

Western Australia

Duties Legislation Amendment Act 2013

As at 29 Jun 2013

No. 5 of 2013

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Duties Legislation Amendment Act 2013

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Western Australia

Duties Legislation Amendment Act 2013

No. 5 of 2013

An Act to amend —

- **the *Duties Act 2008*; and**
- **in certain circumstances, the *Duties Legislation Amendment Act 2008*.**

[Assented to 29 June 2013]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Duties Legislation Amendment Act 2013*.

2. Commencement

- (1) This Act comes into operation as follows —
 - (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
 - (b) Part 2, except to the extent to which it does not operate because of subsection (2) — on assent day;
 - (c) Part 3, except to the extent to which it does not operate because of subsection (2) — on the day after assent day.
- (2) Part 2 does not operate if assent day is 1 July 2013 or later and Part 3 does not operate if assent day is before 1 July 2013.

Part 2 — Royal Assent before 1 July 2013

Division 1 — *Duties Legislation Amendment Act 2008* amended

3. Act amended

This Division amends the *Duties Legislation Amendment Act 2008*.

4. Section 2 amended

Delete section 2(c).

5. Part 2 Division 2 Subdivision 3 deleted

Delete Part 2 Division 2 Subdivision 3.

Division 2 — *Duties Act 2008* amended

6. Act amended

This Division amends the *Duties Act 2008*.

7. Schedule 3 Division 3 deleted

Delete Schedule 3 Division 3.

Part 3 — Royal Assent on or after 1 July 2013

8. Act amended

This Part amends the *Duties Act 2008*.

9. Section 9 amended

- (1) In section 9 insert in alphabetical order:

Western Australian business has the meaning given in section 79;

Western Australian business asset has the meaning given in section 79.

- (2) In section 9 in the definition of *unencumbered value* delete “36.” and insert:

36;

10. Section 15 amended

In section 15:

- (a) in paragraph (c) delete “Australia.” and insert:

Australia;

- (b) after paragraph (c) insert:

(d) a Western Australian business asset.

11. Section 17 amended

In section 17(1):

- (a) in paragraph (b)(iii) delete “subsection.” and insert:

subsection;

(b) after paragraph (b) insert:

(c) in section 81(4) and (5), the following Western Australian business assets —

- (i) intellectual property;
- (ii) a restraint of trade arrangement;
- (iii) a business identity.

12. Chapter 2 Part 5 Division 5 inserted

After Chapter 2 Part 5 Division 4 insert:

Division 5 — Western Australian business assets

Subdivision 1 — Terms used

79. Terms used

In this Division —

business asset means any of the following —

- (a) goodwill of a business;
- (b) a restraint of trade arrangement for a business;
- (c) a business identity;
- (d) a business licence;
- (e) a right of a business under an uncompleted agreement to supply commodities or provide services;
- (f) intellectual property of a business;
- (g) things that a business has that are in the nature of rent rolls and client lists,

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but does not include a trade debt;

business identity means a business name, trading name or internet domain name, or a right to use a business name, trading name or internet domain name;

business licence means a licence, permit or authority which is issued, granted or given under —

- (a) a written law and which is required by a written law to be held by a person carrying out an activity for gain or reward; or
- (b) a law of the Commonwealth and which is required by a law of the Commonwealth to be held by a person carrying out an activity in Western Australia for gain or reward;

circuit layout right means an exclusive right under the *Circuit Layouts Act 1989* (Commonwealth) for an eligible layout under that Act;

commodities includes land, money, credit and goods and any interest in them;

franchise arrangement means an agreement or other arrangement under which a person (the **franchisor**) that carries on a business authorises or permits another person (the **franchisee**) —

- (a) to engage in the business of producing, supplying or providing commodities or services, or both, at a place other than the place of business of the franchisor as long as the franchisee does so under —
 - (i) a stated marketing, business or technical plan or system; and
 - (ii) a common format or common procedure, or both;
- and
- (b) to use a mark or common trade name in such a way that the business carried on by the

franchisee is or is capable of being identified by the public as being substantially associated with the mark or name identifying, commonly connected with or controlled by the franchisor or a person that is a related person to the franchisor;

intellectual property means —

- (a) a patent, trademark, industrial design, copyright, registered design, plant breeder right or circuit layout right; or
- (b) anything else that has the following characteristics —
 - (i) it is in the nature of a strategy, process, procedure, mode of operation or way of working that enables a commodity or service to be produced, supplied or provided or that enhances the production, supply, provision or quality of a commodity or service;
 - (ii) it was created, devised or developed to be used for business purposes or, having been created, devised or developed for other purposes, has been applied, adapted or modified for use for business purposes;

or

- (c) a right to use or exploit —
 - (i) anything mentioned in paragraph (a) or (b); or
 - (ii) an adaptation or modification of anything mentioned in paragraph (a) or (b);

plant breeder right means —

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- (a) a plant breeder's right under the *Plant Breeder's Rights Act 1994* (Commonwealth); or
- (b) a plant breeder's right corresponding to a right mentioned in paragraph (a);

related person has the meaning given in section 162;

restraint of trade arrangement, for a business, means a restraint of trade arrangement which, in the opinion of the Commissioner, enhances or is likely to enhance the value of the business;

Western Australian business, in relation to a dutiable transaction, means —

- (a) a business that, in the year preceding the transaction has —
 - (i) been carried on in or from Western Australia; or
 - (ii) supplied commodities or provided services to customers in Western Australia;

or

- (b) carrying out an activity for gain or reward under a licence referred to in paragraph (a) of the definition of **business licence**; or
- (c) carrying out an activity in Western Australia for gain or reward under a licence referred to in paragraph (b) of the definition of **business licence**;

Western Australian business asset means a business asset of a Western Australian business.

Subdivision 2 — Particular transactions involving business assets

80. Some transactions involving business licences to be taken to be agreements to transfer WA business assets

When a person agrees to relinquish a business licence held by that person, or agrees not to apply for a renewal of such a business licence, so that it, or another business licence in respect of the same kind of activity, can be issued, granted or given to another person that agreement is taken to be an agreement to transfer a Western Australian business asset and is liable to duty accordingly.

81. Transactions for particular WA business assets that are not dutiable transactions

- (1) The transfer, or an agreement for the transfer, of a Western Australian business asset from a franchisor in accordance with a franchise arrangement, is not a dutiable transaction unless another person has relinquished, or agreed not to extend, that business asset or a business asset of the same kind so that the franchisee could acquire that business asset.
- (2) A transaction is not a dutiable transaction if the only dutiable property the subject of the transaction is intellectual property of a business.
- (3) A transaction referred to in subsection (2) is a dutiable transaction if, under section 37, it is aggregated with a transaction that is a dutiable transaction for a Western Australian business asset and the transactions are treated as a single dutiable transaction.
- (4) For the purposes of section 11(1)(f), new dutiable property that is a Western Australian business asset

referred to in section 17(1)(c) is not acquired unless subsection (5) applies.

- (5) If a person —
- (a) carries on, or has carried on, a business (the *first business*); and
 - (b) creates intellectual property, a restraint of trade arrangement or a business identity related to the first business for the purpose of the carrying on of the first business or another business by another person,

then, subject to subsections (2) and (3), the creation of the intellectual property, restraint of trade arrangement or business identity is the acquisition by that other person of a Western Australian business asset of the first business.

Subdivision 3 — Dutiable value of dutiable transactions for business assets

82. Dutiable value of dutiable transactions for business asset

The dutiable value of a dutiable transaction for a business asset is to be determined —

- (a) under section 83 if —
 - (i) the business asset is a business licence referred to in paragraph (b) of the definition of that term in section 79; and
 - (ii) the asset is of a Western Australian business referred to in paragraph (c) of the definition of that term in section 79;
- or
- (b) under section 84 if the business asset is a business licence referred to in paragraph (a) of the definition of that term in section 79; or

- (c) under section 85 or 86, as is relevant; or
- (d) if the Commissioner decides that it is not appropriate to determine the dutiable value of a dutiable transaction for business assets under any of those sections, on such other basis as the Commissioner decides is appropriate.

83. Dutiable value of certain business licences required by Commonwealth law: s. 82(a)

The dutiable value of a dutiable transaction referred to in section 82(a) is the greater of the following —

- (a) the value of the business licence so far as it authorises the carrying out of an activity in Western Australia;
- (b) the portion of the consideration for the transaction that relates to the carrying out of an activity in Western Australia under the authority of the business licence.

84. Dutiable value of business licences required by WA law: s. 82(b)

The dutiable value of a dutiable transaction referred to in section 82(b) is —

- (a) the consideration for the dutiable transaction; or
- (b) the unencumbered value of the business licence the subject of the transaction at the time when liability for duty on the transaction arises if —
 - (i) there is no consideration for the transaction; or
 - (ii) the consideration cannot be ascertained when liability for duty on the transaction arises; or
 - (iii) the unencumbered value is greater than the consideration for the transaction.

85. Dutiable value of business asset where principal place of business is in WA: s. 82(c)

The dutiable value of a dutiable transaction for a business asset where the principal place of business or head office of the Western Australian business is in Western Australia is to be determined using the following formula —

$$DV = \frac{CUV \times (TS - IS)}{TS}$$

where —

DV is the dutiable value;

CUV is —

- (a) the consideration for the transaction; or
- (b) the unencumbered value of the business asset the subject of the transaction if —
 - (i) there is no consideration for the transaction; or
 - (ii) the consideration cannot be ascertained when liability for duty on the transaction arises; or
 - (iii) the unencumbered value is greater than the consideration for the transaction;

TS is the gross amount (in Australian dollars) of all the commodities supplied and services provided by the business in the last 3 completed financial years preceding the transaction;

IS is the gross amount (in Australian dollars) of the commodities supplied and services provided by the business to customers elsewhere in Australia in the last 3 completed financial years preceding the transaction.

86. Dutiable value of business asset where principal place of business is out of WA: s. 82(c)

The dutiable value of a dutiable transaction for a business asset where neither the principal place of business nor the head office of the Western Australian business is in Western Australia is to be determined using the following formula —

$$DV = \frac{CUV \times WAS}{TS}$$

where —

DV is the dutiable value;

CUV is —

- (a) the consideration for the transaction; or
- (b) the unencumbered value of the business asset the subject of the transaction if —
 - (i) there is no consideration for the transaction; or
 - (ii) the consideration cannot be ascertained when liability for duty on the transaction arises; or
 - (iii) the unencumbered value is greater than the consideration for the transaction;

TS is the gross amount (in Australian dollars) of all the commodities supplied and services provided by the business in the last 3 completed financial years preceding the transaction;

WAS is the gross amount (in Australian dollars) of the commodities delivered and services provided by the business to customers in Western Australia in the last 3 completed financial years preceding the transaction.

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13. Section 136 inserted

After section 135 insert:

136. Business licences held under *Fish Resources Management Act 1994*

Nominal duty is chargeable on a dutiable transaction, the subject of which is a business licence (within the meaning given in section 79) held under the *Fish Resources Management Act 1994* if the Commissioner is satisfied that the transaction has not, and will not, result in the passing of a beneficial interest in the business licence.

14. Chapter 2 Part 6 Division 4 inserted

At the end of Chapter 2 Part 6 insert:

Division 4 — Residential or business concessions

147. Concessional rates for transactions referred to in *Stamp Act 1921 s. 75AE*

- (1) A dutiable transaction is a *concessional transaction* for the purposes of this section if the instrument effecting or evidencing it would have been chargeable with duty under the *Stamp Act 1921* Second Schedule item 4(5), if it had been first executed before 1 July 2008.
- (2) Duty is chargeable on a concessional transaction at the applicable concessional rate of duty.
- (3) If a dutiable transaction is, or is treated as, a concessional transaction for the purposes of this section and for the purposes of Division 4A, the taxpayer may choose whether this Division or Division 4A is to apply

and the Commissioner, with the consent or at the request of the taxpayer, may —

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

15. Section 277 inserted

After section 276 insert:

277. Business licences not to be registered etc. unless duty endorsed or instrument lodged

- (1) In this section —
business licence has the meaning given in section 79.
- (2) If a business licence is the subject of a dutiable transaction, a person must not —
 - (a) give effect to, receive, accept, approve or recognise the dutiable transaction under a written law; or
 - (b) register or record —
 - (i) the dutiable transaction; or

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- (ii) a transaction record for the dutiable transaction,

in any register of business licences,

unless the dutiable transaction is duty endorsed or an instrument that effects the dutiable transaction has been lodged for duty endorsement in accordance with section 23.

Penalty: a fine of \$20 000.

- (3) It is a defence to a charge of an offence under subsection (2) to prove that the accused person did not know and could not reasonably have been expected to have known that —
 - (a) the business licence was the subject of a dutiable transaction; or
 - (b) the transaction was not duty endorsed; or
 - (c) an instrument that effects the transaction had not been lodged for duty endorsement.

16. Schedule 2 Division 2 amended

In Schedule 2 Division 2 after the item relating to section 147E insert:

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Residential or business property	\$0 — \$100 000	\$1.50 per \$100.00 or part of \$100.00
	\$100 001 — \$200 000	\$1 500 + \$4.39 per \$100.00 or part of \$100.00 above \$100 000

17. Schedule 3 Division 3 amended

Delete Schedule 3 Division 3 clause 30(3).

18. Schedule 3 Division 6 inserted

At the end of Schedule 3 insert:

Division 6 — Provisions for *Duties Legislation Amendment Act 2013* Part 3

36. Transactions on or after 1 July 2013 and before commencement day

(1) In this clause —

amending provisions means the provisions of the *Duties Legislation Amendment Act 2008* Part 2 Division 2 Subdivision 3;

commencement day means the day on which the *Duties Legislation Amendment Act 2013* section 18 comes into operation.

(2) This clause applies to a transaction that —

(a) occurs on or after 1 July 2013 and before commencement day; and

(b) relates to a Western Australian business asset.

(3) If the transaction is a dutiable transaction, the person liable for duty on the transaction is liable for duty on the transaction as if the amending provisions had not come into operation.

(4) If the transaction would have been a dutiable transaction had the amending provisions not come into operation, the person who would have been liable for duty on the transaction is liable for duty on the transaction as if the amending provisions had not come into operation.

(5) A liability for duty under this clause arises on commencement day.



