property in order to ascertain if a liability exists. Currently, a company is only subject to the land-rich provisions if 60% or more of the company's property constitutes land. There are a number of exclusions from what constitutes "property" for the purposes of this calculation. No such land-rich threshold applies in relation to unit trusts or partnerships.

The removal of the land as a proportion of total property threshold will mean that some companies that are currently not within the duty base because their land to property threshold is less than 60% will be brought into the duty base. The landholder model will therefore broaden the duty base in relation to both listed and unlisted companies, and distribute the stamp duty burden more equitably across a larger number of transactions.

This will address concerns expressed by the mining industry that the current land-rich regime targets the mining industry, as mining companies are generally already within the existing land-rich duty base because of the high proportion of the assets of mining companies that consist of land. The removal of the 60% threshold will mean that all entities with high value Western Australian landholdings will be within the duty base, regardless of the extent of the other assets of the entity. Mining companies that are already within the land-rich base will therefore benefit from the rate reduction that results from broadening the duty base.

The removal of the land-rich threshold will also significantly reduce compliance costs for taxpayers (and administration costs for the OSR) by eliminating the need to value all of the property of a company, as only the value of the Western Australian land and chattels will be relevant.

Listed entities and unlisted entities will continue to have different acquisition level thresholds

It is proposed that the landholder model have different acquisition level thresholds depending on the nature of the entity as listed or unlisted. Differential treatment of acquisitions in listed entities and unlisted entities is necessary because of various differences in their nature, such as the level of control of shareholders and unit holders.

In relation to unlisted entities, it is proposed that acquisitions of interests of 50% or more in land holding entities will be subject to duty, along with any subsequent interests acquired. Setting the threshold at 50% or greater would limit the volume of dutiable transfers of interests in unlisted entities (thereby removing the multiplicity of small interest acquisitions that would be inefficient to assess), but at the same time ensure that the acquisition of significant interests in land are captured. As with the current land-rich regime, aggregation provisions to capture so called ‘creeping acquisitions’ will also be required.

In relation to listed entities, the landholder regime will only seek to apply duty on land being indirectly acquired in instances of a takeover. In this case, the 90% acquisition threshold that currently applies to listed land-rich companies would seem appropriate, as it is consistent with the point at which remaining shares or units can be compulsorily acquired under the Corporations Act. However, by applying this test to both listed companies and trusts, consistency between these entities will be improved.

The introduction of a 50% or more threshold for unlisted entities again means that a number of transactions involving partnerships are likely to be removed from the base. Rather than any acquisition of an interest in any partnership being dutiable, the proposed landholder model would only impose duty on acquisitions of partnership interests of 50% or more (and only where the partnership holds Western Australian land of $2 million or more).

The acquisition threshold for unlisted companies is currently set at greater than 50%. Therefore, the move to a 50% or more acquisition threshold will broaden the base with respect to companies. This may impact on some joint venture arrangements structured such that a company holds the joint venture assets directly and the joint venture partners each own shares in the joint venture company. However, it is more common for each of the joint venture participants to hold their joint venture interest in an entity in which they own 100% of the equity, as this generally provides a greater degree of flexibility and control over their interest in the underlying joint venture assets.

The complexity associated with public and private unit trusts will disappear

The treatment of unit trusts under the proposed model varies considerably from the current provisions, as the existing distinction between public and private unit trusts would no longer be relevant. Rather, the landholder model will distinguish between listed and unlisted unit trusts. The landholder model is also likely to remove the need for provisions relating to pooled investment trusts, equity trusts, and conversion of trusts from private to public, and from public to private, thereby significantly simplifying the legislation.

Generally, in relation to private unit trusts, a number of transactions are likely to no longer be dutiable where the size of the interest acquired is below the 50% or 90% threshold (depending on whether the trust is unlisted or listed). This is because currently, all transactions involving private unit trusts that hold Western Australian property are dutiable regardless of the size of the interest acquired.

Currently, dispositions in public unit trusts are not subject to duty unless the unit trust is taken over and becomes a private unit trust as a result. Therefore, some acquisitions of public unit trusts that do not fall within these takeover provisions, and so are not currently subject to duty, may be brought into the base where a 50% or 90% interest, as the case may be, is acquired.

The method by which duty is to be calculated will be simplified

The landholder model also proposes that the method of calculating the duty payable on an acquisition of an interest in a landholder be calculated with reference only to the proportionate value of the interest in the Western Australian land and chattels owned by the landholder. This is consistent with the method of calculating duty under the current land-rich provisions. However, it differs from the current provisions in relation to partnerships and unit trusts that bring in the value of certain other assets of the entity.

Corporate reconstruction relief may be broadened to encompass unit trusts

It is recognised that the underlying policy of aligning the duty treatment of acquisitions of interests in companies, trusts and partnerships should be applied to other areas of the Stamp Act. Thus, if the landholder model is implemented, an extension of the corporate reconstruction exemption to unit trusts would be supported subject to it being complemented by a general anti-avoidance provision to prevent manipulation of the exemption. This issue is discussed in more detail in the following section. However, the extension of the corporate reconstruction exemption to unit trusts would not be supported if it were not done in conjunction with the introduction of a landholder model.

Furthermore, consideration is being given as part of the rewrite of the Stamp Act to having greater consistency in the treatment of companies, trusts and partnerships in areas such as acquisitions of property by entities, disposals of interests in entities, and the distribution of property on the winding up of entities.

2.3.1 Final Recommendation

A landholder model should be introduced to improve the equity and efficiency of the State's taxation regime, while at the same time reducing compliance and administration costs. To the extent that this reform measure would be revenue positive, its implementation should coincide with a reduction in conveyance duty rates commensurate with the additional revenue otherwise raised. The extent of the rate reduction would be determined following further consultation with industry groups once they have had the benefit of examining the detail of the model as part of the exposure draft of the Stamp Act rewrite legislation.

Figure 3

CURRENT TREATMENT OF COMPANIES, TRUSTS AND PARTNERSHIPS

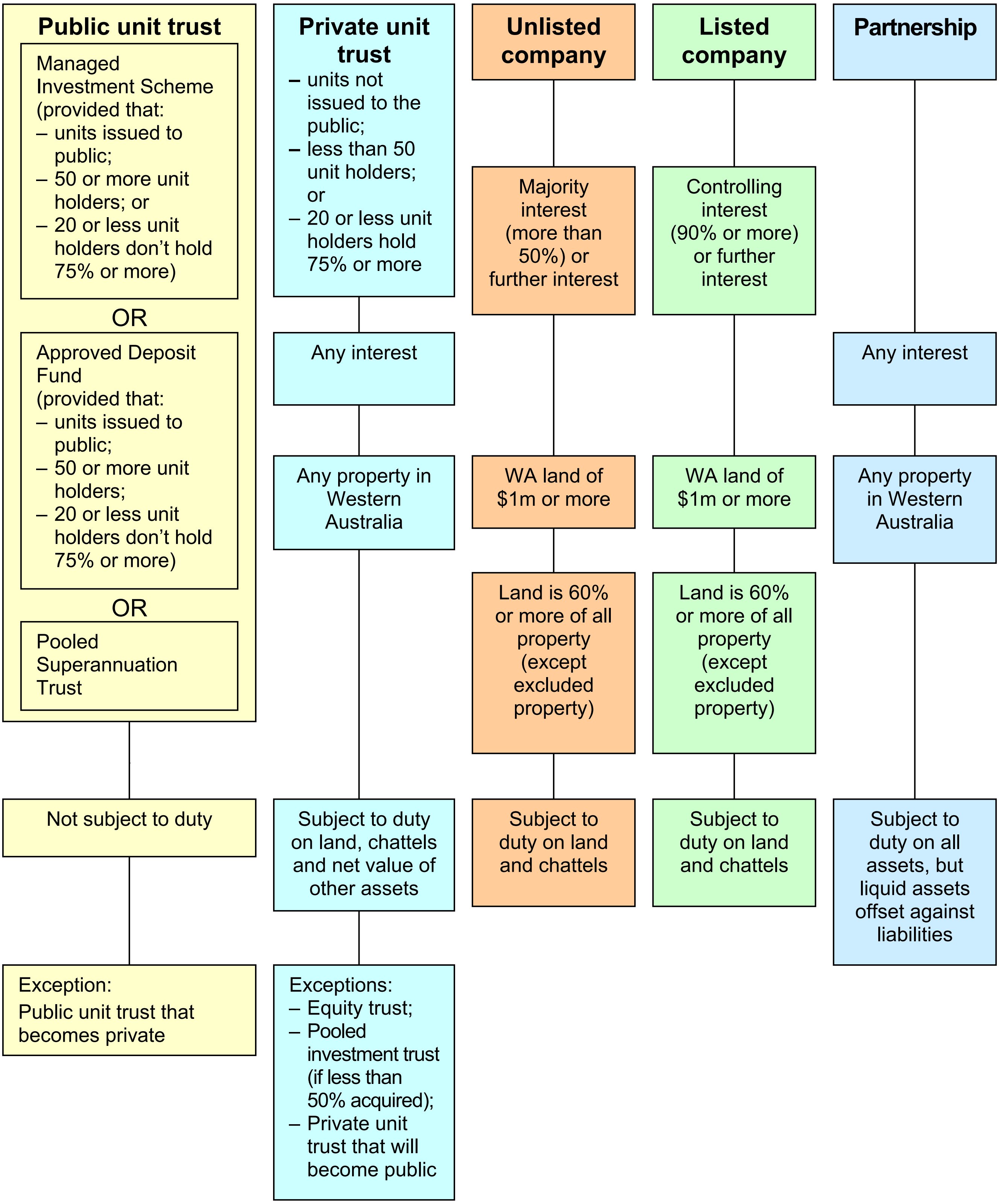
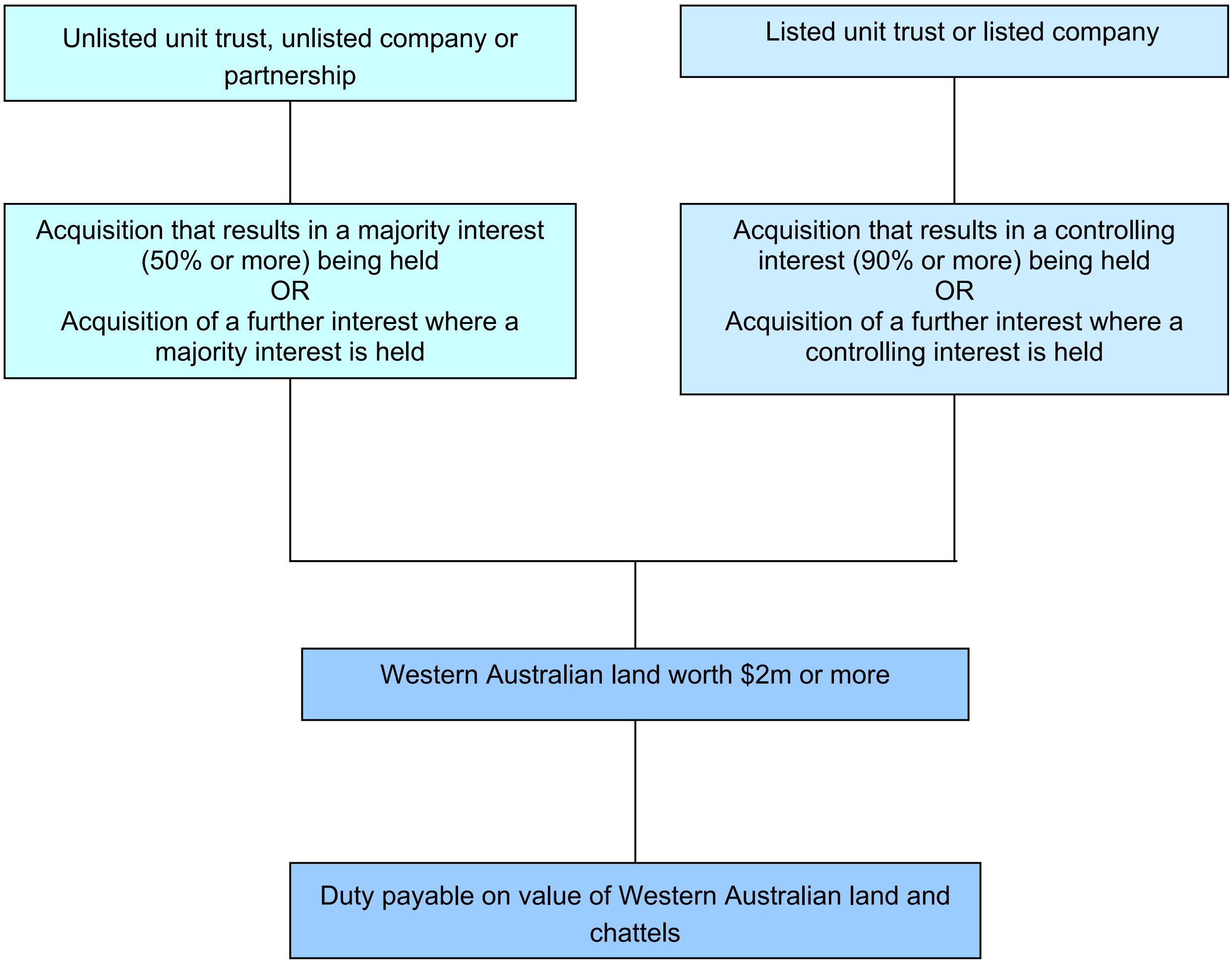


Figure 4

PROPOSED TREATMENT OF COMPANIES, TRUSTS AND PARTNERSHIPS



Broaden the Corporate Reconstruction Concession Provisions

The Interim Report noted the appropriate scope and policy basis for the corporate reconstruction stamp duty relief provisions should be further investigated in Stage 2 of the Review, taking into account any move to replace the current disparate treatments of transfers of indirect interests in property with a new 'landholder' regime.

Stage 2 Feedback

The ICCA supported broadening the corporate reconstruction exemption, whilst the Law Society supported further investigation in Stage 2. The SBDC also supported further investigation in Stage 2, but suggested that this should include investigation of a small business reconstruction concession.

Stage 2 Analysis

One of the policy objectives underlying the proposed landholder model is to achieve greater consistency between the stamp duty treatment of transfers of interests in companies, trusts and partnerships. Should a landholder model be implemented, this same policy objective should be applied to the corporate reconstruction exemption to the extent possible.

However, any extension of the exemption to other entities will increase opportunities for avoidance by providing greater scope for transactions to be structured to access the exemption in circumstances that may not be intended by the legislation. This is particularly a problem in the case of partnerships as there is no regulatory body or obligatory register in relation to partnership interests. In the case of unit trusts, there is no regulatory authority-maintained register of ownership details for all unit trusts. This would make determining whether the exemption criteria have been satisfied and conducting follow up compliance checks more difficult for reconstructions involving partnerships and, to a lesser extent, unit trusts (as opposed to companies, which are required to supply details of changes to their membership to the Australian Securities and Investments Commission).

Given the compliance difficulties in relation to partnership reconstructions, an extension of the exemption to these entities is not supported at this time. Further, it is unclear whether an exemption in relation to partnerships would be necessary following the abolition of duty on non-real property in 2010 as transfers of assets from a partnership to a company or trust structure often involve the transfer of goodwill (which would no longer be dutiable from 2010). Further work would therefore need to be undertaken to demonstrate a need for an extension of the exemption to partnerships following the abolition of duty on non-real property. Such work could be undertaken once the landholder model and corporate reconstruction exemption have been implemented through the Stamp Act rewrite process.

It is considered that the compliance difficulties in relation to unit trusts could be overcome if the extension of the exemption to unit trusts were supported by a general anti-avoidance provision that would be able to be utilised in cases of blatant attempts to manipulate the exemption. Further details in relation to the design of the anti-avoidance provision are included in Chapter 2.8.

As part of the development of the landholder model, the corporate reconstruction regimes in the other jurisdictions are being examined to identify the most appropriate model to achieve the policy objective of providing relief for transfers of property between entities that have a significant ongoing relationship. The development of the model must take into account the commercial realities of restructuring transactions, but at the same time protect the State's revenue base. This process will include an examination of the pre-association and post-association periods.

However, even if the association periods remain unchanged, the proposed landholder regime has the potential to broaden the availability of the corporate reconstruction exemption. Currently, the three-year pre-association period does not have to be met where companies become associated in circumstances where land-rich duty has been paid on the acquisition of an interest in a company that creates the association. The landholder regime that is proposed to replace the land-rich regime would impose duty in the case of the acquisition of certain interests in unit trusts. Therefore, if a unit trust became associated with another company or unit trust and duty was paid on the acquisition of the interest in the unit trust that created the association under the landholder regime, the pre-association period would generally be taken to have been met. The combination of the proposed landholder model and the extension of the corporate reconstruction exemption to unit trusts will therefore significantly increase the opportunities for restructuring corporate groups involving unit trusts.

The proposed landholder model and extension of the corporate reconstruction exemption should be progressed as part of the Stamp Act rewrite project and be included in the exposure draft of the rewritten legislation. This will provide an opportunity for meaningful consultation on these provisions once the specific detail of the legislation is available.

2.3.2 Final Recommendation

In conjunction with any implementation of the landholder model, it is considered appropriate to extend the corporate reconstruction exemption to unit trusts, subject to it being supported by a general anti-avoidance provision to prevent abuse of the exemption. This matter should be progressed as part of the Stamp Act rewrite project.

Concession for Trusts Established for a Family Member with a Disability

The Interim Report found that further consideration should be given in Stage 2 of the Review to the possible provision of stamp duty relief for trusts established for the benefit of a family member with a disability. It was noted that this issue is linked to the progress of Commonwealth initiatives to amend gifting provisions to enable families with a son or daughter with disabilities to establish a trust, which will be exempt from the pension income and assets test.

Stage 2 Feedback

Nil.

Stage 2 Analysis

The Commonwealth gifting provisions were amended from September 2006 to provide for the creation of a 'Special Disability Trust' for the benefit of a severely disabled family member. Conveyances or transfers to the trust, of up to $500,000 in value from family members who are in receipt of age or veterans' pensions, are to be disregarded for the purposes of the Commonwealth assets test.

Stage 2 analysis, including consultation with officers of the Disability Services Commission (DSC), supports the implementation of a stamp duty exemption for property gifted to the trustee of a Special Disability Trust. This would match the Commonwealth's initiative in removing a potential disincentive for establishing a trust for the ongoing financial support of a disabled person.

The definition of an eligible trust for the duty exemption would be linked to the Commonwealth legislation (specifically, section 1209L of the *Social Security Act 1991)*. However, on equity grounds it is not clear why transfers from non-family members were not also made exempt from the Commonwealth's assets test. Accordingly, it is proposed that the stamp duty exemption would also apply to property contributed to the trust from any source, regardless of the donor's relationship to the disabled beneficiary.

Data are not available to cost this measure. However, it is expected to be negligible given the value cap imposed by the Commonwealth on transfers to Special Disability Trusts.

The Commonwealth's model trust deed, which must be adopted for a trust to be a Special Disability Trust, provides for the winding up of the trust when it is no longer required. This will usually be on the death of the beneficiary, or when the trust has no assets. The provision to end the trust allows the people who contribute assets to receive back their contributions, on a proportional basis, or to nominate someone else to whom the assets should be transferred. For example, a parent of the beneficiary with a severe disability could nominate their other children or their grandchildren. Whether or not the current nominal stamp duty provisions apply on the vesting of trust assets will depend on the circumstances of each distribution of trust property and it is not proposed to introduce specific exemption provisions in respect of these types of trusts.

2.3.3 Final Recommendation

Stamp duty relief should be introduced for property gifted to the trustee of a Special Disability Trust as defined by section 1209L of the *Social Security Act 1991*.

Ensuring Equitable Application of Stamp Duty to Petroleum Titles

The Interim Report suggested a need to test the appetite of the Commonwealth for reinstating the original intention that transfer fees on petroleum titles be reflective of the conveyance duty rates and base (including by imposing fees on indirect transfers).

Stage 2 Feedback

The Australian Petroleum Production and Exploration Association (APPEA) opposed any increase in petroleum transfer fees and argued that it was never intended (by Commonwealth and State Governments) that the fees would be used for general revenue purposes. APPEA also noted the need to consult with the Commonwealth and other State Governments to ensure a common treatment of petroleum tenements, and with agencies involved with the administration of petroleum legislation.

Stage 2 Analysis

The current arrangement whereby transfers of petroleum titles are exempt from stamp duty but subject to a 1.5% registration fee (under the respective Commonwealth and State petroleum legislation) represents a significant concession relative to the top rate of 5.4% for other property transfers (including mining titles) under the general conveyance duty scale.

- It is estimated that an additional $21 million per annum could be raised in Western Australia by removing this anomaly through an increase in the registration fee to match the general conveyance duty arrangements.

Amending the Commonwealth and State Petroleum (Submerged Lands) Acts on this basis would be consistent with the intention that the fee be "broadly equivalent to, and in lieu of, State stamp duty", as outlined by the Commonwealth Minister for National Development on 18 October 1967 in the second reading of the Petroleum (Submerged Lands) Bill 1967.

It is recommended that the Treasurer consider writing to the Commonwealth Treasurer (and send copies to other State Treasurers and relevant Ministers) seeking his endorsement for equating the registration fee with conveyance duty. This should include a commitment to use the additional revenue in Western Australia to fund an equivalent reduction in the general rates of conveyance duty.

2.3.4 Final Recommendation

The Treasurer should consider writing to the Commonwealth Treasurer seeking his endorsement for increasing and expanding the 1.5% registration fee on petroleum title transfers to equate it with conveyance duty (including by imposing an equivalent fee on transfers of indirect interests).

Extend Farm-in Concession to a Right to Extract Minerals

The Interim Report recommended that the policy issues surrounding the proposal to extend the farm-in concession to farming-in to a right to extract minerals be further examined in Stage 2 of the Review.

Stage 2 Feedback

Nil.

Stage 2 Analysis

A right to farm-in to extract minerals is similar to that of a farm-in arrangement involving a mining tenement. In each case, the person farming in is contributing towards the development cost of the mining tenement. However, the difference is that in the case of a farm-in arrangement involving a mining tenement, the person earns an interest in the tenement, whereas in the case of a right to extract minerals, the person has the right to take certain minerals from the tenement.

While the Government recently legislated the OSR's long standing practice to assess a farm-in arrangement involving a mining tenement with nominal duty where certain conditions are met, conveyance duty remains payable on an arrangement involving farming-in to a right to extract minerals. However, in both cases, the interest earned results from the amounts being expended on exploration or development of a mining tenement.

It is acknowledged that there are legitimate commercial reasons for farming-in to a right to extract minerals from a tenement, rather than the tenement itself. The CME has advised that generally, the owner of a mining tenement will focus on the discovery of a specific mineral rather than all minerals in a mining tenement. For example, a gold miner will generally only seek to discover and mine gold on their tenements. The CME has advised that it is a fairly common practice, particularly when mineral prices are high, for the owner of a tenement to sell rights to third parties to explore for, and remove, certain minerals that they are not interested in exploiting. For example, a gold miner might enter into an arrangement with a nickel miner in relation to the nickel deposits in a mining tenement, as the gold miner might not have the expertise or the capital to engage in nickel mining activity. In this case, money is being spent on developing the mining tenement, however, the nickel miner is not earning an interest in the tenement itself. Rather, the nickel miner is acquiring a right to extract minerals from the tenement through that expenditure.

On this basis, it is proposed that the current exemption for farming-in to a mining tenement be extended to farming-in to a right to extract minerals from the mining tenement. Certain safeguards will be required, however, to protect the integrity of the exemption.

2.3.5 Final Recommendation

Extending the farm-in concession to a right to extract minerals is supported and should be progressed as part of the Stamp Act rewrite project, along with appropriate rules to protect the integrity of the exemption.

Extend Family Farm Exemption to Allow Related Entities to Farm the Land

The Interim Report recommended that no substantive changes were to be proposed to the family farm exemption provisions.

Stage 2 Feedback

Nil.

Stage 2 Analysis

During consultations on other State Tax Review issues, the Western Australian Farmers Federation (WAFF) expressed to the OSR the view that the policy objective of the family farm exemption is not being achieved because of restrictions on the types of entities that are able to access the exemption. However, the WAFF also recognised that any attempts to broaden the exemption may provide assistance in circumstances that were not intended by the legislation (i.e. not involving a continuation of a family farming enterprise) and create opportunities to structure transactions to minimise the duty payable.

As part of the rewrite of the Stamp Act, further consideration has been given to the parameters of the exemption and whether there is any scope to broaden the availability of the exemption, without creating opportunities for avoidance. This analysis has identified that the exemption could be extended to situations where a related family entity intends to continue to use the farming property for the purposes of primary production. This measure would accommodate more modern practices for structuring the ownership of farming properties since the exemption was introduced in 1994. It would require supplementary rules to define the relationship between the entity, the transferee and the transferor to protect the integrity of the exemption.

2.3.6 Final Recommendation

Extending the availability of the family farm exemption to situations where a related family entity intends to continue to use the farming property for the purposes of primary production should be progressed as a part of the Stamp Act rewrite.

Abolish Stamp Duty on Nuisance Deeds

The Interim Report recommended that further consideration be given in Stage 2 of the Review to abolishing nominal stamp duty on 'nuisance deeds'.

Stage 2 Feedback

Nil.

Stage 2 Analysis

Currently, transfers of property are subject to conveyance duty at ad valorem rates of up to 5.4%, or a nominal rate of $20 if the conveyance is not otherwise chargeable with ad valorem duty. Deed duty of $20 also applies to certain instruments executed as deeds that are not otherwise chargeable with duty.

Under the framework of the rewritten stamp duties legislation, specific property and transactions will be identified as being chargeable with transfer duty, rather than all transfers of property being chargeable with duty. Transfer duty will either be imposed at an ad valorem rate, or a nominal rate of $20. This approach will eliminate the requirement for all deeds to be lodged for assessment, as only those which are specified as being chargeable with nominal transfer duty will be required to be lodged.

Nonetheless, it is intended that some classes of instruments that in the main, currently only attract nominal duty under the existing Stamp Act, will continue to be required to be lodged and, in many cases, attract nominal duty. Examples of these are instruments evidencing declarations of trusts and documents relating to family law matters. It is considered that requiring these instruments to attract ad valorem duty, if certain conditions are not met, makes their lodgement a useful compliance tool.

2.3.7 Final Recommendation

General abolition of nominal duty on deeds (except those deeds to be specified as being chargeable, for wider anti-avoidance purposes) should be progressed as part of the Stamp Act rewrite project.

Abolish Stamp Duty on Non-Real Conveyances

The Interim Report noted that abolition of conveyance duty on non-real property (e.g business goodwill, intellectual property etc) did not rate as highly as the abolition of hiring duty or mortgage duty.

In March 2006, the Government announced that non-real conveyance duty would be abolished from 1 July 2010 (with hiring duty to be abolished on 1 January 2007 and mortgage duty phased out by 1 July 2008). Other States have also announced that they will be abolishing non-real conveyance duty, with varying commencement dates.

Stage 2 Feedback

The abolition of stamp duty on non-real conveyances received general support, with several submissions (CPA, CCI and SBDC) preferring an earlier abolition date than 1 July 2010.

WACOSS, UnionsWA and COTA did not consider the abolition of non-real conveyance duty to be a priority for tax reform.

Stage 2 Analysis

Bringing forward the abolition date for non-real conveyance duty to 1 July 2008 would mean that all agreed abolitions of stamp duties listed in the GST Agreement could be completed by that date, well in advance of the Northern Territory, the ACT, South Australia, Queensland and New South Wales (and the same as for Tasmania). It would also have the following advantages in the context of the Stamp Act rewrite (planned to take effect on 1 July 2008):

- a number of provisions that are specific to the imposition of duty on non-real property would not need to be included in the rewritten legislation, simplifying the rewrite process and the legislation itself; and

- minimising disruption to taxpayers, who would not need to learn the regime in relation to non-real property for a two year period (under the current abolition schedule) and then adjust to the regime post abolition in 2010.

Other advantages would include:

- an early resolution to the issues surrounding the valuation of goodwill currently being experienced by professional partnerships and legal practices; and

- achieving earlier consistency with already exempt indirect transfers of non-real property held in company and trust structures (and partnership structures should the proposed landholder model be introduced), together with earlier removal of the incentive to structure transactions to avoid duty through the use of indirect ownership options.

However, general cuts in conveyance duty and other stamp duties are otherwise considered a higher priority (see also Chapter 1). The scope for such cuts in 2008-09 and 2009-10 would be reduced by an estimated $110 million and $120 million respectively.

Should the timing of abolition remain unchanged, to provide certainty for taxpayers, a comprehensive definition of non-real property (including the treatment of fishing licences) should be developed well in advance of 1 July 2010 and legislated as part of the Stamp Act rewrite. This should include appropriate consultation with other States on their definitions of non-real property.

2.3.8 Final Recommendation

Even if bringing forward the abolition of stamp duty on non-real business assets to 1 July 2008 to coincide with the commencement of the Stamp Act rewrite legislation cannot be accommodated in the Government's priorities, amendments to effect the subsequent abolition should be included in that legislation.

Abolish the Principal Place of Residence and Small Business Concession

The Interim Report suggested that the respective merits of enhancing or abolishing the PPR and small business stamp duty concession scheme be evaluated in Stage 2 of the State Tax Review.

Stage 2 Feedback

The HIA and the SBDC suggested that the concession should be retained and the threshold increased to a value that more closely corresponds to current market conditions.

Stage 2 Analysis

Purchasers of a PPR or small business valued below $100,000 currently benefit from a concessional rate of stamp duty of 1.5%, with the concession phasing out for properties valued between $100,000 and $200,000.

This concession is estimated to have cost around $1 million in 2005-06.

- The low cost reflects that there are relatively few purchases of property below the value threshold of the concession, which was last increased (to $100,000) in 1998 (with the phase-out threshold extended from $135,000 to $200,000 in 2004).
- This cost is likely to have declined since 2005-06, as a result of further growth in property values.

The need for a specific concession for low value residential properties has been at least partly superseded by the introduction of the stamp duty exemption for first home buyers in 2004 (current exemption threshold level of $250,000, phasing out at $350,000, with increases recommended as part of this Review).

- First home buyers were an important target group for the concessionary treatment of residential properties, notwithstanding its wider availability to other purchasers of low value homes and small business.
- While abolishing the concession would adversely impact on some existing home owners who may purchase a new home, the affordability of their purchases would be significantly assisted by the increased value of their current homes (whereas first homebuyers are not able to take advantage of appreciating property wealth, and consequently need to rely more on borrowing).

For small businesses any increase in costs (e.g. $700 for a $100,000 purchase) from abolishing the concession would be deductible for Commonwealth taxation purposes. A direct grant would be a preferred form of start-up assistance for micro-businesses on transparency grounds and the ability to target funding to businesses most in need.

2.3.9 Final Recommendation

The PPR and small business conveyance duty concession should be abolished and the minor savings used to fund a reduction in general conveyance duty rates.

Reassess Stamp Duty Where the Consideration Paid for the Purchase of the Property is Reduced

The Interim Report noted that the proposal to allow stamp duty to be reassessed where the consideration paid for the purchase of property is reduced prior to settlement is supported and should be further considered in Stage 2.

Stage 2 Feedback

The Law Society and UDIA supported the proposal.

Stage 2 Analysis

While the current practice of not reassessing duty if consideration is reduced prior to settlement stems from long-standing common law in the stamp duty area, it can be perceived as being inequitable. Further examination of the Duties Acts in other jurisdictions indicates that the practicalities of reassessing duty can be accommodated using Duties Act concepts and the assessment framework of the TAA.

2.3.10 Final Recommendation

Allowing stamp duty to be assessed (or reassessed where applicable) on a lower amount where the consideration for property has been reduced prior to the property being transferred should be progressed as a part of the Stamp Act rewrite.

Provide a Stamp Duty Exemption for Certain Transfers of Property Upon the Dissolution of a Marriage or De Facto Relationship

The Interim Report recommended that the following policy issues be considered further in Stage 2 of the Review:

- Whether an exemption should be available for transfers of property from a trustee to the parties to a marriage or de facto relationship or their children, reflecting that it is now common practice for property to be held in trust structures.
- Whether an exemption should be provided for transfers to trustees, where a party to the marriage or de facto relationship, or child of that party, is a beneficiary.
- Whether an exemption should be provided for certain transfers of superannuation property upon the dissolution of a marriage or de facto relationship.

Stage 2 Feedback

Nil.

Stage 2 Analysis

The growing importance of superannuation saving in Australia has increased the need for an equitable sharing of such property upon the dissolution of a marriage or de facto relationship.

Subject to appropriate protections to prevent avoidance, an exemption should be provided in the stamp duty legislation for the transfer of superannuation property upon a marriage or de facto relationship breakdown, where the transfer meets the other criteria in relation to personal relationship transfers. This issue should be progressed as part of the rewrite of the Stamp Act.

The regulatory regime in relation to superannuation funds generally requires superannuation property to be held in trust structures. Accordingly, an extension of the exemption to superannuation property will need to allow for transfers to and from trusts in these circumstances.

However, it is not considered appropriate to extend the exemption to other forms of trusts that may hold family assets. In many instances, family trusts are primarily a vehicle for reducing the income tax payable by a family (such as by splitting income between family members in order to benefit from lower income tax rates and thresholds). Furthermore, discretionary trusts are also often established for asset protection purposes, whereby a creditor would have no right to claim any interest in the discretionary trust property upon bankruptcy of a single beneficiary.

Given that property held on trust for individuals already receives these significant benefits, it is not considered appropriate to provide further benefits by way of stamp duty concessions. This is also consistent with the existing policy that property held in trusts (including family homes) is not exempt from land tax.

2.3.11 Final Recommendation

Extending the availability of the personal relationship concession for transfers of superannuation property upon the dissolution of a marriage or de facto relationship should be progressed as a part of the Stamp Act rewrite project. However, an exemption for transfers of other property in and out of trust structures is not warranted.

2.4. Land Tax

Reduce the Progressivity of the Land Tax Scale

The Interim Report found that options for reducing the current level of progressivity in the land tax scale should be considered as part of Stage 2 of the Review. This could involve a staged approach, taking advantage of growth in land values to offset the revenue costs.

Stage 2 Feedback

There was general support for reducing the progressivity of the land tax scale, including from the Real Estate Institute of Western Australia (REIWA), the ICAA and CPA. A number of Reference Group members (primarily those representing the property industry) were also in favour of such reform as a practical means of addressing aggregation concerns.

The CCI suggested that reform of the land tax scale should proceed in the context of a long-term objective of adopting a single rate of land tax. This view was supported by the ICAA, who argued that a single rate of tax would promote fairness and eliminate avoidance.

Burella Pty Ltd cited historical changes to the land tax scale having benefited taxpayers at the lower end of the scale at the expense of those in the middle and upper value ranges. It would only support a move to a single tax rate if implemented with a low tax-free threshold.

Stage 2 Analysis

The Interim Report highlighted the high degree of progressivity in the land tax scale. Land owners are faced with proportionally much higher increases in land tax assessments than the increase in the value of their land (bracket creep), and the average tax rate paid is much higher for multiple property owners than if the properties were taxed individually. Targeted annual changes to the land tax scale may help alleviate the first concern but not the second.

- As discussed in Chapter 4.2 on land tax aggregation, in the absence of 'grouping' of properties held by related owners, some owners can establish artificial structures to defeat provisions intended to ensure that aggregate land holdings of the same value are subject to the same land tax liabilities, creating significant inequities.

Stage 2 feedback, including from Reference Group members, noted that these structural flaws in the land tax system had been exacerbated recently by the targeting of relief to lower value property holders in annual adjustments to the land tax scale. The effect had been to 'squeeze and steepen' the land tax scale, thereby increasing the incidence of bracket creep and concerns about aggregation for those remaining in the land tax base.

- Since the introduction of a simpler land tax scale on 1 July 2004 (as part of the Business Tax Review, which reduced the number of thresholds from 10 to six), the exemption threshold has increased by 200% (from \$50,000 to \$150,000[9]), the second lowest threshold by 105% (from \$190,000 to \$390,000) and the middle threshold by 59% (from \$550,000 to \$875,000). The top two thresholds have remained unchanged at \$2 million and \$5 million respectively, with no adjustments in the top marginal rates.

The highest level of complaint from taxpayers in 2006-07 has been from the middle-upper parts of the scale, particularly holiday home owners whose properties are appreciating faster than average and where bracket creep has seen land tax bills increase by a much greater proportion than land values (despite the increases in the thresholds in the 2006-07 Budget). Many have been single (taxable) property owners of holiday homes in the South West. A number are now facing land tax bills of over \$20,000 (corresponding to a land value of more than \$2 million), after paying less than \$5,000 in recent years.

The one-off introduction of a single tax rate with a nil threshold would completely eliminate the incidence of bracket creep and the need for the aggregation provisions. However, such fundamental reform is problematic as it would involve a significant revenue loss or a substantial redistribution of the land tax burden from taxpayers with larger, higher value land holdings towards smaller land owners. While a single marginal tax rate in conjunction with a low tax free threshold could be designed to be less progressive, it would still have significant redistributional and cost impacts.

[9] The exemption threshold was lifted from \$10,000 to \$50,000 in 2002.

- Based on 2006-07 data, a single marginal tax rate of around 0.94% above the current threshold of $150,000 would ensure a revenue neutral outcome. However, this would mean a higher effective tax rate for property holdings valued below $1.5 million, accounting for 96% of land tax payers (or around 111,500 out of a total of 115,767)[10].

- If introduced to avoid any taxpayer being worse off (i.e. the single rate would be the current minimum rate of 0.15% above the current threshold of $150,000) the revenue loss would be around $320 million, or the majority of land tax revenue currently collected (about $400 million per annum).

- On the other hand, although land tax reductions targeted at the mid-upper ranges would have direct benefits for larger land owners (both larger businesses and investors), they would also flow through to smaller businesses and households, such as through lease agreements to tenants and through higher returns to members of superannuation funds.

Accordingly, options for reforming the land tax scale would include incrementally introducing a flatter, less progressive land tax scale (reversing the 'squeezing' and 'steepening' of recent years) without going to the extreme of adopting a single rate.

- A variation of this strategy would be to invest a portion of any 2007-08 tax relief package decided upon by the Government to flattening the scale. This could be topped up by any upward revision to the current 2007-08 forward estimate.

- A series of annual adjustments could then be made to further flatten the land tax scale using any future excess of land tax revenue over and above the revenue that would flow if land tax grew at the same rate as the State economy.

A hypothetical example of an initial two year process for reforming the land tax scale on this basis is shown below.

- In 2007-08, the top three thresholds become $2 million, $5 million and $10 million (up from $875,000, $2 million and $5 million respectively) and the middle tax rate is reduced from 1.62% to 1.35%. The estimated revenue loss is $100 million, but only part of this is likely to be a cost against the current forward estimate for 2007-08.

  – The proposed rate reduction takes into account that the jump in the marginal rate at the middle threshold (from 0.45% to 1.62%) is a major contributor to the steepness of the current land tax scale.

- In 2008-09, the top three thresholds remain the same as in 2007-08, but the middle and upper marginal rates are reduced to 1.0%, 2.0% and 2.3% respectively. The estimated additional revenue loss (although not necessarily a cost against the current 2008-09 forward estimate) is $25 million.

[10] Data used for modelling and analysis are based on landowners in the 2006 assessment year who also had landholdings in the previous 2005 assessment year. The actual number of land tax payers would be higher to the extent that new landowners enter the tax base.

The table below illustrates the proposed changes to the land tax rates and thresholds under each scale.

Table 2

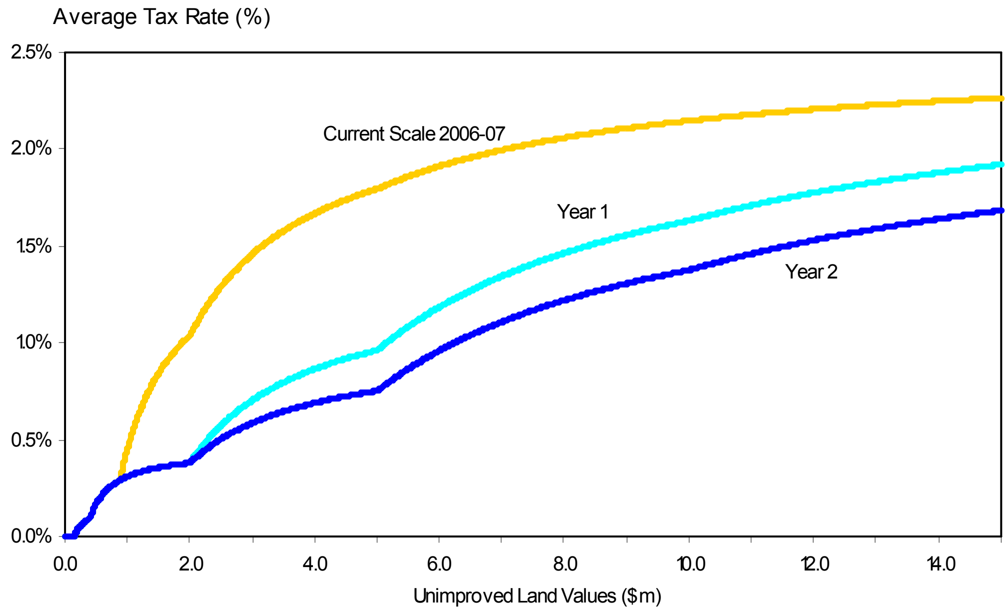
LAND TAX SCALES

	Current Scale	2007-08	2008-09
LAND VALUE THRESHOLDS ($)			
Minimum Threshold	150,000	No Change	No Change
Marginal Rate	0.15%	No Change	No Change
2nd Threshold	390,000	No Change	No Change
Marginal Rate	0.45%	No Change	No Change
3rd Threshold	875,000	2,000,000	2,000,000
Marginal Rate	1.62%	1.35%	1.00%
4th Threshold	2,000,000	5,000,000	5,000,000
Marginal Rate	2.30%	2.30%	2.00%
5th Threshold	5,000,000	10,000,000	10,000,000
Marginal Rate	2.50%	2.50%	2.30%

As illustrated in the chart below, each of these steps delivers a successively flatter and less progressive scale. However, it should be noted that the final recommended land tax scale in each year would need to be reviewed in light of up-to-date land valuations and the extent by which land tax revenue may exceed the forward estimates. Some cuts in land tax bills or MRIT bills (see Chapter 3.1) for properties valued at less than $875,000 need not be ruled out if the general growth in valuations is strong.

Figure 5

COMPARISON OF LAND TAX SCALE OPTIONS – PROGRESSIVE FLATTENING



A further more radical reform option was considered that would take advantage of the ‘skew’ in the current land tax distribution, whereby a large proportion of land tax is collected from a relatively small number of land tax payers at the top end of the scale.

- Based on 2006-07 modelling data, landowners above $2 million account for around 72% of total land tax revenue, but just 2.1% of land tax payers.

Table 3

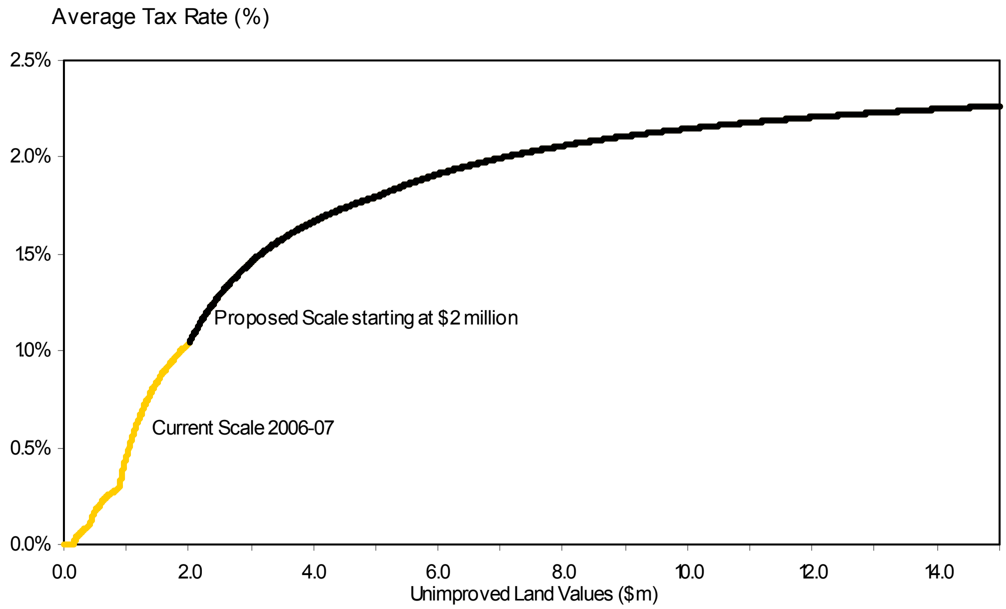
VALUE DISTRIBUTION OF LAND TAX PAYERS AND LAND TAX REVENUE

Land Value	Land Tax Payers		Land Tax Revenue	
($'000)	**Number**	**%**	**$m**	**%**
150-200	27,831	24.0%	1	0.2%
200-300	32,853	28.4%	5	1.2%
300-400	18,249	15.8%	6	1.4%
400-500	10,795	9.3%	7	1.8%
500-600	6,495	5.6%	7	1.8%
600-700	4,223	3.6%	7	1.7%
700-800	3,126	2.7%	6	1.6%
800-900	2,291	2.0%	6	1.5%
900-1,000	1,798	1.6%	7	1.8%
1,000-2,000	5,692	4.9%	59	15.2%
2,000-5,000	1,835	1.6%	78	20.0%
5,000-10,000	363	0.3%	50	12.7%
Over 10,000	216	0.2%	153	39.1%
Total	**115,767**	**100.0%**	**391**	**100.0%**

Under this option, the exemption threshold would actually be dramatically increased, to either $1.5 million or $2 million, but with the same effective tax rate as applies under the current land tax scale at those land values cutting in on the full land value immediately. A comparison of such a scale (with a $2 million threshold) and the current 2006-07 scale is illustrated below.

Figure 6

COMPARISON OF LAND TAX SCALE OPTIONS – $2 MILLION THRESHOLD



The original thinking was that this option would eliminate the steepest part of the land tax scale altogether at possibly no greater cost than the other options examined, and by reducing taxpayers to such a small number enable grouping provisions to be introduced (thereby also addressing current avoidance incentives and inequities, which the high threshold would indeed exacerbate) and administration and compliance costs (including from objections and appeals) to be slashed.

However, the OSR advised that even with only a small number of taxpayers liable for land tax on relatively high valued land it would still not only need to track every piece of land in the State as to usage and legal ownership, but would also require details for every item of land to be gathered in relation to its beneficial ownership (for the purposes of the new grouping provisions). Merely grouping legal interests in land would not provide adequate protection with a threshold of such magnitude.

Data on beneficial ownership is not stored in the land titles system, nor is there any known database which records and maintains such detail. Accordingly, each year the OSR would need to write to every land owner in the State to gather details of beneficial ownership, input that information into its computer system, undertake grouping according to that information and then issue assessments on that basis. Existing OSR systems would need to be totally rebuilt, and staff numbers significantly increased.

Thus, the OSR considered that such large additional administrative and compliance costs would rule out such an option as a practical solution to structural flaws in the land tax system. From a broader policy perspective, the improved fairness of the land tax system from the introduction of (albeit costly) grouping provisions needed to be weighed up against the (albeit limited) narrowing of the tax base which generally works against equity (e.g. in this case, contrast taxpayers just above the proposed land tax threshold with landholders just below the threshold[11]) and economic efficiency.

- Notably, if only land tax payers in the metropolitan region continued to be liable for the MRIT, the shrinkage in the MRIT base would have a much larger proportional cost than in the case of land tax, reflecting the current flat/non-progressive MRIT rate (above the exemption threshold). The estimated cost would be around $49 million in 2006-07 (compared to the current forward estimate of $71 million).

The Interim Report examined proposals for capping individual land tax liabilities but noted that there would be inequities (i.e. same value land holdings incurring different tax liabilities) and administrative complexities. Flattening the land tax scale remains a preferred approach to reducing the volatility of annual land tax bills.

2.4.1 Final Recommendation

The Government should commit to a strategy of flattening the land tax scale in order to reduce inherent bracket creep and the problems caused by aggregation provisions in the absence of grouping provisions.

Introduce a Scheme to Allow the Deferral of Land Tax on Non-Income Producing Property

The Interim Report indicated that further work would be undertaken on land tax deferral options for 'family' or non-income producing properties. The options would target 'capacity to pay' difficulties for landowners in regions once popular for low cost 'holiday homes' but now experiencing rapid development (e.g. South West coastal areas).

General adjustments to the land tax scale rates and thresholds to keep increases in land tax on these properties to moderate levels would decimate overall land tax revenues as the properties concerned represent only a small proportion of all taxable land and are experiencing well above average growth in values.

Nor would it be appropriate to provide targeted/permanent land tax concessions as these properties are generating substantial wealth for their owners, and sale for development purposes (or to investors who would let the homes) of the often large lots would enable more people to enjoy the locations and boost regional economic growth, including through increased tourism.[12]

The introduction of a capping mechanism to address the problem of unexpected land tax increases resulting from property value growth and bracket creep was also considered in

[11] Under this option, it may be necessary to consider a land tax deferral option for land owners that cross the $2 million threshold for the first time each year (and face an initial land tax assessment of $20,768).

[12] It is acknowledged that this would may not occur (or occur to the same extent) if the properties were sold as holiday homes to wealthy individuals who could afford the land tax, or to owner occupiers.

Stage 1 of the Review. However, as per the Interim Report, this proposal was not supported on equity and administration grounds.

Nonetheless, it is considered that the provision of an option for such landowners to defer paying at least part of their rising annual land tax liabilities (which would accrue with an interest component) until such time as the properties are sold or otherwise transferred would represent suitable transitional assistance for what would often be unexpectedly large, unbudgeted increases from the landowner's perspective.

- It would also provide some social recognition of the fact that many owners are not 'cash-rich' and would prefer to retain the lifestyle benefits offered by the homes, rather than to realise the monetary value.

Stage 2 Feedback

Nil.

Stage 2 Analysis

Proposed Land Tax Deferral Scheme

Stage 2 analysis has identified that the following deferral arrangement would effectively target owners of non-income producing properties with the strongest case for transitional assistance, while keeping the potentially substantial administration costs for the OSR to reasonable levels.

The eligible land must be:

- private and residential in nature (i.e. vacant or commercial land would be ineligible);
- owned by a natural person (i.e. not held within a company or trust); and
- the only taxable land owned (i.e. in addition to their non-taxable PPR).

It is recognised that this latter constraint may seem unreasonable to multiple property owners who may also have holiday homes. However, the OSR has explained that significant administration costs would arise where other land is held, particularly with respect to the options available for paying land tax in a number of instalments.

The deferral option would be available to land owners on the following basis:

- the land owner must not have any other outstanding State tax debt;
- no rent can be derived from the property; and
- an interest rate will be levied on the deferred land tax. This should be set at a level which broadly offsets the interest cost incurred by the Government (from the delay in the receipt of cash payment of land tax) and is broadly reflective of the interest rates levied by financial institutions on 'reverse mortgage' products (see below).

The deferred land tax would become payable when the land (or part of the land) undergoes a change of ownership (i.e. is sold or transferred, including upon the death of an existing owner) or where the land owner no longer meets the conditions under the scheme (such as by deriving rent or other income from the land, or by gaining ownership of other taxable land).

A minimum lead time of 12 months would be required to put the necessary administration arrangements in place, indicating an introduction date of 30 June 2008, for the 2008-09 assessment year.

Data are not currently available to precisely estimate the number of land owners who may be eligible to use the proposed land tax deferral system, although a 'ballpark' estimate by the OSR is 2,000 to 2,500. Many eligible land owners may also prefer to continue to pay their annual land tax bills, rather than accrue a land tax debt.

The only impact on the State budget in accrual terms would be the administration costs (yet to be estimated by the OSR) and any reduction in land tax revenue from the slightly increased risk of non-recovery of land tax liabilities (although, any deferred land tax would be secured by a memorial over the land).

Alternative 'Reverse Mortgage' Products

The proposed land tax deferral arrangement would complement the 'reverse mortgage' products that are now offered by some financial institutions.

A typical reverse mortgage involves the borrower's home being used as a security for a loan, which is provided in the form of a lump sum, a regular stream of payments or a line of credit facility. The principal and interest is generally not repaid until the home is sold.

Whilst the availability of reverse mortgage loans has grown significantly in recent years, these facilities are typically targeted towards asset rich retirees, with the funds generally used to supplement their living income.

- As reverse mortgages are not generally available to those under the age of 55 (albeit the minimum age varies across lenders), they do not provide a financial option for younger land owners who may be having difficulties in meeting their land tax assessments (e.g. those that inherited a 'family' or 'holiday' property).

- Furthermore, many retirees may not be willing to take out reverse mortgages, as the funds accessed may affect pension entitlements and the associated concessions.

- Nevertheless, some land owners that would not qualify for the proposed land tax deferral arrangement (e.g. multiple land owners that are self funded retirees) may still find them an attractive option.

2.4.2 Final Recommendation

A land tax deferral scheme for owners of non-income producing residential property, subject to certain qualifying conditions, should be introduced with effect from 30 June 2008.

Provide a Land Tax Exemption for Private Aged Care Providers

The Interim Report found that arguments for a land tax exemption for private aged care providers had merit in terms of equity vis a vis already exempt not-for-profit providers, and competitiveness vis a vis other States already providing the broader exemption. However, further examination of any precedents that might be set to exempt other commercial businesses, and of any relevant findings from other inquiries, was considered necessary.

Stage 2 Feedback

The Aged Care Association Australia (Western Australia) (ACAA-WA) reiterated its support for a land tax exemption for private aged care facilities, arguing that this was unlikely to set any precedents to exempt other commercial businesses given the unique nature of the residential aged care industry.

- Several individual privately owned aged care operators added their support for an exemption.

ACAA-WA also suggested that the current land tax system contributed to significant financial pressures on some aged care providers and encouraged the provision of aged care services to more affluent residents who were able to pay a higher accommodation bond.

Stage 2 Analysis

Stage 2 analysis has not identified any clear precedent concerns from providing a land tax exemption to private aged care providers. Accredited aged care providers operate within a framework regulated by the Commonwealth's Aged Care Act. The fees they are able to charge their residents and subsidies they receive are standardised, irrespective of the nature of their operations (i.e. private or not-for profit).

- As a result, aged care providers operate under conditions not generally found in other sectors where non-profit entities and commercial entities operate side by side (e.g. education).

The proposed land tax exemption would apply to aged care facilities (including residential care facilities, nursing homes and hostels) accredited under the Aged Care Act.

Introduction of the measure is not expected to result in a significant increase in administrative or compliance costs. It would be feasible to introduce an application process for administering the exemption from 1 July 2007.

The revenue cost of this proposal has been estimated at around $1 million per annum.

2.4.3 Final Recommendation

A land tax exemption should be provided to private aged care facilities.

Introduce a Principal Place of Residence Land Tax Exemption for Individuals Who Have a Future Right to a Property Under the Terms of a Will

The Interim Report did not consider this issue as it was not raised in Stage 1 of the Review. The issue has arisen because a situation has been identified where a beneficiary under a will was prevented from taking ownership of a property until they reached a specified age and, although the beneficiary resided in the property as their principal residence prior to reaching that age, no exemption was available to the executor of the will as trustee.

Stage 2 Feedback

Nil.

Stage 2 Analysis

Providing a land tax exemption in the circumstances outlined above would be consistent with the policy of providing a land tax exemption for a person's PPR. On this basis, it is considered appropriate to introduce an exemption, subject to certain conditions to protect the integrity of the exemption.

The land tax exemption would be provided where private residential property is owned by an executor of a will as trustee and an individual (the beneficiary) resides in the property as their primary residence, but the terms of the will prevent the individual from taking ownership of the property until a certain and definable future date specified in the will.

2.4.4 Final Recommendation

A PPR exemption should be introduced in certain circumstances for individuals who have a future right to a property under the terms of a will.

Removing Taxation Barriers for People with Disabilities

The Interim Report found that an exemption from land tax, and rates and charges concessions, should be provided in circumstances where a property is occupied by an adult child with a disability as their PPR but is held in the parents', grandparents' or siblings' name. This was subsequently introduced as part of the Government's Stage 1 State Tax Review reform measures.

Stage 2 Feedback

Mr Brian O'Hart proposed the removal of the 'no rent or income' condition for accessing the land tax exemption for principal places of residence of disabled persons, citing that this condition would deny the disabled beneficiary rent assistance (as provided by the Commonwealth Government) which assists in easing the financial burden placed on parents of adult children with disabilities.

Stage 2 Analysis

Removal of No Rent or Other Income Condition

Stage 2 analysis also supports the removal of the requirement for no rent or other income to be derived from property occupied by a relative with a disability as their primary residence.

Providing for rent to be charged enables the disabled person to receive rent assistance from the Commonwealth of $100.60 per fortnight. Other organisations that provide accommodation in group homes charge disability support pensioners the maximum rental so that they can apply for maximum rent assistance. These organisations are understood to include Activ Foundation Inc, Nulsen Haven Association Inc, Cerebral Palsy Association of WA, DSC and Westcare Accommodation Services.

Consideration was given to apportioning the land tax exemption/rates and charges concessions in situations where rent was paid by the person with a disability or any other person sharing the accommodation. However, it was considered that any method of apportionment would be difficult to administer and, given the application of this exemption is limited, probably unnecessary.

Adoption of a Wider Definition of Disabled Person for Taxation Purposes

As part of the analysis of the taxation barriers to persons with disabilities, advice was received from the DSC that there are practical difficulties in applying the existing definition of a disabled person that is used for land tax and rates and charges concession purposes (i.e. a person who has a disability as defined in section 3 of the Disability Services Act and is assessed as requiring full time care). In particular, the current definition is difficult to administer for the OSR and the DSC and creates significant problems for applicants in establishing their eligibility for the exemption. This has effectively limited the potentially eligible population to a very small proportion (less than 5%) of people with a disability.

A more appropriate and administratively efficient approach would be to link the definition of a disabled person to the Commonwealth's criteria, which is based on eligibility for a disability support pension.

As the Commonwealth disability support pension is not available to children under 16 years old, special provisions would also need to be made for a disabled beneficiary under that age who occupies the land as their primary residence. In this case, the definition will be for minors who are not orphans (existing provisions for orphans will continue to apply), are severely disabled, live in property owned by a trust of which they are a beneficiary, and whose parents/guardians are eligible to receive Carer Allowance payments from the Commonwealth.

2.4.5 Final Recommendation

The requirement that no rent or other income be derived from property occupied by a relative with a disability as their primary residence, in order for the exemption/concessions to apply, should be removed.

The definition of a disabled person and a disabled beneficiary for the purposes of the exemption/concessions should be widened by the adoption of the Commonwealth criteria for the person to be eligible to receive a disability support pension.

2.5. Payroll Tax

Payroll Tax Consistency Project

The Interim Report supported the examination of areas of inconsistency in the payroll tax base between the States and development of a program for convergence that would reduce compliance costs for business. It was noted that work in this area could be achieved either through a national consistency project or by Western Australia conducting its own examination of areas where greater consistency with other States could be implemented.

Stage 2 Feedback

As part of Stage 2 feedback, the CCIWA and the SBDC reiterated their support for a national payroll tax consistency project.

- The CCIWA noted that there was scope for agreement on ‘straightforward administrative inconsistencies’ between jurisdictions prior to achieving consistency on more complex or technical matters.

- The SBDC expressed caution about ‘any reforms that would lead to greater complexity and increased compliance costs to small business in Western Australia’. The SBDC’s priorities for consistency were contractors, eligible termination payments[13], lodgement dates, grouping provisions (in particular family discretionary trusts) and employee share acquisition schemes.

- The HIA argued that ‘not all inconsistencies between payroll tax jurisdictions should be regarded as requiring amendment and that some of these inconsistencies exist to accommodate business practices or conditions that are peculiar to a particular jurisdiction’.

[13] The SBDC view is that these payments should be removed from the tax base, rather than seeking a consistent treatment of such payments across jurisdictions.

Stage 2 Analysis

In March 2006, State and Territory Treasurers endorsed Western Australia leading a national project to examine the feasibility of achieving consistency in the 'administration' of payroll tax (extending to a variety of 'base' issues). The project does not extend to aspects of payroll tax such as exemption thresholds or rates, where consistency could compromise States' fiscal sovereignty and involve large budget impacts.

The Council of Australian Governments subsequently recognised that standardisation of the 'administration' of payroll tax could form an important part of a new wave of cooperative multi-jurisdictional reforms aimed at reducing the regulatory burden on business and supporting future economic growth. Western Australia's participation will help maintain its competitive position with other States, and internationally.

The current scope of the project is lodgement dates, motor vehicle and accommodation allowances, wages paid for services performed in another jurisdiction, employee share acquisition schemes, superannuation and fringe benefits, and grouping provisions. Identifying the scope for consistency with Commonwealth taxation arrangements where applicable, and recognising the compliance cost implications for single-jurisdiction employers, has been part of this work.

A positive assessment of the extent to which consistency is considered feasible in these areas was provided to State and Territory Treasurers at the 29 March 2007 Ministerial Council meeting. Treasurers agreed to adopt common provisions and definitions in each of the areas within the original scope of the project, and to move towards consistency in a range of additional areas covered in a prior bilateral agreement between New South Wales and Victoria.

2.5.1 Final Recommendation

Western Australia should continue to support the process currently underway to implement increased interstate consistency in the 'administration' of payroll tax.

2.6. Stamp Duty on Insurance

Engage with the Commonwealth on the Treatment of Discretionary Mutual Funds and Direct Offshore Foreign Insurers

The Interim Report noted that broadening the insurance stamp duty base to DMFs and DOFIs should await the outcome of the Commonwealth's consideration of measures to regulate these entities.

Stage 2 Feedback

The Insurance Council of Australia (ICA) supported the extension of insurance duty to DMFs, but also noted the slow progress of the Commonwealth in introducing regulation for

DMFs. The Council suggested that the State Government should proceed ahead of the Commonwealth to extend insurance duty to DMFs.

Stage 2 Analysis

Although DMFs and DOFIs are thought to be providing only a very minor share of insurance services in Western Australia, they may be of increasing importance in the future and (as noted by feedback from the insurance industry) equity would require these entities to be subject to the same taxation treatment as other insurers.

The Commonwealth is currently still considering a number of options for expanding the Insurance Act to the activities of DMFs and DOFIs, including appropriate supervision and data collection by the Australian Prudential Regulation Authority (APRA).

The Commonwealth's actions will largely determine the capability of the OSR to access the required information on the insurance activities of DMFs, which is a necessary step for determining whether it is administratively practical to extend insurance duty to these entities. Although the ICA has advocated that the State move in advance of the final decision of the Commonwealth, it has not addressed the issue of the 'information gap' which currently exists and how this could be ovecome.

Accordingly, it is recommended that the Western Australian Treasurer write to the Commonwealth Treasurer on the importance of progress in this area from a tax reform and administration perspective.

Subject to progress by the Commonwealth, it may then be possible to expand the insurance duty base. Reflecting the DMFs' small share of the insurance market, the revenue implications are estimated to be negligible (DOFIs are already subject to insurance duty, although the liability is imposed on the insured person rather than the insurer).

2.6.1 Final Recommendation

The Treasurer should write to the Commonwealth Treasurer on the proposed treatment of DMFs and the importance of the Commonwealth progressing its reforms in this area. Subject to such reform and appropriate industry consultation, the insurance duty base should be broadened to include DMFs and to rationalise the treatment of DOFIs.

2.7. Stamp Duty on Motor Vehicle Transfers

Introduce a Single Rate for all Heavy Vehicles

The Interim Report noted feedback about potential complexities and inequities resulting from the three different stamp duty scales for different classes of vehicle (light, used heavy and new heavy). The report suggested that this could be further examined in Stage 2, although it was not apparent that concerns were widespread, even for dealers who may trade in more than one of the three classes of vehicle.

Stage 2 Feedback

The CCI advocated the progressive adoption of a flat rate for all vehicles (as currently applies only to new heavy vehicles) as an important taxation reform, citing the benefits of reduced complexity. However, it acknowledged that affordability considerations would prevent setting the flat rate at the current minimum rate for light vehicles of 2.75% (which would ensure that no vehicle licence transfer/registration was worse-off).

In Reference Group feedback, the CCI suggested a flat rate of 4% for all vehicles. On the issue of flat versus sliding scales (as opposed to the issue of different scales for different vehicle types), the Motor Trade Association of Western Australia (MTA) preferred a flat rate of 3.5% for light vehicles. WACOSS supported retaining the sliding scale for light vehicles, but with the Royal Automobile Club (RAC) proposal modified to also provide relief for vehicles below $15,000.

Stage 2 Analysis

Three different rate scales apply for motor vehicle licence transfers, depending on whether the vehicle is an ‘other’ vehicle, used heavy vehicle or new heavy vehicle.

- The ‘other’ vehicle category includes standard passenger vehicles, motor cycles, scooters, caravans, campervans and household trailers.
- Heavy vehicles are defined to be over 4.5 tonnes.

Table 4

MOTOR VEHICLE STAMP DUTY RATE SCALE

Vehicle Value	Other Vehicles (i.e. light vehicles below 4.5 tonnes)	Used Heavy Vehicles	New Heavy Vehicles
$0 - $15,000	2.75% flat	2.5% flat	3.0% flat
$15,000 - $40,000	2.75% – 6.50% [(a)]	2.5% – 5.0% [(b)]	3.0% flat
Over $40,000	6.50% flat	5.0% flat	3.0% flat
Maximum Duty ($400,000 and over)	n.a.	$20,000	$12,000

(a) rate = 2.75% + (V-$15,000)/($40,000-$15,000)x(6.50%-2.75%) where V = value of vehicle.

(b) rate = 2.5% + (V-$15,000)/($40,000-$15,000)x(5.0%-2.5%) where V = value of vehicle.

While the CCI’s proposal for the “progressive” adoption of a flat rate would be more affordable during the transition period, a substantial number of vehicle purchasers would still be worse-off if the rate is set above the current minimum rate for light vehicles of 2.75%.

- Under a flat rate of 4%, around 80% of light vehicle transactions (i.e. those below $23,350) and all new heavy vehicle transactions would become worse-off. Under a flat rate of 3.5% for light vehicles, around 60% (i.e. those below $20,000) would be worse-off.

  - The estimated annual revenue cost of these proposals is around $55 million for a 4% flat rate for all vehicles and around $98 million for a 3.5% rate for light vehicles.

- There would also be considerable added complexity during the transition period, which would need to be managed through the DPI. In effect, a series of annual adjustments to the top/bottom thresholds and minimum/maximum rates of the sliding scales would be required, which may also add to confusion for vehicle purchasers.

Nonetheless, there would be merit in rationalising the two scales for heavy vehicles by extending the flat rate of 3% which applies to heavy vehicles to used vehicles.

- This would involve an estimated revenue loss of around $2 million and remove an anomaly whereby a transfer of a used heavy vehicle valued above $20,000 incurs a greater amount of stamp duty than a new heavy vehicle of the same value.

- While levying a 3% duty rate would make transfers of low value used heavy vehicles below $20,000 worse-off (which account for 60% of transfers of used heavy vehicles), the maximum increase in stamp duty would only be $75 for a vehicle valued at $15,000.

  - The latest available data indicate that the majority of purchases of low value used vehicles are for less than $5,000, where the average increase in duty would be just $12.50 under a 3% rate.

Making the scale for light vehicles more progressive by delivering tax relief to purchases of vehicles below $15,000 is not supported. The stamp duty rate for low value vehicles is already comparable to rates in other States and annual vehicle running costs (licence fee and Compulsory Third Party insurance) are lower than in other States.

- The estimated annual revenue cost of reducing the current minimum rate of duty for light vehicles below $15,000 to 2.0% is around $30 million.

2.7.1 Final Recommendation

The single flat stamp duty rate of 3% for new heavy vehicles should be extended to all used heavy vehicles, in the interest of fairness and simplifying the tax system.

Anti-Avoidance Provision for the Transfer of Motor Vehicles Registered in Other Jurisdictions

The preliminary findings of the Interim Report noted that to the extent that affordability considerations and other priorities prevent a reduction in motor vehicle stamp duty rates, an anti-avoidance provision should be considered to mitigate the potential practice of licensing a vehicle in another State, and subsequently having the vehicle re-licensed in Western Australia.

Stage 2 Feedback

The CCI would prefer reductions in the current high rates of duty and suggested that further evidence of widespread avoidance should be required before any anti-avoidance measure was introduced.

Stage 2 Analysis

The current arrangements in each State require a vehicle to have a 'garaging' address in the jurisdiction for registration and stamp duty purposes. However, the legitimacy of a reported garaging address is difficult to enforce or verify, especially for light vehicles. This creates opportunities for purchasing and initially registering vehicles in one jurisdiction (to take advantage of lower stamp duty costs), and then transferring the registration to Western Australia (which would not incur duty). Some businesses which operate in more than one State may also have a commercial incentive to register their garaging addresses in one jurisdiction, even though the vehicles are substantially used in other jurisdictions.

No evidence of vehicles being purchased and licensed in another State to avoid duty in Western Australia was provided in feedback. However, anecdotal reports continue to be received by the Government from individual dealers about a loss of customers to dealers who operate in other States where lower stamp duty rates apply for high value vehicles.

The recommended motor vehicle duty scale (see Chapter 1 on Tax Relief Priorities) targets relief at medium value vehicles and would continue to levy a 6.5% duty rate on vehicles above a $50,000 value threshold. As this would not reduce any existing incentive to purchase and register relatively valuable vehicles in other States, it would be prudent to have an anti-avoidance provision which could be applied should significant cases of interstate registration of vehicles be brought to the OSR's attention in the future.

2.7.2 Final Recommendation

An anti-avoidance provision is required that will address the concern relating to the registration of vehicles in other States, for use in Western Australia, to assist with the protection of Western Australia's revenue base.

Imposition of Motor Vehicle Transfer Duty – New Vehicles

The preliminary finding of the Interim Report was that the list price regime has improved the transparency and certainty of the stamp duty treatment of new vehicles. However, the operation of the regime should be examined further in Stage 2 to confirm that it is the most appropriate model for imposing stamp duty.

The preliminary finding also noted that further consultation should be held with the motor trades industry on options for improving the operation of the list price regime, including the option to include a kilometre test for determining whether a demonstration or loan vehicle is new or used for stamp duty purposes.

Stage 2 Feedback

The SBDC supports further work on an alternative system as part of Stage 2, possibly based on actual price paid. The MTA had also suggested that consideration should be given to basing the stamp duty calculation on the actual price paid for the vehicle.

In addition, the MTA had earlier raised difficulties with the exemption that exists for dealers for demonstration vehicles and trading stock, and with the suggested addition of a kilometre test to assist in the classification of a vehicle as new or used.

Stage 2 Analysis

The current list price regime for the calculation of stamp duty on new vehicles was developed in consultation with the MTA and aimed to provide clarity and reduce dealers' compliance costs associated with the previous market value regime. This issue was discussed in the Motor Vehicle Taxes chapter of the Interim Report.

An alternative basis for calculating stamp duty suggested in the Stage 2 feedback was the actual price paid for the vehicle. However, as identified in the Interim Report, significant avoidance opportunities could arise through the under reporting of purchase prices, particularly in relation to non-arms length transactions.

While non-arms length transactions could be dealt with by imposing duty on the market value in such cases, this would reintroduce the complexities of determining what is market value. Further, this would not deal with artificial reductions in purchase prices for other transactions. On this basis, a move away from the list price regime to a purchase price regime could lead to a significant undermining of the stamp duty base.

Nonetheless, the OSR is currently examining the application of the list price regime in circumstances where multiple price lists from manufacturers, importers or principal distributors exist that are restricted to a temporary period, or to a particular class of purchaser, or are directed at a particular segment of the market. This examination has the potential to deal, at least in part, with a number of industry concerns by providing some flexibility in the current list price regime to incorporate these types of multiple variations in the standard list price for a new vehicle for stamp duty purposes.

However, a proliferation of price lists also has the potential to cause compliance problems for dealers and other purchasers who may become confused about which price should be applied. The fact that vehicles purchased under temporary arrangements must be licensed during the associated promotion period to apply the promotional price may also add a level of complexity. Considerable paperwork may also need to be kept by dealers to satisfy OSR (in subsequent audits) that the correct market value has been applied

It was further suggested in the Interim Report that the list price regime could be improved through the introduction of a kilometre test to assist in determining whether a vehicle is new or used for stamp duty purposes. However, the MTA did not support this measure on the basis of the compliance costs it would create for business. Consequently, an alternative measure is now proposed, under which the period for classing a car as 'new' would be amended from three months to two months, to help reduce the incidence of cars (such as demonstrators) being assessed as ‘new’ for stamp duty purposes even where they have been driven for significant distances prior to sale.

The MTA’s Stage 2 feedback also raised concerns with the compliance costs and what was referred to as “double dipping” associated with the dealers’ exemption for vehicles used as trading stock. This issue was discussed in the Motor Vehicles Taxes chapter of the Interim Report and the associated Technical Appendices. On the basis of that analysis, changes to the exemption were not considered necessary.

The MTA has also suggested that dealers be given a six month “safe harbour” period for vehicles within a dealership before stamp duty is payable on trading stock. However, this would have no regard for the use of the vehicle during that period and is inconsistent with the policy underlying the exemption (which is to apply an exemption to vehicles acquired solely for resale or demonstration purposes). It would mean that vehicles used as parts delivery vehicles, courtesy buses, dedicated loan vehicles and vehicles dedicated for the personal use of the dealer principals, staff and their families would be able to access the exemption.

Such an approach would also lead to inequities, as dealers would gain a competitive advantage over other service providers and repairers that are not able to access similar exemptions. Furthermore, it could lead to avoidance of stamp duty through dealers using vehicles exempted under the car dealership arrangements for use by family and friends.

On this basis, the suggested change to the dealers’ exemption is not supported.

2.7.3 Final Recommendation

No change to the list price basis of calculating duty for motor vehicles or to the dealers’ exemption is recommended at this time. However, the period for determining a new car should be reduced to two months and further examination of the appropriate treatment of multiple list prices will be undertaken by the OSR.

2.8. Tax Administration

Introduce a General Anti-Avoidance Provision into the Stamp Act.

The Interim Report found that a general anti-avoidance provision would help deter blatant stamp duty avoidance. It was recommended that an approach that recognises and seeks to address concerns about the uncertainty that may be created by the introduction of such a provision be further examined as part of Stage 2.

Stage 2 Feedback

The ICAA and Law Society expressed concerns about the uncertainty that may arise from a general anti-avoidance provision.

Stage 2 Analysis

The need for a general anti-avoidance provision for stamp duty was discussed in the ‘General Anti-Avoidance Provision’ section of the Technical Appendices to the Interim Report.

While the Stage 2 feedback included some concerns about the adoption of a general anti-avoidance provision, such a provision is considered necessary to deter blatant duty avoidance for the reasons outlined in the Technical Appendices. However, it is recognised that the inclusion of such a provision could be perceived as creating uncertainty for taxpayers. It is therefore intended that the general anti-avoidance provision be designed to minimise such uncertainty where possible.

For example, it is intended that the Commissioner will only be able to use the provision to disregard a scheme that has duty avoidance as its sole or dominant purpose. This differs from the regimes that apply in some other jurisdictions which allow the Commissioner to disregard a scheme where any purpose of that scheme is tax avoidance. While the “any purpose” test would make the provision more robust from a revenue protection point of view, it is recognised that this approach broadens the scope of the provision considerably. Further, the ATO relies on a “sole or dominant purpose” test for the operation of the anti-avoidance provision in Part IVA of the income tax legislation. Adopting the same test allows taxpayers to rely on common law principles that have evolved through the use of Part IVA of the Income Tax Assessment Act, thereby providing greater certainty for taxpayers.

Further, it is proposed that the factors that the Commissioner would consider in determining a person’s purpose in entering into a tax avoidance scheme should be clearly specified in the legislation. This would provide a degree of guidance to taxpayers as to the circumstances in which the provision would be applied.

However, while it is acknowledged that the introduction of a general anti-avoidance provision may reduce certainty for some taxpayers, it should also be recognised that the provision is designed to apply only in the case of artificial, blatant or contrived schemes. It is considered that taxpayers and their advisers that are involved in such schemes are fully aware that contrived arrangements are being entered into to avoid the duty payable on a transaction. Such uncertainty in these situations is unlikely to exist.

Moreover, while significant evidence exists regarding the ongoing need for a general anti-avoidance provision to protect the revenue, no evidence has been provided to substantiate the negative impact of uncertainty being claimed as an undesirable consequence of such a provision. This is notwithstanding the longstanding operation of such a provision at the Commonwealth level, and in some State jurisdictions.

2.8.1 Final Recommendation

The introduction of a general anti-avoidance provision in relation to stamp duty is required to protect the State’s duty base and to mitigate the use of avoidance schemes. This measure should be progressed as a part of the Stamp Act rewrite.

Provide the Commissioner of State Revenue with the Power to Make a Compromise Assessment in Certain Circumstances

Providing the Commissioner with the power to make a compromise assessment would assist both taxpayers and the OSR settle certain complex tax cases, and should be further considered in Stage 2 of the Review.

Stage 2 Feedback

The Law Society indicated support for the proposal.

Stage 2 Analysis

Stage 2 analysis supports the introduction of a compromise assessment making power for the reasons outlined in the State Tax Review Technical Appendices.

Should this be supported by the Government, legislation to provide the Commissioner with a compromise assessment making power should be included in the TAA. This power, together with the general administration of the taxation Acts, will provide the Commissioner with the ability to negotiate compromise assessment settlements with taxpayers, prior to and post assessment.

It is considered that taxpayers will benefit from the Commissioner having an ability to make a compromise assessment, as it should reduce compliance costs in cases where the Commissioner is currently obliged to pursue information beyond a point where it is cost effective to do so in order to make as accurate an assessment of the duty liability as possible. Both the Commissioner and taxpayers should also benefit from the power to make compromise assessments as it is expected there would be fewer disputes that would proceed to the SAT.

To ensure this power is not used in circumstances not supported by the Commissioner, conditions should be included in the amending legislation to provide for the Commissioner's decision on whether to enter into a compromise assessment agreement to be a non-reviewable decision. Moreover, it should provide that the Commissioner cannot be compelled by any means to make a compromise assessment agreement. Furthermore, once the taxpayer and the Commissioner have entered into a compromise assessment agreement, no further objection or review rights will be available to the taxpayer for that assessment.

A compromise assessment or reassessment made with the taxpayer's agreement should also be a non-reviewable decision. That is, there should be no process of formal objection or review available to the taxpayer, as the compromise assessment has been decided with the agreement of the taxpayer. The taxpayer, as part of the agreement between the Commissioner and himself/herself, should renounce his/her rights available under the TAA to a reassessment, objection or review of the assessment made as a result of the agreement or any other rights of judicial review. The Commissioner should likewise be bound by this agreement unless he was misled by the taxpayer in the lead up to the making of the agreement.

After appropriate further consultation with external organisations on the operation of this power, and on commencement of the legislation, a Commissioner's practice should be published containing the Commissioner's view on the circumstances when a compromise assessment would be appropriate and, also, when a compromise assessment will not be considered.

2.8.2 Final Recommendation

A compromise assessment power should be introduced, subject to certain conditions.

As the compromise assessment power requires the Commissioner to have the general administration of the taxation Acts, amendments to provide the general administration of those Acts to the Commissioner are also supported.

Reinstate the Onus of Proof on the Taxpayer for Appeals Under the Taxation Administration Act

The Interim Report noted that a high priority should be attached to reinstating the onus of proof on taxpayers for appeals under the TAA, subject to further consultation with the SAT in Stage 2 of the Review.

Stage 2 Feedback

The ICAA and the Law Society did not agree that onus of proof should be reversed in the SAT.

Stage 2 Analysis

Section 37(2) of the TAA provides that the onus of establishing that an assessment or decision to which an objection relates is invalid or incorrect, lies with the taxpayer. As the Tribunal is to stand in the shoes of the original decision-maker, that is, in the place of the Commissioner when determining an objection, there is an inconsistency as there is no statutory requirement for the taxpayer to bear the onus of proof in a review proceeding before the Tribunal.

It is noted that the courts have generally accepted that the reason for placing the burden of proving a claim on the taxpayer in relation to taxation appeals/reviews is that any matter or information relevant to establishing that an assessment is incorrect is exclusively within the knowledge of the taxpayer and outside the knowledge of the Commissioner. Also, as the Commissioner is not a party to the transaction that is the subject of the assessment, the taxpayer is in the best position to provide all details of the matters that are being reviewed.

Discussions with the Tribunal President and the OSR on this matter are ongoing, including with respect to other mechanisms by which the perceived problems caused by the current arrangements can be addressed.

2.8.3 Final Recommendation

The Commissioner of State Revenue should prepare a report to the Treasurer recommending whether the onus of proof should be reinstated on the taxpayer when the SAT is reviewing an objection decision of the Commissioner, with the report to reflect the views of the SAT President and the other options available.

Amend the Taxation Administration Act to Enable the Commissioner of State Revenue to Place a Memorial on Mining Tenements and Clarify Memorials for Increasing Amounts of Land Tax

The Interim Report recommended that the Commissioner should have the capacity to place a memorial on mining tenements (as well as other "land"), on grounds of revenue protection and administration efficiency and that amendments to the TAA to facilitate this should be considered further in Stage 2 of the Review.

The Interim Report also recommended that amendments should be made to the TAA to clarify that a single memorial should suffice for both the original amount of land tax that remains unpaid and for subsequent liabilities incurred after the lodgement of the original memorial.

Stage 2 Feedback

Nil.

Stage 2 Analysis

Stage 2 analysis supports both proposals put forward in the State Tax Review Interim Report. Where there is a risk to revenue, the Commissioner should have the capacity to secure the debt with a memorial over a mining tenement, as is the case with other types of "land". Consultation is continuing with various organisations with respect to how such proposals could be implemented. The implementation may include amendments to the *Mining Act 1978* to provide for memorials to be notified on the register of mining tenements.

In relation to memorials lodged in respect of a land tax liability, the practice of the Commissioner has been to lodge one memorial in respect of a property to secure the outstanding amount, and where the amount accumulates as subsequent years' land tax remains unpaid, the Commissioner will refuse to lift the memorial until the outstanding tax liability is paid in full. The practice should be clarified in the TAA.

2.8.4 Final Recommendation

The TAA (and other legislation as required) should be amended to allow the Commissioner to place a memorial over mining tenements and to clarify that a single memorial should suffice for both the original amount of land tax that remains unpaid and for subsequent liabilities.

Introduce Legislative Measures to Support Verbal Approval for Extensions of Time to Pay Land Tax of One Month or Less

The preliminary finding of the Interim Report was that amendments should be made to the TAA and SAT Regulations to ensure that the current process of providing verbal approval of requests for extensions of time of one month or less to pay land tax can continue.

Stage 2 Feedback

Nil.

Stage 2 Analysis

The issues surrounding extensions of time to pay in relation to land tax were detailed in the 'Tax Administration – Other Issues' Chapter of the Technical Appendices to the Interim Report.

There has been no feedback received in Stage 2 in relation on this issue. On this basis, the preliminary finding is supported and it is recommended that the necessary amendments be made to the TAA and SAT Regulations so that the current practice of providing verbal approval to taxpayers who request an extension of time of no greater than one month to pay land tax can continue.

2.8.5 Final Recommendation

The TAA and the SAT regulations should be amended to allow verbal approval of requests for extensions of time of one month or less to pay land tax.

Introduce Measures to Improve the Administration of Small Tax Credits

The preliminary finding of the Interim Report was that further consideration be given to mechanisms to improve the administration and refund of small amounts to taxpayers when they cannot be located, including through the use of the Unclaimed Money Act and the writing off of credits less than $5.

Stage 2 Feedback

Nil.

Stage 2 Analysis

The issues relating to the administration of small tax credits were discussed in the Tax Administration Chapter of the Interim Report.

Stage 2 analysis has confirmed the need to implement a mechanism to improve the administration of small tax credits. The OSR will continue to examine the most appropriate mechanism to achieve the necessary balance between the rights of taxpayers and the expectation that the revenue laws are administered in a cost effective manner.

2.8.6 Final Recommendation

A mechanism should be introduced to improve the administration and refund of small tax credits to taxpayers, subject to further consideration of the most appropriate mechanism.

2.9. Other Issues

Abolish the On-Road Diesel Subsidy

The Interim Report noted that any decision to abolish the on-road diesel subsidy will need to be negotiated with the Commonwealth.

Stage 2 Feedback

Nil.

Stage 2 Analysis

When introduced in the wake of a High Court decision in 1997, the on-road diesel subsidy was intended to offset the (minor) price impact of replacing a State franchise fee on fuel with a Commonwealth excise surcharge. However, it is uncertain if consumers benefit from the subsidy, reflecting its very low level (0.71 cents per litre) and the difficulty of ensuring the benefit is 'passed-on' by fuel retailers.

Abolishing the subsidy would free up an additional $8 million per annum for funding taxation reform in priority areas, such as reducing conveyance duty rates.

It recommended that the Treasurer write to the Commonwealth Treasurer (who insisted that the subsidy be maintained when the GST replaced the general franchise fee safety net arrangements in 2000), seeking his agreement to the abolition of the subsidy and providing a commitment to use the resulting budgetary savings for the funding of taxation reform.

2.9.1 Final Recommendation

The Treasurer should write to the Commonwealth Treasurer to seek agreement to the abolition of the on-road diesel subsidy from 1 July 2008, with the expenditure savings to be used to fund taxation reform.

3. Taxation Reform Options Requiring Further Examination

3.1. Metropolitan Region Improvement Tax

Incorporating the Metropolitan Region Improvement Tax into the Land Tax Scale

The Interim Report found that further consideration, in consultation with the WAPC and the DPI, should be given to incorporating the MRIT[14] into the land tax scale and funding the WAPC solely from general revenue.

Stage 2 Feedback

The CCI and CPA supported removing the current hypothecation arrangements and incorporating MRIT into the land tax scale, including as part of broader reform towards the adoption of a single land tax rate. Burella Pty Ltd did not support absorbing MRIT into the land tax scale if the scale remains progressive.

The SBDC supported the complete abolition of MRIT with no absorption into the land tax scale.

WACOSS did not support abolition of the MRIT.

Stage 2 Analysis

Whilst some preliminary work in Stage 2 of the Review has been undertaken by the DTF, including modelling of how landowners would be affected by immediate absorption (see below), further investigation is necessary to determine the strength of the case for unwinding the current hypothecation arrangements that exist under the MRIT.

- The greater reform priority should be on reducing the progressivity of the land tax scale, which would ease the process of absorbing the single rate MRIT over the longer-term. This could be achieved by reductions in the upper land tax rates and/or pushing out the mid and upper land value thresholds.

- A review of the hypothecation arrangements should include an examination of the history of expenditure on projects under the Metropolitan Region Town Planning

[14] MRIT is levied upon the unimproved value of all land that is liable for land tax and located within the boundaries of the metropolitan region. MRIT collections are hypothecated to a trust fund for expenditure by the WAPC on road reserves, parks and recreation areas.

Scheme, including processes surrounding funding prioritisation and accountability measures. This will require the close cooperation of WAPC and would need to take into account any efficiencies in planning and acquisition of land, having regard for the Government's wider metropolitan planning and development policies. Some consideration could also be given to approaches in other States that do not have MRIT-type arrangements.

Modelling the Impact of Absorption of MRIT into the Land Tax Scale

Another important issue is the extent to which absorbing the MRIT into the land tax scale on a revenue neutral basis would shift the incidence from metropolitan properties to regional properties (including holiday homes). Based on 2006-07 data[15], 28,247 regional land owners (24.6% of total taxpayers) will account for 13.0% (or $59 million) of total modelled revenue of $451 million[16] (for land tax and MRIT) in 2006-07, while 87,340 metropolitan land owners (75.4% of total taxpayers) will account for 87.0% (or $392 million) of total revenue.

Persons or entities who only pay land tax (and no MRIT) are generally classified as 'regional' land owners, while those paying both land tax and MRIT are generally classified as 'metropolitan' land owners.[17] However, a large number of 'regional' landowners would in fact reside in the metropolitan region (e.g. a person who lives in Perth but has a country holiday property). Hence care is required not to equate the concepts of land ownership and location of residence.

15 Available modelling data are based on 2006 assessment year land owners who had land holdings in the previous 2005 assessment year. It does not include new land owners.

16 Modelling of the impact of changes in the land tax and MRIT scales is done on a gross revenue basis for existing landowners (i.e. does not allow for refunds, discounts for early payments, estimates for new landowners or other policy changes). These factors account for the $11 million difference between estimated total land tax and MRIT revenue of $462 million (as published in the 2006-07 mid year review) and the modelled total revenue of $451 million.

17 An MRIT payer could also own land in a regional area and pay land tax on their total aggregated land holding (both regional and metropolitan). While this level of detailed data are not available, it is not considered to have a material impact on the modelling results.

Table 5

REGIONAL AND METROPOLITAN LANDOWNERS – NUMBER AND SHARE OF TOTAL REVENUE (LAND TAX AND MRIT) UNDER CURRENT ARRANGEMENTS

Land Value ($'000)	Regional	% of Tax Payers	% of Revenue	Metro	% of Tax Payers	% of Revenue	Total	% of Tax Payers	% of Revenue
150-200	**8,167**	7.1%	0.1%	**19,664**	17.0%	1.3%	**27,831**	24.0%	1.3%
200-300	**9,057**	7.8%	0.3%	**23,796**	20.6%	2.7%	**32,853**	28.4%	3.0%
300-400	**4,037**	3.5%	0.3%	**14,212**	12.3%	2.5%	**18,249**	15.8%	2.8%
400-500	**2,349**	2.0%	0.3%	**8,446**	7.3%	2.4%	**10,795**	9.3%	2.7%
500-600	**1,355**	1.2%	0.3%	**5,140**	4.4%	2.1%	**6,495**	5.6%	2.4%
600-700	**783**	0.7%	0.3%	**3,440**	3.0%	1.9%	**4,223**	3.6%	2.1%
700-800	**609**	0.5%	0.3%	**2,517**	2.2%	1.7%	**3,126**	2.7%	2.0%
800-900	**437**	0.4%	0.2%	**1,854**	1.6%	1.5%	**2,291**	2.0%	1.7%
900-1,000	**281**	0.2%	0.2%	**1,517**	1.3%	1.7%	**1,798**	1.6%	1.9%
1,000-2,000	**990**	0.9%	2.3%	**4,702**	4.1%	12.6%	**5,692**	4.9%	14.9%
2,000-5,000	**278**	0.2%	2.5%	**1,557**	1.3%	16.0%	**1,835**	1.6%	18.5%
5,000-10,000	**52**	0.0%	1.5%	**311**	0.3%	10.0%	**363**	0.3%	11.6%
Over 10,000	**32**	0.0%	4.4%	**184**	0.2%	30.7%	**216**	0.2%	35.0%
Total	**28,427**	24.6%	13.0%	**87,340**	75.4%	87.0%	**115,767**	100.0%	100.0%

If the current flat rate (non-progressive) MRIT (0.15%) were absorbed into the current highly progressive land tax scale and the exemption threshold left unchanged at $150,000, an across the board increase in land tax rates of around 17% would be required to ensure a revenue neutral outcome.

Table 6

CURRENT AND MODELLED LAND TAX SCALES

2006-07 Scale			Modelled Scale		
Value Thresholds	**Base Amount**	**Tax Rate**	**Value Thresholds**	**Base Amount**	**Tax Rate**
$150,000	$0	0.15%	$150,000	$0	0.18%
$390,000	$360	0.45%	$390,000	$432	0.53%
$875,000	$2,543	1.62%	$875,000	$3,003	1.89%
$2,000,000	$20,768	2.30%	$2,000,000	$24,265	2.69%
$5,000,000	$89,768	2.50%	$5,000,000	$104,965	2.92%

Under this ‘immediate absorption’ scenario, the share of total revenue paid by regional land owners would increase from 13.0% to 15.2%, representing a net redistribution of around $10 million of the land tax and MRIT burden away metropolitan land owners toward regional land owners.

- While this effect could be phased-in by gradually absorbing the MRIT over a number of years, the end result would be the same redistribution of the tax burden between regional and metropolitan land owners.

Table 7

REGIONAL AND METROPOLITAN LANDOWNERS – SHARE OF TOTAL REVENUE (LAND TAX AND MRIT) UNDER REVENUE NEUTRAL ABSORPTION OF MRIT

Land Value	2006-07 Scale		Absorbed Scale		Difference	
($'000)	Regional	Metro	Regional	Metro	Regional	Metro
150-200	0.1%	1.3%	0.1%	0.2%	0.0%	-1.1%
200-300	0.3%	2.7%	0.3%	0.9%	0.1%	-1.7%
300-400	0.3%	2.5%	0.3%	1.1%	0.1%	-1.4%
400-500	0.3%	2.4%	0.4%	1.4%	0.1%	-1.0%
500-600	0.3%	2.1%	0.4%	1.5%	0.1%	-0.7%
600-700	0.3%	1.9%	0.3%	1.4%	0.0%	-0.5%
700-800	0.3%	1.7%	0.3%	1.3%	0.0%	-0.4%
800-900	0.2%	1.5%	0.3%	1.2%	0.0%	-0.3%
900-1,000	0.2%	1.7%	0.3%	1.5%	0.0%	-0.2%
1,000-2,000	2.3%	12.6%	2.7%	12.5%	0.4%	-0.1%
2,000-5,000	2.5%	16.0%	2.9%	17.1%	0.4%	1.1%
5,000-10,000	1.5%	10.0%	1.8%	10.9%	0.3%	0.9%
Over 10,000	4.4%	30.7%	5.1%	33.9%	0.7%	3.2%
Total	13.0%	87.0%	15.2%	84.8%	2.2%	-2.2%

For the 28,427 regional land owners, 26,275 would incur an increase in total tax (ranging from an average increase of around 22.0% in the low value ranges to around 17.0% for high value land holdings, while 2,125 would experience no change (as their land tax liability remains below the minimum $20 charge for issuing an assessment).

For the 87,340 metropolitan land owners, 83,220 with land holdings below $2 million would be better off (with reductions in tax bills of up to 71% in the low value ranges), while 4,120 would be worse off (mainly in the value ranges above $2 million).

- The increase in the tax burden for metropolitan land owners above $2 million mainly reflects that the single MRIT rate of 0.15% would be replaced by a higher increases in land tax rates in the high value property ranges (for example, the top marginal rate would increase from 2.5% to 2.92% for properties above $5 million).
- Taken in isolation, the increase in the tax burden for metropolitan land owners above $2 million (from 56.7% to 61.9%) is more than double the total increase for regional land owners. However, this is more than offset by the reduced burden for other metropolitan taxpayers.

Table 8

REGIONAL AND METROPOLITAN LANDOWNERS – AVERAGE TOTAL TAX BILLS (LAND TAX AND MRIT) UNDER CURRENT ARRANGEMENTS AND REVENUE NEUTRAL ABSORPTION OF MRIT

Land Value	2006-07 Scale		Absorbed Scale		Difference - %	
($'000)	Regional	Metro	Regional	Metro	Regional	Metro
150-200	$34	$289	$41	$41	22.0%	-85.7%
200-300	$145	$505	$174	$175	20.0%	-65.3%
300-400	$298	$800	$358	$359	20.0%	-55.1%
400-500	$631	$1,259	$751	$743	19.0%	-41.0%
500-600	$1,087	$1,847	$1,288	$1,275	18.5%	-31.0%
600-700	$1,550	$2,441	$1,834	$1,810	18.3%	-25.8%
700-800	$2,011	$3,031	$2,377	$2,343	18.2%	-22.7%
800-900	$2,510	$3,658	$2,963	$2,925	18.1%	-20.0%
900-1,000	$3,829	$5,070	$4,503	$4,419	17.6%	-12.8%
1,000-2,000	$10,519	$12,088	$12,309	$11,966	17.0%	-1.0%
2,000-5,000	$40,294	$46,268	$47,102	$49,395	16.9%	6.8%
5,000-10,000	$132,848	$145,237	$155,283	$158,406	16.9%	9.1%
Over 10,000	$612,794	$750,551	$715,859	$830,466	16.8%	10.6%
Total	$2,058	$4,486	$2,412	$4,378	17.2%	-2.4%

Notably, however, this particular absorption scenario runs counter to the objective of flattening the land tax scale to reduce inherent bracket creep and inequities associates with ‘aggregation’ but not ‘grouping’. Accordingly, further modelling would be needed of other absorption options if related recommendations in this report are accepted.

3.1.1 Final Recommendation

Further examination of the hypothecation arrangements under the MRIT, including options for absorbing MRIT into the land tax scale over the longer-term, should be undertaken in consultation with the WAPC and DPI.

3.2. Land Tax

Provide a Land Tax Concession for the Conservation and Protection of Land

The Interim Report found that a strong case did not exist for further land tax concessions for the conservation and protection of land, and in particular, extending the current land tax exemption on covenanted land to ‘conservation zoned’ land.

However, a final position on this issue could still be informed by work being undertaken by a Working Group chaired by the DEC on the removal of financial disincentives for the conservation of privately owned land, including development of a framework for ensuring a consistent and permanent conservation zoning by local government.

Stage 2 Feedback

Nil.

Stage 2 Analysis

The Working Group is yet to finalise its study.

3.2.1 Final Recommendation

The Department of Treasury and Finance should continue to liaise with the DEC on its investigation of financial disincentives to conservation activities.

3.3. Perth Parking Levy

Abolish Perth Parking Levy

The Interim Report found that an independent review of the effectiveness of the PPL may be warranted in view of concerns expressed by the business community.

Stage 2 Feedback

While there was broad agreement that the PPL should be independently reviewed, the CCI continued to advocate its immediate abolition on the basis of its impact on businesses in the Central Business District, questionable effectiveness in improving environmental outcomes and reduction in budget flexibility from the hypothecation arrangements. Mr Graham Laurance continued to support an exemption for churches (with retrospective application to 1999), citing the small potential revenue cost and the anomaly of churches being exempt from various other State and Commonwealth taxes but not the PPL.

Stage 2 Analysis

It is not clear that the PPL is effective in achieving its principal objective of promoting a balanced transport system for gaining access to central Perth that limits traffic congestion and improves air quality. Business groups continue to argue that behaviour is not responsive to the levy, which represents a nuisance tax.

The current PPL rate ($169 per annum for a car bay, or just $0.46 cents per day) is lower than similar levies in Sydney (up to $900 per annum) and Melbourne (up to $800 per annum). While significantly increasing the PPL may assist in achieving its core purpose, it would exacerbate affordability for non-commercial entities such as churches (although concessions could be considered for these groups).

A full assessment of the impact of the PPL would involve resources beyond those available for this Review. An independent review is considered to be the most appropriate review process, particularly as there are a variety of stakeholders within Government (including the DPI) as well as the community.

A review would need to take adequate account of the benefits of the PPL-funded Central Area Transit and Free Transit Zone arrangements (which could alternatively be funded from the general budget) in reducing congestion in the central Perth area and have regard for the wider public transportation and environmental policies of the Government.

3.3.1 Final Recommendation

The Government should commission an independent review of the PPL.

3.4. Other Issues

Review of Tax Exemptions and Concessions (including Means Testing)

The Interim Report noted that a full review of State tax concessions and exemptions would be valuable but was a major project in its own right and could not be completed in the timeframe for the final report (with existing resources).

The Interim Report did not address the general issue of means testing, although it noted that the additional administration costs and complexity were likely to be considerable if means testing (i.e. income and/or assets test) were to be introduced for the motor vehicle licence fee family concession. It also noted that the future ageing of the population posed the risk of an escalation in the cost of non-means tested State concessions.

Stage 2 Feedback

WACOSS advocated that tax reform and relief be set within a framework of progressive taxation and means testing of concessions. This included means testing the first home buyer stamp duty exemption (on the basis that the current property price thresholds are a poor alternative for targeting the exemption) and motor vehicle licence fees.

The UDIA suggested that Stage 2 of the Review should make a provision for a full review of concessions and exemptions so as to assess the full impact of State taxes on the community.

The CCI said a commitment to undertake a review of State taxation concessions and exemptions should be recommended by the State Tax Review.

Stage 2 Analysis

Inconsistencies highlighted in the course of the State Tax Review included the provision of specific exemptions for some taxpayers but not other similar categories of taxpayers (e.g. exemptions for not-for-profit hospitals but not certain private hospitals who effectively compete with them), or exemptions for taxpayers from some State taxes but not others (e.g. religious bodies are exempt from most State taxes but not the PPL, and universities are exempt from most State taxes but not payroll tax).

The Government has previously given a commitment to a review of State Government social concessions (i.e. concessions mainly for pensioners and seniors relating to a range of utility charges and local government rates). The need to consider the State tax system in the context of other taxes, charges and social welfare arrangements, as noted in the terms of reference for the State Tax Review, raises the possibility of extending any review of social concessions to State tax concessions.

The practicality of means testing State tax concessions, which has clear in-principle equity advantages, could be tested as part of any review of concessions generally. This could include a full analysis of the administration costs of means testing processes for the OSR, and whether in all the circumstances the use of price or value thresholds (such as for the first home buyer stamp duty exemption) represents a reasonable means of targeting concessions for State governments that have no direct role in the taxation of income.

- The administration issues to be examined would include the extent to which external parties (such as conveyancers and financial institutions) would no longer be in a position to accurately assess the taxation liabilities of their customers (as they would not necessarily have a requirement to verify income as part of their day to day businesses operations). This may substantially erode the administrative efficiencies of the current self-assessment and automated processes for State taxes.

While the DTF would have an important and resource-intensive contribution to make (including the provision of costing information and advice on administration issues for State taxation concessions), it is not considered the appropriate agency to head any wide review of concessions which are aimed at achieving social objectives. It should also be recognised that such a review may just as likely identify instances where concessions should be removed or scaled back as it is to identify instances where concessions should be extended or increased.

- This may particularly be the case if tax exemptions which are aimed at assisting industries were included in the review. The most efficient and transparent means of providing Government assistance to industry (assuming any assistance is warranted by market failure, public benefits etc) is considered to be through direct grants rather than through the tax system.

3.4.1 Final Recommendation

The Government should consider extending any future review of social concessions to State tax concessions, including an examination of whether better and more cost effective targeting could be achieved by means testing, but having regard for the significant resources required to undertake such a review and associated cost/benefit issues.

Avoidance Disclosure Requirement

The Interim Report found that in addition to a general anti-avoidance provision, there would be benefits from introducing a ‘notification regime’ in relation to duty avoidance schemes to help detect and deter such schemes, and ensure a level playing field for all taxpayers. The

Interim Report recommended that the matter should be further considered as part of Stage 2 (including through examination of similar regimes elsewhere).

Stage 2 Feedback

The Law Society opposed the introduction of a disclosure regime for avoidance schemes, whilst the ICAA had concerns over the obligations that may arise for advisers as a result of introducing such a regime.

Stage 2 Analysis

The 'Disclosure Rules' section of the Technical Appendices to the Interim Report provided a discussion of the benefits that a disclosure regime would provide in terms of detecting tax avoidance, and gave an overview of the arrangements that apply in the United Kingdom.

The introduction of a disclosure regime in the Stamp Act would ensure that the Commissioner is aware of high value transactions involving Western Australian property that are occurring. However, an appropriate balance needs to be struck between protecting the State's revenue, and the compliance burden placed on taxpayers.

Consideration would need to be given to the transactions in respect of which notification is required, when notification is required, the information required in the notification and who is required to notify. In addition, penalties for failure to notify the Commissioner would also need to be considered.

3.4.2 Final Recommendation

An avoidance disclosure requirement in relation to stamp duty should be considered to protect the State's duty base and to mitigate the use of avoidance schemes.

4. Taxation Reform Proposals Not Supported

4.1. Stamp Duty on Conveyances

Lodgement and Payment Provisions

There were a number of different aspects of the stamp duty lodgement and payment provisions that were addressed in the preliminary findings of the Interim Report.

Those preliminary findings supported the OSR continuing its education strategy for the conditional contract provisions and investigating whether more flexible penalty provisions are desirable for genuine lodgement errors.

The findings also supported the extension of the definition of an "eligible conditional contract" to all transactions that are liable for conveyance duty, including agreements to pay lease premiums. This finding did not include the extension to put and call option provisions, which was specifically not supported.

For reasons outlined in the Interim Report, the preliminary findings did not support:

- a proposal for stamp duty liabilities to only arise at settlement, in light of avoidance and recovery concerns. However, consultation with industry (including financiers) was suggested as a way of alleviating the financial burden on property purchasers;
- a proposal to align the conditional contract provisions with time periods that apply commercially to due diligence and approval periods;
- a proposal to replace the conditional contract provisions with a requirement for all contracts (whether conditional or not) to be lodged for assessment within two months of execution (but with the stamp duty payment date linked to completion of the contract) to simplify the current arrangements;
- proposals generally for substantially extending the payment period for eligible conditional contracts; and
- the proposal for put and call option arrangements to be treated as a form of conditional contract.

Stage 2 Feedback

The Australian Institute of Conveyancers Western Australian Division (AICWA)

- Considered that the issues raised in the Interim Report can be resolved.
- Reiterated that the liability for the payment of duty should arise on the date that settlement takes place, except where a period of more than 12 months from acceptance of the offer has elapsed. Where settlement has not taken place (for any reason) within 12 months from contracting, the liable party should lodge the contract for assessment by the Commissioner.
- Suggested that a discretionary period set by the Commissioner should be allowed for off-the-plan conditional contracts, subdivisional conditional contracts, farming land conditional contracts and mining tenement conditional contracts to allow an appropriate extension of time for payment to be granted by the Commissioner.
- Were unconvinced that there will be an increase in problems associated where an on-sale of an interest in property occurs as a result of the simplification proposed.

UDIA

- Were of the view that the Interim Report does not provide any details to illustrate why revenue is at risk.
- Considered the current extension of two years is a reflection of the amount of time to obtain title and changes to the time for payment and extending that period further should not be seen as a risk to revenue.
- Recommended that the payment period for eligible subdivision conditional contracts should be extended to four years to reflect average time taken to obtain planning, environmental, financing, infrastructure and regulatory approvals (original submission sought an extension to three years).
- Does not support preliminary finding in relation to put and call options and reiterates its recommendation for put and call options to be identified separately as a type of conditional contract.

HIA

- Considered that the proposal regarding put and call options should be reconsidered in Stage 2.
- Does not agree that put and call options are ‘identical’ to a contract for the sale of property.

Stage 2 Analysis

The further submissions received in relation to the stamp duty lodgement and payment provisions have disagreed with the preliminary findings and suggested that the issues raised should be re-examined as part of Stage 2 of the State Tax Review.

Stamp duty liability to arise at date of settlement

In the case of the AICWA submission, further information was provided to support the need for re-examination of the conditional contract provisions. This information provided actual "case studies" of circumstances where conveyancers had encountered problems with interpreting the legislation.

This information has been used as the basis of further discussions with representatives from the AICWA, both in the context of improving the targeting of existing customer education programs run by the OSR, and to further explore the reasons why the AICWA's suggestion for alternative lodgement and payment provisions was not supported.

The information provided and the subsequent discussions have been valuable in terms of being able to better target education programs. In addition, these discussions have provided the impetus behind a review that is currently underway as to the various penalty tax remission Commissioner's practices and the development of an interactive web based tool that will assist conveyancers to determine the type of contract being considered.

However, neither the information nor discussions have dealt with the fundamental question of mitigating the revenue risk that the suggested AICWA proposal entails. Instead, the AICWA has called on the OSR to prove that a greater number of those seeking to avoid duty have been caught under the "new" more complicated system than under the old system of lodgement in three months and payment in three months.

Conducting such an exercise is problematic, if not impossible, in part because direct comparisons cannot be made of like for like. Even were such a comparison possible, any result would do little to ease the concerns about the avoidance opportunities that will be created by the AICWA's proposed requirement that suggests the liability on a contract should not arise until the date that settlement takes place (or 12 months from execution). It is not hard to envisage a range of scheme designs that could give effective control of a property being obtained (with the purchaser able to have security of being able to enforce settlement) without the duty liability trigger of settlement being pulled.

There is also the appropriate risk management in respect of sub-sales, a real feature of the investment property market. The OSR has recently been conducting audits in relation to a number of completed off-the-plan complexes. In one particular high value complex, a quarter of the original purchasers had on-sold their unit to another purchaser prior to the complex being completed. While the current requirement to lodge the contracts two months after execution is by no means an ironclad evasion prevention measure, the lodgement requirement provides a far greater level of revenue protection than would be available if the AICWA's suggested alternative were agreed to.

The AICWA response clarified the procedures surrounding a transfer by direction and outlined the suggested actions taken by conveyancers. The OSR considers that these procedures, and the outlined actions in relation to compliance advice on an on-sale that has presumably already occurred, are not adequate to protect the revenue. While not perfect, the current lodgement provisions try to strike an appropriate balance between recognising commercial reality of certain property types, which usually involved deferred settlement, while nonetheless ensuring that the original contract would be in the possession of the Commissioner, and the transfer will not be endorsed or released unless duty is paid on the on-sale.

The alternative stamp duty lodgement and payment proposal contained in the further AICWA submission is not supported as a course of action the Government should pursue. While it would remove certain complexity for conveyancers, it fails to adequately balance these competing concerns. Moreover, it is considered that the perceived complexity can be mitigated through a dual approach of targeted industry education and a reconsidered penalty remission policy.

Extension of payment period for subdivision conditional contracts

The UDIA has reiterated its original submission seeking an extension of the current two year payment period on subdivision conditional contracts.

It has noted that if the payment period was aligned with the average period taken to obtain planning, environmental, financing, infrastructure and regulatory approvals, there would be no need for purchasers to seek refunds of duty paid on contracts that do not proceed, and that compliance costs for taxpayers and the OSR would be reduced.

However, it is considered that savings in compliance costs associated with this suggestion is likely to be minimal. Under the current Stamp Act requirements, where a sale does not proceed and that document has been lodged with the Commissioner (which is likely to be the case as the UDIA proposal does not alter the two month lodgement period) the same information would be required to reassess the contract with no duty under section 20 of the Stamp Act as is currently required to process the refund of the duty. The only cost reduction involved in this suggestion is the administration cost involved in processing of the refund by the OSR.

The UDIA also noted that it can currently take up to four years to obtain the necessary approvals and to obtain title, and that other legislation provided up to four years for certain approvals to be submitted.

The existing lodgement and payment arrangements were put in place taking into account the "commercial reality" identified during industry consultation only two years ago. While no statistical information has been provided by the UDIA (either in its original submission or the response to the Interim Report) that indicates that the average period for these approvals to be obtained has doubled, anecdotal evidence suggests time frames have certainly increased.

The Government has recently sought to address the cause of increased approval timeframes with a number of measures, including the appointment of a land release coordinator to expedite major subdivision applications and review planning conditions, which have delayed land releases.

It is therefore considered that an extension of the two year payment period for subdivision conditional contracts should not be supported at this time.

Treatment of put and call options

The UDIA and the HIA did not support the preliminary finding of the Interim Report in relation to put and call options. Both groups reiterated the need for their original submissions to be reconsidered.

The UDIA has suggested that put and call options should be treated like any other conditional contract. It states that the use of put and call options serve a different commercial purpose to a contract of sale and have different commercial imperatives. However, these purposes and imperatives have not been explained and it is therefore difficult to examine the merit of the suggestion put forward.

The HIA has suggested that builders who use a put and call option to secure land to build a dwelling, and then find a consumer to purchase the house and land package, should be exempted from the put and call option provisions. The HIA indicates that put and call options are used as a "threat" that motivates builders to locate a buyer in a timely manner, otherwise the builder will be forced to purchase the block of land.

Despite the HIA's disagreement with provisions on the basis that it considers the legal approach to be flawed, it should be recognised that the arrangements as described are in substance considered to be sub-sales of the property in question. The provisions were specifically designed to capture these types of arrangements. As such, an exemption from the operation of the provisions is not supported.

4.1.1 Final Recommendation

The preliminary findings of the Interim Report should be supported.

Exploration Licences

The preliminary finding of the Interim Report was that mining and exploration tenements should continue to be defined as land for the purposes of the 'land-rich' stamp duty provisions, as holders of these tenements have certain proprietary rights in relation to the land, and favourable tax treatment would otherwise apply to the acquiring of an interest in tenements through indirect means.

From an economic perspective, it was noted that the proposal may be conducive to increased mining exploration in Western Australia. However, regulatory reforms and Commonwealth tax incentives were considered more likely to be effective in this regard. On balance, it was concluded that it would be more efficient and equitable to keep the conveyance duty base broad, facilitating lower rates.

Stage 2 Feedback

The CME indicated that it did not support the propositions outlined in the 'Land-rich Provisions' section of the Technical Appendices to the Interim Report in relation to this issue. This was based on its analysis of the rights conferred on the holder of an exploration licence, the view that an exploration licence is not an interest in land (in a common law context), and that excluding exploration licences from the definition of land would enhance the competitiveness, equity and efficiency of the taxation system.

Stage 2 Analysis

While it may be arguable that exploration licences are not an interest in land in a common law context, such licences have historically been included within the land base for stamp duty purposes in Western Australia. They have many similarities with other types of tenements that are part of the land base and avoidance opportunities would be created if exploration licences were excluded from the base.

In this regard, the Stage 2 feedback has failed to recognise or address the potential avoidance opportunity that would arise if this measure were adopted. There would be a significant incentive for a purchaser to attribute higher values to property that is not dutiable (such as exploration licences) and lower values to other dutiable property (such as mining and production tenements) to reduce the stamp duty payable on a transaction. Substantiating and verifying these values would be extremely difficult given the speculative nature and volatile values of exploration licences, and would impose considerable compliance and administration costs on both taxpayers and the OSR. In effect, this measure would introduce similar complexities into the landholder regime that have been targeted as shortcomings in the existing high compliance cost land-rich regime.

4.1.2 Final Recommendation

Exploration licences should continue to be specifically taxable in the same manner as land for stamp duty purposes, both in relation to direct transfers and indirectly as part of the proposed landholder regime.

Abolish Stamp Duty on Real Non-Residential Conveyances

While the Interim Report found that stamp duty on conveyances of non-residential real property is one of the most inefficient State taxes, its complete abolition was not considered a high priority on competitiveness grounds, nor was it considered affordable. Furthermore, there were various concerns about distinguishing residential from non-residential conveyances for stamp duty purposes.

Stage 2 Feedback

The ICAA and CPA continued to support the abolition and/or phasing out of stamp duty on conveyances of non-residential real property in the medium to long-term.

Whilst there was some support for abolition from Reference Group members, most acknowledged the affordability constraints and gave higher priority to general reductions in conveyance duty rates or increases in thresholds.

Stage 2 Analysis

As noted in Chapter 1 on ‘Priorities for Taxation Relief’, economic modelling has tended to rank non-residential conveyance duty as worse than residential conveyance duty, focusing on the impact on business investment. However, it is not clear that this takes into account the difficult-to-measure welfare losses from residential stamp duty distorting household choices of whether to rent or buy, renovate, or move to a more suitable home in a more preferred location (including choices of older couples who may prefer to ‘downsize’ their homes).

- Economically, residential as well as non-residential conveyance duty could be damaging, by raising the barrier to skilled population migration to Western Australia.

- The interstate competitiveness assessment in the Interim Report remains pertinent, given that no jurisdiction has as yet committed to the abolition of stamp duty on conveyances of non-residential real property even in the long-term, as do the concerns about definitional issues and associated complexities.

Distortions and inequities in the current non-residential conveyance duty regime result in part from the inconsistent treatment of indirect acquisitions of property, such as through the acquisition of the shares or units in land-holding companies and trusts. Chapter 2 includes a major reform proposal (the ‘landholder’ regime) to deal with this issue.

Stamp duty on conveyances of non-residential property is estimated to account for up to 40% of total conveyance duty revenue, depending on the incidence of major one-off commercial transactions. Of this, about 83% is estimated to come from conveyances of real property (e.g. shopping centres, office buildings, factories, mining tenements, farms etc), with the remainder coming from conveyances of non-real property (e.g. business goodwill, intellectual property etc) which the Government has committed to remove from the duty base from 1 July 2010.

- The abolition of stamp duty on non-residential conveyances would therefore significantly limit the scope for tax relief in other areas, including general reductions in conveyance duty that would also benefit homebuyers.

In a letter to the Deputy Premier and Treasurer of 30 March 2006 (following the announcement of a schedule by Western Australia to abolish the other remaining stamp duties listed for review in the GST Agreement), the Federal Treasurer indicated *inter alia* that he would not remove the abolition of stamp duty on business conveyances of real property from further consideration. However, it is not apparent from the State Tax Review that this option for State tax relief and reform is presently in the best interests of, or the preferred option of, the Western Australian community (compared to other options).

4.1.3 Final Recommendation

An across-the-board reduction in conveyance duty rates and increases in thresholds, funded from both the Budget surplus and a broadening of the stamp duty base in respect of indirect acquisitions of business property (and other possible revenue-positive tax reform measures), should be preferred to the full abolition of stamp duty on conveyances of real business property.

Impose Conveyance Duty on GST-Exclusive Prices

The Interim Report found that further analysis of administration and compliance issues would be required if any changes to a GST-exclusive basis for conveyance duty were to be contemplated.

Stage 2 Feedback

The Stage 2 feedback received on this issue indicates support for a GST-exclusive approach to conveyance duty, subject to the resolution of any administrative issues. The feedback indicated that the administrative issues detailed in the Technical Appendices to the Interim Report could be resolved and such an approach would be more equitable.

Stage 2 Analysis

Specific details on how the administrative issues could be resolved were not provided in the Stage 2 feedback. In the absence of such information, there would be significant work involved in verifying that the issues could be resolved and to fully understand the compliance and administrative costs associated with the proposal. This research would take considerable time to perform and could not be done prior to the finalisation of this report.

Adopting a GST-exclusive base would involve a revenue loss of around $30 million in 2007-08. However, it would only benefit new residential property purchasers and vacant land purchasers, as other purchases (such as sales of businesses and established residential property) are generally GST free. The alternative approach of a general conveyance duty rate reduction would benefit a much greater number of taxpayers.

- In the case of established residential property, the impact of the GST (and other tax changes introduced in 2000) on the cost of new residences was expected to flow-through to the price of established homes and is implicit in the purchase price (this was the original rationale for introducing the FHOG Scheme for purchases of both new and established residences). However, there is no way of separately identifying the influence of the GST on the prices of established residences.

4.1.4 Final Recommendation

An overall rate reduction has a higher priority than excluding the GST component of the purchase price when calculating the stamp duty payable. However, further work could be undertaken on the administrative and compliance aspects of this proposal should the Government wish to pursue this matter in the longer term.

Stamp Duty Concession for House and Land Packages

The Interim Report found that introducing a concession for house and land packages may close one 'inequity' vis a vis contract-built homes but would open up another vis a vis established homes, and that data constraints were preventing a costing of any concession. Further consideration was to be subject to feedback received in Stage 2.

Stage 2 Feedback

The HIA supported the introduction of the concession and reiterated its view that a builder's land holding is directly analogous to a motor vehicle dealer's trading stock (which is exempt from stamp duty). The HIA also argued that competitive market pressures would see builders pass on savings to home buyers if a concession was introduced.

Stage 2 Analysis

The housing industry's preference for stamp duty to be levied on land value only (as in the case of contract built housing) would clearly favour purchasers of house and land packages over established houses.

Alternatively, it could be argued that land purchased by builders for developing and selling house/land packages constitutes 'trading stock' and should be subject to a similar stamp duty exemption as is available to motor vehicle dealers, to avoid the end consumer paying stamp duty on the land component twice (i.e. including the amount 'passed on' by the builder).

Differences in the analogy with motor vehicle dealers are that land is an appreciating asset and the product sold to the end consumer is not the same as that purchased by the builder/dealer. Exempting the builder from stamp duty on the land (or rebating stamp duty to the end consumer) would raise more complex administrative and definitional issues.

- It is not clear if the definition of a builder/developer of house and land packages should extend to 'ad hoc' developers who may occasionally purchase and build on vacant blocks, or to persons who subdivide their existing home block and then build and sell.

- If the concession were provided to the builder/developer, equity (vis a vis investors) and revenue protection would demand a claw-back where the house was not built or the house and land package not sold to the final consumer within a reasonable time.

- If a rebate were provided to the purchaser of the house and land package, there may be an issue in establishing the value of the initial land purchase and stamp duty paid by the builder/developer (particularly if multiple lots had been acquired).

Although the current arrangements involve some 'cascading' of stamp duty, this effect is common to most State taxes and is generally tackled by keeping the tax rates down rather than by 'input tax credit' mechanisms.

The cost of the 'trading stock' concession option has now been estimated at $40 million per annum, based on ABS data on housing finance commitments for newly constructed housing. This would significantly reduce the affordability for the Government of implementing general reductions in conveyance duty rates.

Notably, the house and land package concession proposal is understood to have also been raised in other States by industry groups in recent years, but has not been supported by any government.

4.1.5 Final Recommendation

A general reduction in conveyance duty rates should be preferred to a concession for house and land packages.

Stamp Duty Concession for Sustainable Housing

The Interim Report noted that there do not appear to be strong arguments for providing targeted assistance through the tax system.

Stage 2 Feedback

Nil.

Stage 2 Analysis

As there was no further feedback on this issue in Stage 2, no further analysis has been undertaken. It is considered that social and environmental objectives are best addressed through direct assistance rather than through tax concessions.

4.1.6 Final Recommendation

There should be no specific taxation concession for 'sustainable housing'.

Mortgage Backed Security Exemption

Submission no.3 proposed the inclusion of a mortgage backed security exemption into the Western Australian Stamp Act. The DTF made a request for further information for this proposal to be evaluated as part of the Review.

Stage 2 Feedback

No further input was received.

Stage 2 Analysis

At this stage no additional information has been received to facilitate further examination.

4.1.7 Final Recommendation

No changes to the Stamp Act in respect of mortgage backed securities are proposed at this time.

Exemption for Associations that Transfer from the *Associations Incorporation Act 1987* to Another Act

A review of the *Associations Incorporation Act 1987* (the Act) was initiated by the Court Government in 1996. On 30 November 2006, the Minister for Consumer and Employment Protection tabled the *Associations Incorporation Bill 2006* in State Parliament as a 'Green Bill' for public comment by 30 April 2007. The Green Bill is a working draft of possible changes to the Act and is not the Government's final position.

The Green Bill contains provisions that relate to the transfer of the regulation of associations from the Act to another law where their activities may be better regulated (such as the Commonwealth's Corporations Act), if they have large scale commercial activities. These provisions include both voluntary and mandatory transfers of associations (the latter would be at the direction of the Commissioner for Consumer Protection). Such transfers may give rise to stamp duty liabilities, including mandatory transfers that may not be the preference of the association.

This matter was not considered in the Interim Report, which was completed before the release of the Green Bill.

Stage 2 Feedback

The Commissioner for Consumer Protection has proposed that a stamp duty exemption be provided for 'conveyances' of assets that may effectively result from the regulation of an association transferring to another Act.

Stage 2 Analysis

This matter cannot be progressed ahead of further development of the *Associations Incorporation Bill 2006,* which will not occur within the timeframe for this Review or the expected finalisation of the Stamp Act rewrite.

Further information from the Department of Consumer and Employment Protection will be required on the expected frequency and ownership implications of transfers of associations, including the extent of any underlying change in the beneficial ownership of assets. Where there are changes in the beneficial ownership of assets, it may be inequitable to provide an exemption for associations if the same types of changes would be taxable for other entities (especially if commercial benefits are involved).

As there are currently over 15,000 incorporated associations in Western Australia, there is likely to be a large variation in the circumstances and commercial implications of transfers to another Act. Accordingly, the Government may need to consider an alternative approach of targeted relief rather than providing a general exemption in legislation.

4.1.8 Final Recommendation

Any further consideration of any stamp duty relief for associations transferring from the Associations Incorporation Act to another Act should be deferred pending public comments on and refinement of the *Associations Incorporation Bill 2006*.

4.2. Land Tax

Abolition of Aggregation

The Interim Report did not support abolishing the land tax aggregation provisions, primarily on the grounds of equity and revenue protection. It proposed a new anti-avoidance provision to capture artificial ownership structures designed to defeat the aggregation provisions, with the additional revenue to be reinvested in general threshold increases or rate reductions (this was subsequently introduced in the 2006-07 Budget).

Stage 2 Feedback

Apart from the desirability of ‘flattening’ the land tax scale, Burella Pty Ltd (property development and leasing) rejected nearly all of the findings of the Interim Report on this issue and questioned the quality of the analysis. It continued to advocate the abolition of aggregation for land tax purposes, citing concerns about the impact of high effective tax rates on multiple property owners and their inability to fully pass on land tax costs to tenants.

Burella indicated that a single rate of land tax with a low threshold would partly alleviate its concerns, and queried why the changes to the scale in the 2006-07 Budget (higher thresholds for low/medium property values) were inconsistent with the Interim Report findings. The changes, it argued, exacerbated avoidance incentives, and the reinvestment of anti-avoidance dollars provided little benefit to multiple property owners not engaged in avoidance.

- Burella also advocated an examination of the existing land tax scale in Queensland, or introduction of concessionary tax rates for owners of more than one property.

Similar concerns over aggregation were expressed by some Reference Group members who are involved in the property industry, although it was acknowledged that affordability and the impact on low value landowners (if land tax rates were increased to ensure revenue neutrality) count against abolishing aggregation as a practical reform option. Flattening the land tax scale (by reducing marginal rates and/or increasing thresholds for higher value property holdings) was considered to be a more viable priority for reform.

Stage 2 Analysis

The aggregation provisions (which are essentially the same in Western Australia as in the other States) contribute to a fairer and more equitable tax system to the extent that they ensure land holdings of the same value are subject to the same land tax liabilities. This point was generally not directly addressed in Stage 2 feedback.

However, as highlighted by Burella, the aggregation provisions can be avoided by the same owner using different legal entities for holding individual properties. This option is particularly available to larger property owners whose land tax savings may offset the accounting, administration and registration costs of establishing multiple entities.

If these avoidance practices were effectively addressed, there would be a more equitable distribution of the tax burden for other land owners, including other multiple land owners who use one legal entity. While the anti-avoidance provision in the 2006-07 Budget went part way, a full solution would require the introduction of ‘grouping’ provisions which combine the land holdings of entities with the same beneficial ownership, in a similar manner that grouping provisions operate for payroll tax.

Unfortunately, the benefits of such an arrangement may be outweighed by the associated administration and compliance costs (see discussion in Chapter 2.4).

Apart from losing the equity benefits outlined above, abolition of the aggregation provisions is estimated to cost approximately $130 million per year. Accordingly, the Interim Report found that concerns about the impact of aggregation on land tax bills should be addressed by reducing the progressivity of the scale over time.

- Reducing the level of progressivity in the scale could be achieved by lowering the land tax rates at the upper thresholds and or pushing out the land value ranges in the middle to upper tax brackets. Options for reducing the progressivity of the scale are further investigated and modelled in Chapter 2.4.

- Whilst the introduction of a single land tax rate was considered desirable in this regard, it would involve substantial revenue costs or redistribution of the land tax burden from taxpayers with larger, higher value land holdings towards smaller land owners.

  - Based on the revised land valuation data for 2006-07, a single marginal tax rate of around 0.94% on the value of land above the current threshold of $150,000 would ensure a revenue neutral outcome.

  - However, as this would be a higher effective tax rate for property holdings valued below $1.5 million, around 96% of land tax payers (or around 111,500 out of a total of 115,767) would be worse-off.

Table 9 below shows the land tax scales in Queensland, which Burella recommended be examined as a possible means of reducing the incentive to avoid aggregation.

Table 9

QUEENSLAND LAND TAX 2006-07 SCALES

Resident Individuals			Companies and Trusts		
Unimproved Value of Land $'000	**Base Tax at Threshold**	**Marginal Rate on Excess**	**Unimproved Value of Land $'000**	**Base Tax at Threshold**	**Marginal Rate on Excess**
0 – 500	Nil	Nil	0 – 300	Nil	Nil
500 – 750	$500	0.70%	300 – 750	$1,500	1.50%
750 – 1,250	$2,250	1.45%	750 – 1,250	$8,250	1.65%
1,250 – 2,000	$9,500	1.50%	1,250 – 2,000	$16,500	1.80%
2,000 – 3,000	$20,750	1.675%	Over 2,000	1.50% on Full Value	
Over 3,000	1.25% on Full Value				

Some of the distinguishing characteristics of the land tax arrangements in Queensland are:

- land tax is levied on the full value of land (i.e. with no exemption threshold) above the maximum threshold of each scale, at a flat rate equal to the effective rate on a property value at the maximum threshold. Beyond this point the scale is no longer progressive;

- a more complex system, with two separate land tax scales (both still highly progressive up to the maximum threshold) - one for 'resident individuals' (i.e. natural persons) and another for 'companies and trusts'[18]. Implementing this scale in Western Australia could be considered contrary to the objective of simplifying the tax system and would increase administration costs;

- higher rates of land tax are levied on companies and trusts than resident individuals. The rationale provided by Queensland for this approach is that commercial entities are likely to have a greater capacity to pay land tax than individuals, given their ability to pass land tax increases onto their tenants; and

- both scales involve much higher minimum thresholds ($500,000 for individual residents and $300,000 for companies and trusts) than in Western Australia, which would redistribute the land tax burden to a smaller number of landowners, albeit this would be marginal given the small amount of revenue that is collected in these low value ranges in Western Australia.

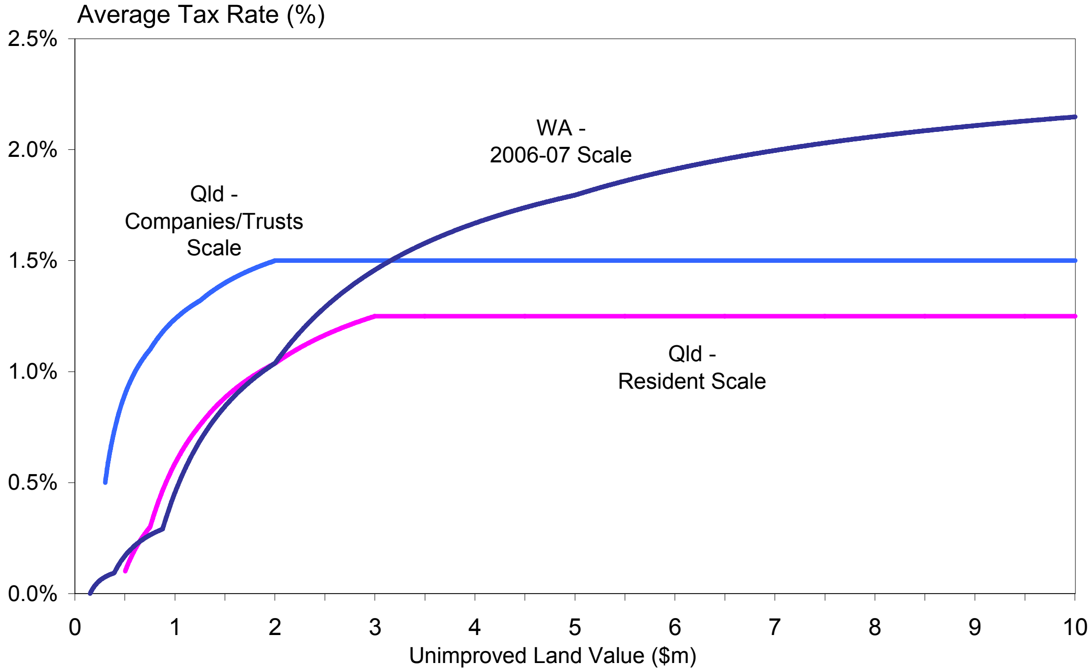
Figure 3 illustrates how Queensland's scales are flat after the top thresholds have been reached and therefore less progressive than Western Australia's rate scale overall. The Queensland scales are one example of how scales can be flattened, another being to increase

[18] This scale also applies to 'absentees' (i.e. persons who do not reside in Australia).

the maximum thresholds or reduce the top marginal tax rates. Either would be consistent with the Interim Report's findings on reforming the land tax scale over time.

Figure 7

COMPARISON OF WESTERN AUSTRALIAN AND QUEENSLAND 2006-07 LAND TAX SCALES



Other proposals in Stage 2 feedback for the provision of land tax concessions or rate reductions for owners of two or more properties would create inequities and narrow the current land tax base, leading to an incidence shift onto single land owners. Data are not available to further analyse these proposals.

4.2.1 Final Recommendation

The aggregation provisions should be retained. However, concerns over the impact of progressivity on owners of multiple taxable properties (including avoidance incentives and associated problems in the absence of grouping provisions) should be addressed by flattening the land tax scale over time. Alternative ways of achieving this are modelled in Chapter 2.4.

Increase the Land Tax Concession for Caravan Parks to 100%

The Interim Report found that any further consideration of increasing the caravan park land tax concession should wait until the outcome of a Ministerial taskforce investigation of the use of specific tourism zoning to reduce land tax impacts on low-key tourist operations.

Stage 2 Feedback

Tourism WA and the Caravan Industry Association WA (CIAWA) reiterated their support for increasing the current 50% concession to a full exemption. The following points were made in support of their arguments.

- The implementation of the Taskforce recommendations could take 'several years', during which some caravan parks will be forced to close (as a result of escalating land tax costs).
- The 50% concession had failed to prevent a number of caravan park closures since its introduction.
- There have been clear benefits in South Australia and Victoria from their 100% exemption, where caravan park numbers have remained steady or only marginally decreased.

Stage 2 Analysis

In September 2006, the Tourism Planning Taskforce (established by the Minister for Planning and Infrastructure and chaired by her Parliamentary Secretary) released its final report, which included a number of recommendations on the issue of land tax on tourist accommodation. Relevant recommendations included the following.

> *That the Treasurer and the Minister for Tourism be advised that the taskforce considers that the current land tax framework is considered to have a negative impact on a considerable number of low key tourist accommodation sites, and as such work against the State Government's objectives for tourism development and the retention of a variety of tourist accommodation.*
>
> *That the land tax system be examined, with the objective of providing tax relief for identified strategic tourism sites, including low-cost tourist accommodation facilities…*

The taskforce nonetheless also provided evidence that the introduction of tourism zoning (including specific zones for caravan park and camping grounds, cabin/chalet parks and tourist resorts) would reduce land valuations and correspondingly reduce land tax assessments. This approach would have the merit of ensuring that land values and land tax are reflective of the purported 'low cost' nature of the existing accommodation/facilities.

- However, the taskforce also suggested that a revised zoning scheme might have limited take-up, as some low cost tourism operators may be averse to forgoing the benefits of capital growth (from land use remaining unrestricted) in return for lower land tax.

As the taskforce report was largely prepared over 2002 and 2003, it does not take into account the introduction (from 1 July 2005) of a 50% land tax concession for caravan parks.

Nor does the taskforce report appear to address the impact on the incentive to develop land to the use valued highest by the community, or the equity implications of providing a land tax exemption for a narrow category of non-primary commercial properties (which effectively shifts the tax burden onto other taxpayers).

In relation to the CIAWA submission, it is unclear if the relevant caravan parks would have remained open if a 100% land tax exemption had been available. Other commercial considerations may have been the determining factor, including the opportunity cost associated with the escalating value of the land for alternative uses.

- Media reports have suggested that higher local government rates and other charges have also contributed to financial pressures on caravan parks in the South West region.

An option may be to offer operators the opportunity to defer their land tax (subject to interest accumulating and payment of the deferred amounts being triggered by the sale of the property), as is proposed in this Report for owners of holiday homes. However, the income tax deductibility of land tax and existing 50% concession distinguishes tourism operators from holiday home owners.

On balance, the existing 50% land tax concession is considered to strike the right balance between the social objective of encouraging the retention of 'affordable' tourism accommodation in increasingly sought after regions of the State, and encouraging regional economic development through optimal land use (while also maintaining the integrity of the land tax system).

- Furthermore, a decision by an operator to decline an opportunity to adopt a special tourism zoning (if offered by a local government authority) would be a commercial one, and would not seem to defray the benefits of introducing such a scheme.

The cost of extending the 50% concession to a full exemption has been estimated at around $1 million per annum.

4.2.2 Final Recommendation

The land tax concession for caravan park operators should be kept at 50%.

Remove Five-year Claw Back of Land Tax when Land is Subdivided

The Interim Report recommended that a stronger, evidence-backed case for relaxing claw back arrangements for the development of rural land would be required in Stage 2 of the Review to justify the proposal.

Stage 2 Feedback

The UDIA submitted that:

- retrospective imposition of land tax is inequitable in circumstances where the use of land qualified for an exemption or concession, and the entity that becomes liable for the tax is not the entity that previously received the benefit of the exemption or concession; and

- where the land is acquired on the open market, all developers will have had equal opportunity to acquire the land, and exemptions and concessions claimed by the previous owner or available after acquisition based on the continued use of the land for exempt purposes, do not provide one developer with a competitive advantage over another.

Stage 2 Analysis

The claw back provisions for land tax on newly subdivided rural business land, private residential property and dwelling park land are intended to deter schemes that exploit the concessions available for such land. This is most apparent where a developer acquires land always with the intent of developing the land, but continues to use the land for an exempt purpose (e.g. primary production) for a number of years.

- However, it also recognises that the previous owner may have held the intention for some time to realise the development value of the land, but continued to use the land for an exempt purpose pending further appreciation of the value of the land for development purposes. An owner and potential developer could reach an agreement about the future sale of the land.

While it is true that a developer would not have control of the use of land prior to its purchase, it could be expected that the developer would factor into the negotiations for the purchase of the land, the cost of the land tax claw back. The incidence of the land tax claw back would thus be shared with the previously exempt owner through the agreed purchase price, as a private commercial matter between the two parties.

On the other hand, at least some of the cost of the land tax claw back may be passed on by the developer to the final purchasers of the subdivided lots. This could be seen as reducing the affordability of lots at a time when Western Australia's property boom has already resulted in a large decline in housing affordability (although the impact of the land tax claw back would be small relative to that of other factors constraining land supply).

The Western Australian claw back arrangements appear to be unique. While Queensland has a somewhat similar provision, it only applies where the same entity that subdivides the land had previously claimed land tax exemptions for using the land for tax-exempt purposes. Therefore, if a developer purchases land and immediately subdivides it, there would be no claw back.

The direct cost of removing the claw back is estimated to be less than $1 million per annum. However, the OSR considers that this could rise significantly if the Queensland approach to the claw back provisions were adopted. It is also unclear if the benefit would flow through to the final purchasers of subdivided lots.

4.2.3 Final Recommendation

While acknowledging the possible inequity in the specific circumstances quoted by the UDIA, the removal of the five year land tax claw back arrangements for the subdivision of land that was recently exempt or concessionally taxed in the hands of the previous owner should not be a priority.

Reintroduce the Land Tax Developers' Concession

The Interim Report noted that quantitative evidence of adverse impacts on land stocks or prices, or on contractors, from the 'seasonal' influence of land tax on the creation of subdivided lots would be necessary before considering any reinstatement of the land developers' concession. The concession had only recently been abolished (in 2003) as part of the BTR package (with the savings used to fund certain changes to the land tax scale).

Stage 2 Feedback

The HIA and the UDIA continue to support the reintroduction of the land tax developers' concession. However, their feedback did not include the quantitative evidence sought, although the HIA offered to assist in finding relevant data.

The UDIA argued that DPI statistics clearly show that in the past two years lodgement of final plans for subdivisions are held over by developers from 1 June to after 30 June, but this did not address the key policy issue.

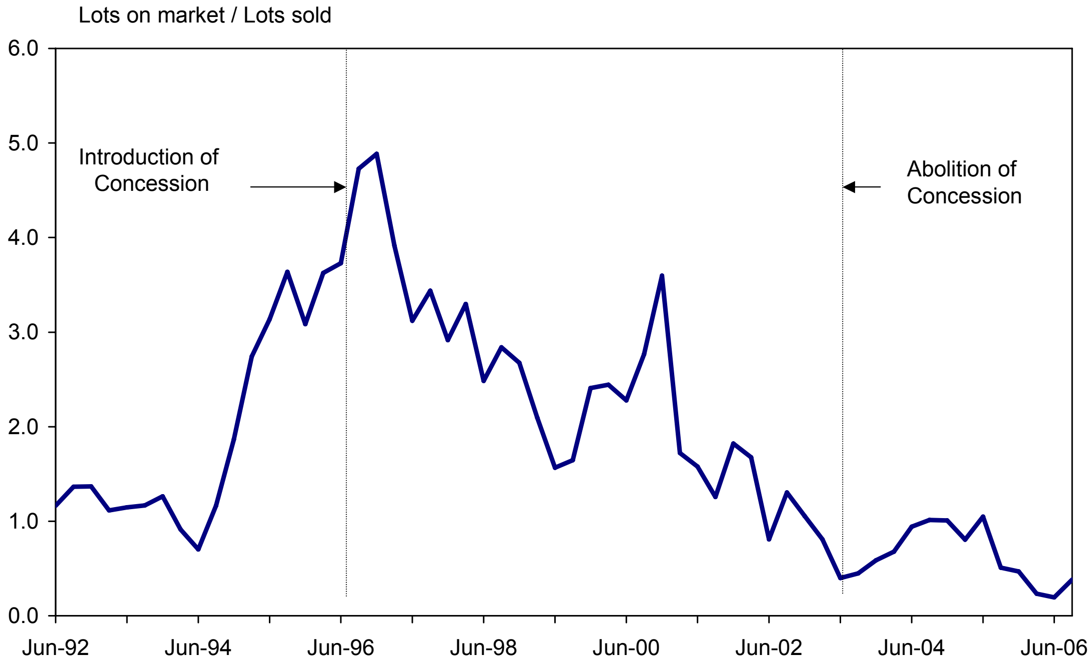
Stage 2 Analysis

Under the developers' concession, which was in place from 1996 to 2003, land tax was levied on the 'en globo' (i.e. non-subdivided) value of lots owned by developers at 30 June. The primary purpose of the concession was to help bolster the buffer stock of residential lots, in order to improve supply relative to demand and consequently reduce pressure on prices.

However, the available evidence suggests that the developers' concession had no impact on the trend decline in buffer stocks of residential land.

Figure 8

BUFFER STOCKS OF LAND

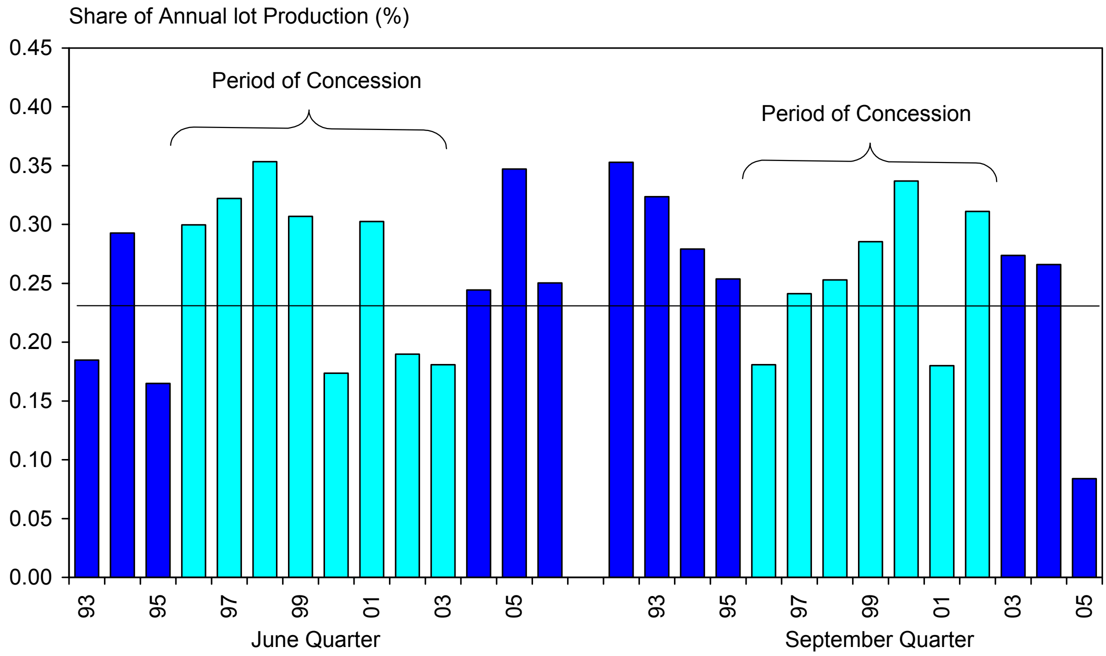


Source: UDIA data

Furthermore, quarterly data on lot production before and after the annual land tax liability date of 30 June does not even support claims of a significant seasonal impact of land tax on the creation of subdivided lots (with potential disruptions to other parties in the housing supply chain such as civil contractors and builders).

Figure 9

SEASONAL CREATION OF LOTS



Source: UDIA data

- The contribution of the June quarter in the final four years of the concession was virtually the same as prior to its introduction in 1996, and has actually increased (rather than fallen) since the abolition of the concession in 2003.
- Monthly data are not available for a similar long-term comparison of June-July lot creation.

4.2.4 Final Recommendation

The land tax developers' concession should not be reintroduced.

4.3. Payroll Tax

Introduce a Labour Services Tax

The Interim Report found that a proposal to broaden the payroll tax base such that it became a tax on all labour services (including the labour component of services provided by independent contractors) had in-principle merit on efficiency and equity grounds. However, it was also recognised that there were major practical issues and that it was unlikely that the proposal could be fully developed within the timeframe of this Review.

Stage 2 Feedback

There was no feedback on this issue. However, the Chair of the Reference Group flagged that he considers it may warrant further investigation, with appropriate resourcing for the DTF.

Stage 2 Analysis

A preliminary estimate is that a labour services tax rate of around 3.8% with an exemption threshold of $750,000 would raise the same revenue as the current payroll tax rate of 5.5%. If there were no exemption threshold, a labour services tax rate of around 3.6% may raise the same revenue as payroll tax. However, considerable further analysis would be required to identify the incidence shifts (e.g. by firm size and business type) and develop robust revenue estimates. As noted in the Interim Report, such a tax would in many respects emulate a State PAYG income tax (but it is considered that it would be a poor second-best alternative).

A labour services tax would be difficult to progress unilaterally in Western Australia, as it would require businesses that operate across interstate boundaries to operate different accounting systems. For example, a Western Australian firm that also operates in South Australia would require systems that enable it to identify the labour component of services provided by contractors in South Australia for Western Australian payroll tax purposes (as this would impact on the effective tax rate payable on the firm's Western Australian 'payroll'), but not for South Australian payroll tax purposes.

While the Payroll Tax Consistency Project could in the future extend to an examination of the feasibility of consistency in relation to employees versus contractors, there has been no indication from other States that they would consider a broader labour services tax (including the recent bilateral agreement between New South Wales and Victoria). The Interim Report also noted that some Reference Group members opposed such a tax, and that a similar base-broadening effect might be achieved more simply by substantially lowering the payroll tax threshold, to bring contactors that employ staff into the payroll tax net.

The paper published by the Centre for Independent Studies in November 2006 on *State Taxation and Fiscal Federalism* commented on the erosion of the payroll tax base through threshold increases to assist small business. It concluded that if it was politically unattainable to revert to the original broad base/low rate structure, States should at least "stop white-anting the base through increases in their tax free thresholds and grants of firm-specific concessions". DTF supports this as a pragmatic way forward.

4.3.1 Final Recommendation

Western Australia should not pursue the introduction of a broader labour services tax in isolation from other jurisdictions.

Establish a Skills Shortage Training Fund

The Interim Report did not support hypothecation of a portion of payroll tax revenue for expenditure on training, as it would reduce budget scrutiny and flexibility, and potentially distort resource allocation between competing programs.

Stage 2 Feedback

The Skills Shortage Training Taskforce was established in July 2005 to recommend to the Western Australian Minister for Education and Training reforms to improve vocational training and address skills shortages in the State. The Taskforce has proposed that a multi-industry training fund be established for skills shortage areas, to be funded by a reduction in any proposed tax relief.

Stage 2 Analysis

The proposal by the Skills Shortage Training Taskforce is very similar to the proposal put forward by the Western Australian Department of Education and Training (DET) in Stage 1 of the Review. The DET recommended that:

- rather than a reduction in payroll tax, it would be more advantageous for employers and industry if a percentage of this revenue was redirected to addressing skill shortages; and
- DET should work with the DTF to model and design this proposal.

While recognising the benefit of initiatives to boost the supply of skilled labour in Western Australia to help consolidate and sustain the State's strong economic performance, the proposal by the Skills Shortage Training Taskforce does not address the concerns with hypothecation that were noted in the Interim Report in relation to the DET proposal.

4.3.2 Final Recommendation

Hypothecating payroll tax revenue should not be the preferred means for boosting funding for vocational training.

4.4. Stamp Duty on Motor Vehicle Transfers

Stamp Duty Rebate for Fuel Efficient and Safer Vehicles

The Interim Report found that there was not a strong case for providing stamp duty rebates for more fuel efficient and/or safer vehicles. To the extent that government incentives are considered necessary to address environmental 'externalities' and public safety issues, targeted expenditure programs such as the LPG Subsidy Scheme (which has been increased from \$500 to \$1,000 per vehicle conversion) and road improvement and driver education programs are generally considered preferred alternatives for the State Government.

Stage 2 Feedback

No further feedback was received in comments on the Interim Report. Some members of the Reference Group subsequently expressed support for the proposals, while others noted that there would be a significant additional administration and compliance burden on dealers who collect stamp duty on behalf of the Government.

Stage 2 Analysis

While appreciating the seriousness of environmental and road safety issues in Western Australia and the associated costs to the wider community, stamp duty concessions (or more transparent but administratively expensive rebates) are not considered to be the most cost-effective ‘intervention’ by the State Government.

Smaller vehicles, which are generally more fuel efficient, already attract lesser annual licence fees (which are based on weight) and lower stamp duty rates to the extent that they are cheaper (definitional issues otherwise arise). Lifting the stamp duty thresholds in the manner discussed in Chapter 1 may further enhance the incentive to purchase more recent and fuel efficient vehicles. It is unclear if providing an additional stamp duty rebate of $500 (as proposed by the RAC in Stage 1) would have a significant impact on car purchase behaviour.

Nonetheless, the Interim Report noted that ‘alternative’ fuel vehicles (i.e. ‘hybrid vehicles’) are both small and relatively expensive. In these cases, a direct grant to purchasers or a lower annual licence fee would avoid adding complexity to the motor vehicle stamp duty system, an aspect of the system which has been criticised during the Review (see Chapter 2.7), and recognise that only around 500 hybrid vehicles are currently registered in Western Australia.

Furthermore, what is currently considered a safety feature may become ‘standard’ in the future, resulting in erosion of the revenue base. As manufacturers are constantly improving safety standards, drawing the line for safety features (or combination of safety features) to qualify for the rebate for various vehicle types (heavy and light) could be problematic, adding to administration and compliance costs.

The 5 star safety rating system produced by the Australian New Car Assessment Program covers mainly new passenger vehicles. The exclusion of used and heavy vehicles from any stamp duty rebate scheme could be considered unfair.

Alternatives to encourage safety could be a ‘good driver’ reward scheme in the form of a reduction in drivers’ licence fees or compulsory third party insurance fees. Such a scheme would include all vehicles and take account of the ‘human factor’ as well as the vehicles in preventing accidents from happening in the first place. However, fines and higher comprehensive vehicle insurance premiums already help to deter unsafe driving behaviour.

Public statements by the RAC outside of the State Tax Review suggested that improving road conditions would save as many lives as safer cars and improving driver safety combined.

4.4.1 Final Recommendation

Stamp duty arrangements are not the preferred means for promoting the use of safer or more fuel efficient/low-emission vehicles, or improving road safety more generally.

Stamp Duty Exemption for Written-Off or Stolen Vehicles

The Interim Report found that this proposal should be adopted as it would eliminate the double payment of duty in circumstances where a relatively recently acquired vehicle needs to be replaced. However, this was subject to further examination being undertaken by the OSR, in consultation with the DPI, of the parameters for the concession and the arrangements required to administer it.

Stage 2 Feedback

Nil.

Stage 2 Analysis

Adopting such a scheme would only benefit a small number of taxpayers, as the limited time period between acquisition of the vehicle and it being written-off or stolen that would be necessary to prevent the exemption from being exploited would result in only a small number of taxpayers being able to access the concession. In addition, the insurance cover for new vehicles may cover replacement costs (including stamp duty).

Further, the proposal would also be likely to require complex administrative arrangements between the OSR and the DPI in order to administer the scheme. There are a number of issues that would need to be resolved, such as whether the OSR or DPI would be responsible for determining eligibility for the exemption, whether the exemption would be available at the time of registering the replacement vehicle or through a separate refund process, and the communication protocols between the agencies to enable determinations to be made and exemptions processed. Accordingly, proceeding with this measure would not be consistent with goal of simplifying the administration of the tax system.

4.4.2 Final Recommendation

Although offering equity benefits, a stamp duty exemption for the replacement of written-off vehicles should not be introduced, as it would benefit only a small number of taxpayers and require complex administrative arrangements.

Stamp Duty Exemption for Tractor Based Mobile Cranes

The Interim Report noted that the impact of stamp duty on competitiveness of specialised heavy vehicles, such as certain mobile articulated cranes, should be further examined.

Stage 2 Feedback

Nil.

Stage 2 Analysis

In Western Australia, any motor vehicle which uses public roads is generally required to be licensed and is therefore liable for stamp duty. Some other States provide exemptions for special categories of vehicles which are "purpose built" and generally not designed to carry a load and/or passengers on roads (e.g. tractors, forklifts, mowers, sweepers, mobile cranes, various industrial vehicles, farm machines and earth moving vehicles).

The main exemptions are for all such vehicles in South Australia and for "tractor based" mobile cranes in Queensland (which are only subject to nominal duty of $25).

While there may be some variations among individual dealers/manufacturers of specialised vehicles, the available data from the DPI indicate that registrations of these vehicles are occurring in sufficient numbers in Western Australia. This suggests that the exemptions in other States are not having a significant impact on local dealers/manufacturers as a general rule.

- For example, in the category of vehicles that includes tractor based cranes, there have been over 150 new registrations or transfers in the past twelve months (compared to a total number on register of around 760).

Providing a stamp duty exemption for tractor based mobile cranes (to match South Australia and Queensland) would incur a stamp duty cost of around $1.4 million per annum, while extending the exemption for all special purpose vehicles (to match South Australia) would involve a revenue cost of around $5 million per annum.

4.4.3 Final Recommendation

Special purpose vehicles that use public roads should remain subject to stamp duty.

4.5. Tax Administration

Indexation of All Tax Thresholds

The Interim Report found that further analysis would assist a more fully informed decision by the Government on the proposal for automatic indexation of State tax thresholds.

Stage 2 Feedback

Comments on the Interim Report confirmed that there is significant community support for the indexation of tax thresholds to prevent 'bracket creep' and the erosion of the value of targeted tax concessions over time (such as the first home buyer exemption and the small business payroll tax exemption), although not from all Reference Group members.

Stage 2 Analysis

A preferred alternative for addressing bracket creep is structural adjustment to reduce the progressivity of State taxes, recognising that redistributional objectives are best left to the Commonwealth's income tax and social security instruments. While the case for indexing targeted concessions is considered stronger, the alternative of reviewing thresholds as part of the annual budget process offers more flexibility for meeting overall budget priorities.

- Alternatives to indexation that may lead to better outcomes for the community include allocating additional revenue from bracket creep to tax rate reductions or improved services and infrastructure.

- In the case of land tax, the thresholds and tax rates are 'traditionally' adjusted as part of the annual budget process and this has resulted in land tax revenues rising by substantially less than average land values.

- There may also be a problem with indexation where taxable values are declining, such as in the case of a falling property market. It is unclear if community preferences would extend to reducing thresholds in these circumstances.

The additional technical and administrative complexities involved in general indexation would also be inconsistent with the objective of simplifying the tax system and reducing compliance costs for taxpayers.

- No single indexation factor would capture growth in values across all components of the tax base. For example, in the case of conveyance duty, median house prices may be a poor indicator of growth in the price of commercial property sales.

- Indexation would involve frequent changes to legislation or regulations, additional systems costs (for the OSR and taxpayers) and (in the case of transaction taxes like stamp duties) possible distortions to taxpayer behaviour ahead of indexation changes.

- There are no contemporaneous indexation factors. Each would involve a time lag between the measurement period and its availability (e.g. median house price data are only available after the end of each quarter). In some cases (e.g. some measures of median house prices), the data may also be subject to revision at a later date.

It is estimated that an average 5% indexation increase in the thresholds for conveyance duty (including the first home buyer exemption), land tax, payroll tax and motor vehicle duty would cost around $45 million per annum. However, the actual revenue cost of general indexation would vary from year to year, depending on the growth in the underlying values of each individual tax base and the indexation factors used.

4.5.1 Final Recommendation

Annual review as part of the budget process should be preferred to general indexation of taxation thresholds.

Remove the Right of a Client to Sue a Lawyer for Not Giving Tax Avoidance Advice

In the course of administering the State's major revenue statutes, the role of a legal advisor in providing aggressive tax avoidance advice has sometimes been the subject of debate with those advisors. In such situations, solicitors have often maintained to the Commissioner, sometimes in writing, that they have no choice but to provide this type of advice, given the common law position.

Based on that view, DTF recommended that consideration be given to amending State revenue legislation to remove a client's right to sue a lawyer for not giving unsolicited tax avoidance advice. The hope was that such an action would therefore remove any direct pressure that was driving practitioners to be involved in avoidance activity, when in the absence of that pressure, they would choose not to do so.

The Interim Report recommended that the issue be further examined in Stage 2 of the Review, including consultation with the Law Society.

Stage 2 Feedback

ICAA

- The ICAA was sceptical of the basis for the proposal to remove the right to sue lawyers for providing unsolicited tax advice.

Law Society

- The Law Society opposed the proposal to remove the right to sue lawyers for providing unsolicited tax avoidance advice.

Stage 2 Analysis

The Law Society has been consulted and has made a number of points.

The Society noted that lawyers have a duty to the Supreme Court to act ethically and members of the profession in Western Australia are also bound by the professional conduct rules of the Law Society of Western Australia.

In particular, those rules contain the following provisions:

27. Tax avoidance

27.1 A practitioner must not promote or market or intentionally assist, by the giving of advice or otherwise, in the promotion or marketing of a tax scheme or arrangement which has the predominant purpose of avoidance of tax by the exploitation of revenue law.

27.2 A practitioner must not have a financial interest in a business organization (whether incorporated or otherwise), which promotes or markets any tax scheme or arrangement described in rule 27.1.

The Society considered the relevant case law that had in the past been quoted to the Commissioner as supporting a view that lawyers were compelled to give tax avoidance advice. It concluded that:

- *"The cases do not recommend that lawyers provide aggressive tax avoidance advice, solicited or otherwise;*
- *The competencies of lawyers and accountants advising on commercial transactions include a knowledge of the taxing statutes and their likely application to the transaction before the advisor;*
- *When advising a client, the size, needs, competency and experience of the client need to be taken into account by the lawyer and issues that may impact the client should be raised with the client, including tax issues;*
- *Issues raised with the client should be raised in a manner such that the client is able to make an informed decision as to whether they require advice on the issues; and*
- *The scope of the lawyer's retainer should be clearly agreed and documented with the client."*

Overall, the Society indicated it was not persuaded that there is a general capacity to sue a lawyer for failing to provide unsolicited tax avoidance advice. Whether a lawyer is required to provide tax advice would, in its view, depend upon the agreement made with the client, notwithstanding a lawyer's duty to advise the client where the need for taxation advice exists.

The Society considered that:

"Any cause of action arising in relation to these issues would be founded in the law of negligence or contract. Any limitation to the principles should not be specific to tax, in the same way that the principles governing duty of care have a general application.

The law of negligence acts as a consumer protection mechanism and a limitation on the right to sue therefore takes away a consumer's capacity to hold an advisor to account for failing to discharge their duties properly. We do not consider that this would be a desirable outcome for the community as a whole."

The Commissioner has indicated that contrary to the position that has been put to him in the past by certain individual practitioners, the advice from the Law Society indicates to him that the involvement of a practitioner in structuring activity to minimise a client's exposure to tax could only be by choice under the agreed scope of the lawyer's retainer with their client.

On that basis, the Commissioner accepts that amending State revenue legislation to remove a client's right to sue a lawyer for not giving unsolicited tax avoidance advice would do little, if anything, to reduce avoidance activity.

The Commissioner is also strongly supportive of the Society's position, as contained in its professional conduct rules, which seeks to prevent legal practitioners in Western Australia from being involved, directly or indirectly, in the design, promotion or marketing of aggressive tax avoidance schemes.

The Commissioner is aware that from time to time in the past, aggressive tax avoidance schemes have been marketed (often on a fee basis structured as a percentage of the tax saved) in Western Australia. He has indicated that he will closely monitor the effectiveness of the Law Society's efforts in enforcing its professional conduct rules in this respect and, within the bounds of confidentiality requirements, will ensure that the Society is made aware of any such schemes, the details of which come into the public domain.

4.5.2 Final Recommendation

It is recommended that no further action be taken in respect of this issue.

Examine the Need for Private Binding Ruling System

The Interim Report recommended that further consideration be given in Stage 2 of the Review to the policy merits and possible design of a private binding ruling system.

Stage 2 Feedback

The ICAA expressed disappointment with the lack of support in the preliminary findings for a binding ruling system. It considered that this should be an essential element of any modern taxation system.

The Law Society reiterated the need for certainty for taxpayers in establishing their tax liabilities. It considered that there was a need for private rulings and an expanded system of public rulings so that taxpayers can arrange their affairs with some certainty. Furthermore, the concern that this will promote tax avoidance is misplaced, and overlooks the capacity of the Commissioner to have better intelligence of the proposals put forward by taxpayers seeking to structure their affairs.

Stage 2 Analysis

Stage 2 analysis supports the view that some benefits could be derived from a private binding ruling system, including greater certainty and clarity regarding the taxation obligations of taxpayers.

What still remains uncertain is the extent of such benefits, particularly given that they are likely to accrue to a very limited number of transactions. Part of the areas of potential uncertainty are already dealt with by the existing legislative requirement for the

Commissioner to make a determination in the case of potentially land rich entities and pre-determinations for corporate reconstruction relief for the purposes of the Stamp Act. Such decisions are binding on the Commissioner.

The OSR has advised that these existing functions are very resource intensive, requiring not only highly experienced staff to be dedicated to the task, but also the engagement of expert valuers and other relevant specialists. A broadening to include private rulings more generally (and across all tax lines) is conservatively estimated to involve additional expense of between $500,000 to $1 million.

This in turn raises the question as to whether this would be the most effective method of increasing certainty for the greatest number of transactions, given the amount of expenditure likely to be involved. It is arguable that the dedication of that amount of funding might better benefit taxpayers through directing it to an expanded taxpayer education program.

Leaving aside the expense involved, issues continue to exist in a number of areas that make support for such an initiative problematic. These issues were identified in some detail in the Technical Appendices of the Interim Report (pp.331-343).

No Stage 2 feedback was received which either attempted to quantify the benefits involved with this proposal, nor addressed these other issues identified in the Technical Appendices.

Furthermore, while the private rulings system of the ATO has been cited as a model to be followed at the State level, it is highly relevant that an inquiry of the Joint Committee of Public Accounts and Audit of the Commonwealth Parliament reviewing “Certain Taxation Matters” is currently including in its consideration the current private binding ruling system of the ATO. The committee is expected to report to Parliament in 2007. Even were the introduction of a private binding rulings system to be supported by the Government, it would be prudent to await the outcome of the Commonwealth review as any recommendations made by that committee should be considered in the design of any binding ruling system at the State level.

In light of the above, the introduction of a private binding rulings system into the Western Australian taxation regime is not supported at this time. However, it would be worthwhile that the Commissioner of State Revenue examine the extent and effectiveness of the existing public rulings system and Commissioner’s practices (perhaps using the State Revenue Liaison Committee as a source of industry input) with a view to identifying ways to improve levels of taxpayer certainty more generally.

4.5.3 Final Recommendation

A private binding rulings system is not supported. Instead, the Commissioner of State Revenue should examine and report to the Treasurer on initiatives that would improve the scope and effectiveness of the current public rulings regime.

4.6. Emergency Services Levy

Abolition of the Emergency Services Levy

The Interim Report found that the ESL is fairer than the previous funding arrangements and that funding emergency services from general revenue would require a stronger case than had been made in submissions.

Stage 2 Feedback

Nil.

Stage 2 Analysis

In light of no further feedback being received in Stage 2, no further analysis of this issue has been undertaken.

4.6.1 Final Recommendation

The ESL should be retained.

4.7. Other Issues

Greater Transparency in Budget Decision Making

The Interim Report noted general views expressed by Reference Group members on the need for more information transparency in the Government's budget and tax setting process.

Stage 2 Feedback

The ICAA proposed the formation of a "Budget Reference Group", to provide a regular avenue for business and community input on forecasting and priority areas for Government spending and taxation reform. The ICAA proposal involves the Group becoming involved in the budgetary process by preparing an independent report each year for the consideration of the Treasurer and DTF.

Stage 2 Analysis

Efforts are already underway to improve the transparency and consultative nature of the forecasting process. The DTF has recently completed a comprehensive review of its budget revenue forecasting methods, resourcing, governance and communication processes, publishing the 'Review of Revenue Forecasting' report in March 2006.

- The DTF is implementing the report's recommendations, one of which involves greater consultation with industry experts in preparing forecasts.

In addition, interest groups (both industry and community groups) already participate in pre-Budget bilateral meetings with the Treasurer to discuss priority issues for the forthcoming budget process. This includes discussion of revenue and expenditure proposals by interest groups as well as analysis of their written submissions by the DTF.

- Importantly, each State budget also undergoes rigorous examination in the Parliament through the legislative/appropriation process, including the Estimates Committee process.

4.7.1 Final Recommendation

While the objectives are supported, the formation of an external Budget Reference Group to be involved in the budget process is not considered necessary.

Examine Impact of Insurance Duty on Take-Up of Insurance

The Interim Report indicated that further research should be undertaken on equity aspects of insurance duty, and its impact on the take-up of insurance cover by the community.

Stage 2 Feedback

WACOSS noted that information on the price and income elasticity of demand for insurance is not available. WACOSS also supported a more progressive insurance duty scale on equity grounds and proposed a form of exemption threshold for some categories of insurance (such as home and contents) which would be based on the cost of insurance for the 'median household'.

Stage 2 Analysis

The ICA has indicated that its previously intended research into price elasticity of insurance products (which would help confirm the extent to which stamp duty is a disincentive to adequate insurance cover) is not being progressed at this time.

However, it is now considered that there is sufficient independent economic modelling and analysis available to conclude that cuts in insurance duty should be a relatively high priority on economic efficiency grounds. One example is the Access Economics report *Axing the Alcabala: A Program for a 21st Century State Tax System* (2004), which included insurance duty among the most inefficient State taxes. In Chapter 1 on tax relief priority rankings, it is recommended that insurance duty be levied on a GST exclusive basis, which would be equivalent to a reduction in the duty rate of nearly 10% (or 0.9 percentage points) to 9.1%.

In relation to equity issues, it could be expected that wealthier individuals would generally require more expensive insurance coverage and therefore incur larger amounts of stamp duty under the existing, uniform rate (10% of the premium). The WACOSS proposal for an exemption threshold for certain categories of insurance would have the disadvantages of narrowing the tax base and increasing the complexity of the taxation system.

4.7.2 Final Recommendation

A reduction in insurance duty remains a relatively high priority on economic efficiency grounds. This could be achieved by levying insurance duty on a GST-exclusive basis, as recommended in Chapter 1 on Priorities for Taxation Relief.

Appendix A

List of Stage 2 Comments Received

1	Aged Care Association Australia (WA)
2	Australian Petroleum Production & Exploration Association Limited
3	Confidential
4	Burella Pty Ltd
5	Caravan Industry Association of Western Australia
6	Chamber of Commerce and Industry Western Australia
7	Chamber of Minerals and Energy Western Australia
8	Como House
9	CPA Australia
10	Retirement Care Australia
11	Embleton Care Facility
12	Department of Consumer and Employment Protection
13	Fehily Loaring Pty Ltd
14	Graham Laurance
15	Confidential
16	Housing Industry Association
17	Institute of Chartered Accountants in Australia
18	Insurance Australia Group
19	Insurance Council of Australia
20	James and Nishka
21	Law Society of Western Australia
22	Mr Brian O'Hart
23	Confidential
24	Real Estate Institute of Western Australia
25	Rural Business Development Corporation
26	Small Business Development Corporation
27	State Training Board
28	Tourism WA
29	Urban Development Institute of Australia (WA Division) Inc.

Appendix B

Reference Group [a]

Member	Title	Organisation
Mr Philip Achurch (not able to participate after July 2006)	Chairman	Western Australian Small Business and Enterprise Association
Ms Anne Arnold	Chief Executive Officer	Real Estate Institute of Western Australia
Mr Nigel Barker (represented on occasions by Mr Ken Marston)	Executive Director	Council on the Ageing Western Australia
Ms Shaheen Hughes (replaced Ms Julie Bremner)	Executive Officer Economic and Industry Policy	Chamber of Minerals and Energy
Mr Alex Sanchez (replaced Mr Daryl Cameron)	General Manager Policy - Economics & Taxation Directorate	Insurance Council of Australia
Mr Mark Cole	Representative	Australian Bankers' Association
Professor Gregory Craven (represented by Professor Peter Kenyon)	Professor of Government and Constitutional Law	Curtin University
Mr John Dastlik	Executive Director Western Australia	Housing Industry Association
Mr Trevor De Landgrafft (represented on occasions by Mr Ross Hardwick and Mr Gerry Crowden)	President	Western Australian Farmers Federation

Reference Group [a] – continued

Member	Title	Organisation
Mr Peter Fitzpatrick (represented on occasions by Mr Craig Marsland)	Executive Director	Motor Trade Association of Western Australia
Mr Gavan Forster	Director Housing and Economics	Master Builders Association of Western Australia
Mr Ron Hardaker (represented on occasions by Ms Helen Gordon)	Executive Director	Australian Finance Conference
Mr Scott Grimley	Representative	Institute of Chartered Accountants in Australia and CPA Australia
Ms Fiona Harris	President	Western Australian Division Australian Institute of Company Directors
Mr Garry Hyde (represented on occasions by Ms Bindi Thomson)	Chairman, Economics and Business Management	Pastoralists and Graziers Association of Western Australia
Mr Jonathan Ilbery	Chair	Jackson McDonald
Mr John Langoulant (represented by Mr John Nicolaou)	Chief Executive Officer	Chamber of Commerce and Industry
Mr Joe Lenzo	Executive Director Western Australia	Property Council of Australia
Professor Dale Pinto (replaced Mr Brian Lovitt)	Representative	Taxation Institute of Australia
Mr Barry MacKinnon	Chairperson	Disability Services Commission Board

Reference Group [(a)] – continued

Member	Title	Organisation
Mr Brian Reynolds	Director	Retail Traders Association of Western Australia
Mr Graham Short	Chief Executive Officer	Western Australian Fishing Industry Council
Mr Rod Slater	President (up to 31 December 2005)	Royal Automobile Club
Mr Justin Walawski	Chief Executive	Association of Mining and Exploration Companies
Mr John Walker (represented on occasions by Ms Janine Freeman)	President	Unions Western Australia
Ms Rae Walter (represented on occasions by Ms Lisa Baker)	President	Western Australian Council of Social Services
Mr John Wood	Vice President	Caravan Industry Australia - Western Australia

(a) In a number of cases, members were represented by 'alternates' at all or some meetings.

Technical Committee of Reference Group (Stage 1 Only)

Member	Title	Organisation
Mr Rami Brass	Representative	Taxpayers Australia
Mr Graeme Cotterill	Representative	Taxation Institute of Australia
Mr Jonathan Ilbery	Chair	Jackson McDonald
Mr Guy Lehmann	Representative	National Institute of Accountants
Ms Koo Lloyd-Kane	Representative	Australian Institute of Conveyancers
Mr Rob Maurich	Chapter Member (Western Australia)	Finance and Treasury Association
Mr Peter Moltoni	Representative	Institute of Chartered Accountants in Australia
Associate Professor Jeff Pope	Representative	Curtin University
Evelyn Tucker	Representative	Independent Settlement Agents Association
Mr Grahame Young	Representative	Law Society of Western Australia

Appendix C

State Tax Review – Terms of Reference

Purpose and Objectives of the Review

The purpose of the Review is to make recommendations on reform of the State tax system for the next five years, in consultation with and reflecting the priorities of the Western Australian community.

The over-arching objectives of the Review are to enhance the competitiveness, equity, and efficiency of the State tax system in Western Australia, including minimising distortions to economic activity and compliance costs for taxpayers.

The Review will not be restricted to a revenue-neutral outcome, but aim to provide genuine, aggregate tax relief to the Western Australian community within the constraints of the community's demand for services and infrastructure and the requirement for responsible financial management (further discussed below).

Scope of the Review

The Review will be broad in scope. It will cover all State taxes affecting all sectors of the community. It will not cover the GST, which is a Commonwealth tax, nor mining royalties or user charges such as for electricity and water.

While not extending to Commonwealth taxes, local government rates or user-charges, the Review will recognise that the State tax system operates in the context of this wider system of taxes and charges, together with Australia's social welfare system, and requires various interactions to be taken into account.

The Review will incorporate the Government's commitment to a re-write of the *Stamp Act 1921*. While the main objective of the re-write is to modernise the Act to reflect current business practices, and to simplify it through restructuring and the use of plain language, policy proposals need to be addressed first.

Affordability and Funding of Tax Relief

A target amount of State tax relief has not yet been identified. State taxes are a key source of funding for State services and infrastructure, including in relation to health, education and law and order, and the provision of tax relief will need to be balanced against meeting community expectation in these areas.

Consistency with the Government's fiscal targets will also be crucial, including maintaining the State's AAA credit rating. Funding would be sourced from any sustainable improvement in the State's revenue outlook or a re-balancing of expenditure and revenue priorities, including as part of the 2006-07 State budget.

Process

The Review will be coordinated by the Department of Treasury and Finance.

Public submissions are invited, and consultation will be undertaken with an external Reference Group, appointed by the Treasurer and representing broad community interests.

The Reference Group will provide independent advice to the Treasurer that helps balance competing interests.

Timetable

Stage 1

The aim is to complete Stage 1 of the Review by March 2006. The Government will then consider the initial recommendations of the Review in the 2006-07 Budget.

June 2005: release by the Treasurer of the terms of reference, including an invitation for, and guidelines to assist, public submissions to the Review.

July – September 2005: appointment of the Reference Group by the Treasurer. Three-month period for receipt of public submissions by the Department of Treasury and Finance.

30 September 2005: deadline for public submissions.

October 2005 – December 2005: consultation with the Reference Group, including the consideration of public submissions.

January 2006 – March 2006: consultation with the Reference Group on the initial recommendations of the Review, and preparation of an interim report (Draft White Paper) for consideration by the Government.

May 2006: the Government considers the initial recommendations of the Review in the 2006-07 Budget process and releases the Draft White Paper for public comment as part of Stage 2 of the Review.

Stage 2

The aim is to complete Stage 2 of the Review by March 2007. The Government will then consider the final recommendations of the Review in the 2007-08 Budget process.

June 2006 – December 2006: further consultation with the Reference Group, including consideration of public comments on the Draft White Paper.

30 September 2006: deadline for public comments on the Draft White Paper.

January 2007 – March 2007: further consultation with the Reference Group on the final recommendations of the Review.

May 2007: the Government considers the final recommendations of the Review in the 2007-08 Budget.

Definitions of State Tax Review Principles

Competitiveness

The taxation system should be competitive nationally (and internationally) to ensure Western Australia is attractive for families and business. However, in considering any differences in the tax burden between jurisdictions, an important consideration is whether there are discernable impacts on taxpayer choices, or incentives for avoidance.

Efficiency

There is both an economic and an administrative dimension to efficiency.

In an economic sense, more efficient taxes will have smaller impacts on taxpayer behaviour, and cause less distortion of economic activity. Typically they will be imposed on less-price sensitive activities, transactions or assets that are not highly 'mobile' across jurisdictional borders.

In an administrative sense, an efficient tax will impose low administrative costs on both taxpayers and the revenue collection authority relative to the amount of tax revenue paid (or collected). Diversion of resources to exploitation and countering of avoidance opportunities will also be minimal.

Equity

There are also two dimensions to equity. Taxes should have regard for both 'capacity to pay' (vertical equity), which is usually measured relative to the taxpayer's income, and endeavour to ensure 'equality of treatment' of similar transactions or circumstances (horizontal equity). Opportunities for tax avoidance can reduce equity on both counts.

Other Related Objectives

Simplicity and Transparency

Under a simple and transparent tax system, taxpayers can easily understand their tax obligations, contributing to relatively low compliance and administration costs (the tax principles overlap in a number of ways).

Robustness or Stability

In order to ensure that there is an adequate taxation base for the long-term funding of services and infrastructure, a tax system should be robust to changes in markets, industry structures and market conditions. Tax revenues should also not be excessively volatile.