



Western Australia

Duties Act 2008

## **Duties Regulations 2008**

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## Duties Regulations 2008

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### Defined terms



## **Duties Regulations 2008**

### **1. Citation**

These regulations are the *Duties Regulations 2008*<sup>1</sup>.

### **2. Commencement**

These regulations come into operation as follows:

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*<sup>1</sup>;
- (b) the rest of the regulations — on 1 July 2008.

### **3. Financial markets prescribed (Act s. 3)**

For the purposes of the definition of *prescribed financial market* in section 3 of the Act, these financial markets are prescribed —

- (a) the Australian Stock Exchange Limited;
- (b) the Stock Exchange of Newcastle Limited;
- (c) a stock exchange that is a member of the World Federation of Exchanges.

### **4. Excluded transactions prescribed (Act s. 11(2))**

- (1) For the purposes of section 11 of the Act, each of the following transactions is prescribed as an excluded transaction —

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- (a) the vesting of a security interest under the *Financial Sector (Business Transfer and Group Restructure) Act 1999* (Commonwealth) Part 3;
  - (b) a transaction the subject of which is an interest in a partnership, unless the transaction is a partnership acquisition under section 11(1)(i) of the Act;
  - (c) the temporary transfer of the whole or part of an entitlement under an authorisation in accordance with the *Fish Resources Management Act 1994* section 141, unless the transfer gives rise to the transfer of a beneficial interest in the authorisation;
  - (d) the transfer of dutiable property (other than land or a right in relation to land) that would, but for this paragraph, be a transfer on which duty is not chargeable under section 42(1) of the Act;
  - (e) the creation of an easement under the *Transfer of Land Act 1893* Part IVA;
  - (f) the surrender of an easement pursuant to the *Transfer of Land Act 1893* section 129C(1)(a) or 229A(2).
- (2) Subregulation (1)(b) applies to all transactions that take place on or after 1 July 2008, whether before or after the commencement of the *Duties Amendment Regulations (No. 2) 2009* regulation 4.
- (3) Subregulation (1)(d), (e) and (f) apply to all transactions that take place on or after 1 July 2008, whether before or after the commencement of the *Duties Amendment Regulations (No. 2) 2013* regulation 4.

*[Regulation 4 inserted in Gazette 20 Sep 2013 p. 4363-4.]*

**5A. Dutiable property prescribed (Act s. 18(h))**

For the purposes of section 18 of the Act, dutiable property that is a profit à prendre is prescribed as special dutiable property.

*[Regulation 5A inserted in Gazette 15 May 2009 p. 1639.]*

**5B. Dutiable transactions prescribed (Act s. 140)**

(1) In this regulation —

*lot* has the meaning given in the *Land Tax Assessment Act 2002* Glossary clause 2;

*profit à prendre* means a profit à prendre created under a timber sharefarming agreement under the *Conservation and Land Management Act 1984* or the *Forest Products Act 2000*.

(2) For the purposes of section 140 of the Act, the following dutiable transactions are prescribed —

(a) the surrender of a profit à prendre in relation to a lot (the *old profit à prendre*) in the following circumstances —

- (i) the benefit of the old profit à prendre is in relation to a portion of the lot;
- (ii) the surrender is part of replacing the old profit à prendre with another profit à prendre in relation to the lot (the *new profit à prendre*) that is limited to that portion of the lot;
- (iii) the same person who has, or persons who have, the benefit of the old profit à prendre will have the benefit of the new profit à prendre;
- (iv) no consideration is provided in relation to the surrender;

(b) the acquisition of new dutiable property by the creation of a profit à prendre in the following circumstances —

- (i) the profit à prendre is a new profit à prendre as defined in paragraph (a)(ii);
- (ii) the circumstances described in paragraph (a)(ii) and (iii) apply in relation to the new profit à prendre;
- (iii) no consideration is provided in relation to the acquisition.

- (3) This regulation does not have the effect of making the surrender of a profit à prendre before 16 May 2009 dutiable.

*[Regulation 5B inserted in Gazette 15 Nov 2011 p. 4795-6.]*

**5. Information and particulars prescribed (Act s. 203(1)(b))**

For the purposes of section 203(1)(b) of the Act, this information and these particulars are prescribed in respect of a relevant acquisition —

- (a) the name and address of —
  - (i) the landholder concerned; and
  - (ii) if the landholder concerned is a unit trust scheme — the trustee of the scheme;
- (b) the name and address of —
  - (i) the acquirer; and
  - (ii) any related person that is taken into account in relation to the relevant acquisition for the purposes of section 163 or 164 of the Act;
- (c) the date of the day on which the relevant acquisition occurred or is taken to have occurred;
- (d) the extent (expressed as a percentage of the surplus property of the landholder if it were to be wound up) of the interest acquired, or taken to have been acquired, in the landholder concerned that is the relevant acquisition;
- (e) the aggregated interests in the landholder concerned, after the relevant acquisition, of —
  - (i) the acquirer; and
  - (ii) any related person that is taken into account in relation to the relevant acquisition for the purposes of section 163 or 164 of the Act;
- (f) the acquirer's estimate of the value of the landholder concerned, as determined under section 186 of the Act;
- (g) the consideration for the relevant acquisition.



**6. Classes of new vehicles prescribed (Act s. 237(1)(b))**

- (1) For the purposes of section 237 of the Act, these classes of vehicles are prescribed —
- (a) a motor vehicle, including a motor cycle, that is designed primarily to carry people;
  - (b) a motor vehicle that is designed primarily to transport goods or to carry materials used in trade, business or industry.
- (2) The classes of vehicles prescribed by subregulation (1) do not include these vehicles —
- (a) a motor vehicle that is fitted with seats for 9 or more adults, including the driver, that is used to carry people for hire or reward;
  - (b) a motorised wheelchair;
  - (c) a heavy vehicle;
  - (d) a vehicle that was damaged by the storm that occurred in Western Australia on 22 March 2010.
- (3) The amendment made by the *Duties Amendment Regulations 2010* (to insert paragraph (d) into subregulation (2)) applies in relation to the grant or transfer of a licence for a vehicle on or after 23 March 2010.

*[Regulation 6 amended in Gazette 1 Apr 2010 p. 1341-2.]*

**7. Classes of vehicles and persons, and purposes, prescribed (Act s. 244)**

- (1) In this regulation —
- Agriculture Minister* means the Minister responsible for administering the *Biosecurity and Agriculture Management Act 2007*;
- farming land* has the meaning given in section 99(1) of the Act;

**tractor** means a motor vehicle that —

- (a) is designed —
  - (i) for use primarily in industry (whether in the public or private sector) including, without limiting the meaning of “industry”, agriculture, earth moving and forestry; and
  - (ii) to be driven or controlled by a person carried in or on the vehicle;

and

- (b) is not designed —
  - (i) for use primarily for the carriage on roads of passengers or goods; or
  - (ii) for hauling a semi-trailer;

**tractor plant** means a motor vehicle that —

- (a) is, or has permanently attached to it, an excavator, road roller, road grader, bulldozer, mechanical shovel, plough, rotary hoe or similar plant; and
  - (b) is designed to be driven or controlled by a person carried in or on the vehicle; and
  - (c) is not suitable for the carriage of any load other than accessories necessary for the operation of the vehicle.
- (2) For the purposes of section 244(a) of the Act, these classes of vehicles are prescribed —
    - (a) a tractor;
    - (b) tractor plant.
  - (3) For the purposes of section 244(b) of the Act, the classes of persons who are prescribed are persons who own a tractor or tractor plant the vehicle licence charge payable for which is reduced under the *Road Traffic (Charges and Fees) Regulations 2006* regulation 16.
  - (4) For the purposes of section 244(c) of the Act, these classes of purposes are prescribed —

- (a) travelling —
  - (i) from one part of farming land to another part of that land; or
  - (ii) from farming land to another place to carry out farming activities;
- (b) carrying out fire fighting or fire prevention operations;
- (c) taking part in fire control exercises that have been authorised by a bush fire control officer appointed under the *Bush Fires Act 1954*;
- (d) if farming land is declared by the Agriculture Minister to be drought affected or water deficient — travelling between the farming land and a water supply for the purpose of carting water for stock or for domestic purposes.

**8. Records prescribed (Act s. 256(a))**

- (1) For the purposes of Chapter 5 of the Act, these records are prescribed for a vehicle in respect of which section 246 or 247(1) of the Act applies to the grant or transfer of a licence for the vehicle to a dealer —
  - (a) a record of the date of the grant or transfer of the licence for the vehicle to the dealer;
  - (b) for each loan of the vehicle by the dealer, as described in section 247(1)(a) of the Act —
    - (i) a record of the date the loan begins and the date the loan ends;
    - (ii) a record of the name of the charitable organisation, school or individual to which or whom the vehicle is loaned;

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- (iii) a record of the purposes for which the vehicle is loaned;
  - (iv) a description of the vehicle, including type, make, model, licence plate number and engine number;
  - (v) if the vehicle is loaned to an individual for a philanthropic purpose — a copy of the Commissioner's approval of the philanthropic purpose.
- (2) When a dealer is required by section 256(a) of the Act to keep a record referred to in subregulation (1) for a vehicle —
- (a) the dealer; and
  - (b) if the vehicle is loaned as described in section 247(1)(a) of the Act — the person responsible for the vehicle while on loan,

must certify on the record that the record is accurate.

Penalty: a fine of \$2 000.

**9A. Records to be kept (Act s. 285(2))**

For the purposes of the Act, a person liable to pay duty on a dutiable transaction is required to keep a transaction record for the transaction that is duty endorsed.

*[Regulation 9A inserted in Gazette 1 Apr 2011 p. 1186.]*

**9. Act Sch. 3 cl. 13(1) varied (Act Sch. 3 cl. 27(1)(b))**

Clause 13(1) of Schedule 3 to the Act is varied as if the following were inserted instead of that subclause —

- (1) Despite section 190(1)(a), if the day that is 3 years before the day on which the relevant acquisition occurred is before 1 July 2008, section 190 is to be read as if —
  - (a) the following paragraph were inserted instead of section 190(1)(a) —

“

- (a) an interest, other than one to which subsection (2) applies, that was held by the person or a related person, or by the person and a related person, before 1 July 2008; or

” ; and

- (b) the following subsection were inserted instead of section 190(2) —

“

- (2) This subsection applies to an interest in the landholder acquired by an acquisition (the *earlier acquisition*) if the relevant acquisition in respect of which duty is to be calculated under section 188(1) was made pursuant to an arrangement entered into —

- (a) during the prescribed period in respect of the earlier acquisition; and
- (b) in the opinion of the Commissioner, for a purpose of avoiding or reducing the amount of duty payable.

”.

#### 10. Consideration for the grant of a lease, ascertaining

- (1) In ascertaining the amount of consideration for a dutiable transaction that is the grant of a lease, the value of any substantial improvement of, or addition to, the leased property that the lessee has agreed to carry out, or has already carried out, is not included.
- (2) Subregulation (1) applies to all transactions that take place on or after 1 July 2008, whether before or after the commencement of the *Duties Amendment Regulations 2009* regulation 4.

*[Regulation 10 inserted in Gazette 27 Mar 2009 p. 933.]*

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**Notes**

<sup>1</sup> This is a compilation of the *Duties Regulations 2008* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

**Compilation table**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Duties Regulations 2008</i>	20 Jun 2008 p. 2751-61	r. 1 and 2: 20 Jun 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2008 (see r. 2(b))
<i>Duties Amendment Regulations 2009</i>	27 Mar 2009 p. 932-3	r. 1 and 2: 27 Mar 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 28 Mar 2009 (see r. 2(b))
<i>Duties Amendment Regulations (No. 2) 2009</i>	15 May 2009 p. 1638-9	r. 1 and 2: 15 May 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 16 May 2009 (see r. 2(b))
<i>Duties Amendment Regulations 2010</i>	1 Apr 2010 p. 1341-2	1 Apr 2010 (see r. 2)
<i>Duties Amendment Regulations 2011</i>	1 Apr 2011 p. 1185-6	r. 1 and 2: 1 Apr 2011 (see r. 2(a)); Regulations other than r. 1 and 2: 2 Apr 2011 (see r. 2(b))
<i>Duties Amendment Regulations (No. 2) 2011</i>	15 Nov 2011 p. 4795-6	Regulations other than r. 1 and 2: 1 Jul 2008 (see r. 2(b)); r. 1 and 2: 15 Nov 2011 (see r. 2(a))
<b>Reprint 1: The <i>Duties Regulations 2008</i> as at 24 Feb 2012</b> (includes amendments listed above)		
<i>Duties Amendment Regulations (No. 2) 2013</i>	20 Sep 2013 p. 4363-4	r. 1 and 2: 20 Sep 2013 (see r. 2(a)); Regulations other than r. 1 and 2: 21 Sep 2013 (see r. 2(b))

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
Agriculture Minister .....	7(1)
farming land .....	7(1)
lot .....	5B(1)
new profit à prendre .....	5B(2)
old profit à prendre .....	5B(2)
profit à prendre.....	5B(1)
tractor.....	7(1)
tractor plant .....	7(1)