



Western Australia

Duties Regulations 2008

Compare between:

[01 Jul 2018, 01-d0-01] and [09 Oct 2019, 01-e0-01]

Duties Regulations 2008

1. Citation

These regulations are the *Duties Regulations 2008*⁺.

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*⁺;
- (b) the rest of the regulations — on 1 July 2008.

2A. Listed entity demergers and hybrid demergers

(1) In this regulation —

entity has the meaning given in section 148(1) of the Act;

listed entity means a listed corporation or a listed unit trust scheme (as those terms are defined in section 148(1) of the Act);

security means —

- (a) in relation to a corporation — an issued share of the corporation; or
- (b) in relation to a unit trust scheme — a unit issued under the scheme.

(2) In this regulation, an entity (*entity A*) is a **wholly-owned subsidiary** of a listed entity if the listed entity, or the trustee of the listed entity as trustee (if it is a unit trust scheme), directly or indirectly —

(a) holds 100% of the securities of entity A; and

(b) controls (either by being able to cast or to control the casting of) 100% of the votes that may be cast at a general meeting of entity A.

(3) In these regulations, a **listed entity demerger** is an arrangement that is made in relation to a wholly-owned subsidiary (the **demerged entity**) of a listed entity if —

(a) under the arrangement, each person (a **listed entity security holder**) who holds securities of the listed entity on the date nominated by the listed entity may acquire securities of the demerged entity; and

(b) the arrangement does not provide for any acquisition of securities of the demerged entity otherwise than by a listed entity security holder; and

(c) the demerged entity is listed on a prescribed financial market, or the Commissioner is satisfied that the demerged entity will be listed on a prescribed financial market, before the day that is 12 months after the day on which the first acquisition of securities under the arrangement occurs.

(4) In these regulations, a **hybrid demerger** is an arrangement that is made in relation to a wholly-owned subsidiary (the **demerged entity**) of a listed entity if —

(a) under the arrangement, each person (a **listed entity security holder**) who holds securities of the listed entity on the date nominated by the listed entity may acquire securities of the demerged entity; and

(b) the arrangement also involves a public float of securities of the demerged entity; and

(c) the arrangement does not provide for any acquisition of securities of the demerged entity otherwise than —

(i) by a listed entity security holder; or

(ii) in the public float.

(5) For the purposes of subregulations (3) and (4), a person may, without limitation, acquire securities by the purchase, gift, allotment or issue of the securities.

(6) For the purposes of subregulations (3) and (4), an acquisition of securities for a listed entity security holder by a person nominated for that purpose by the listed entity is taken to be an acquisition by the listed entity security holder.

[Regulation 2A inserted: Gazette 8 Oct 2019 p. 3617-19.]

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 —
 - (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);
 - (g) a partnership acquisition where —
 - (i) the partnership holds no land in Western Australia, other than a lease or leases having a nominal value; and
 - (ii) the partnership holds no indirect interest in land in Western Australia, other than in a lease or leases having a nominal value.
- (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.
- (4) Subregulation (1)(g) applies to all transactions that take place on or after 1 July 2008, whether before or after the commencement of the *Duties Amendment Regulations 2016* regulation 4.

*[Regulation 4 inserted: Gazette 20 Sep 2013 p. 4363-4;
amended: Gazette 24 May 2016 p. 1536.]*

~~5A.~~ 4A. Special 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: 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;~~

~~*timber sharefarming 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~~18 of the Act, dutiable property that is any of the following ~~dutiable transactions are~~is prescribed as special dutiable property —

(a) ~~the surrender of~~ a profit à prendre ~~in relation to a~~ other than a timber sharefarming profit à prendre;

(b) a timber sharefarming profit à prendre, if there is or will be consideration for the surrender of the timber sharefarming profit à prendre;

(c) a plantation interest created under an agreement under the *Tree Plantation Agreements Act 2003*, if there is or will be consideration for the surrender of the plantation interest.

~~[Regulation 4A inserted: Gazette 8 Oct 2019 p. 3619.]~~

4B. Dutiable transactions on which nominal duty is chargeable prescribed (Act s. 140)

(1) In this regulation —

lot has the meaning given in the *Land Tax Assessment Act 2002* Glossary clause 2(1);

timber sharefarming profit à prendre has the meaning given in regulation 4A(1).

(2) For the purposes of section 140 of the Act, the acquisition of new dutiable property by the creation of a timber sharefarming profit à prendre (the *new profit à prendre*) is prescribed as a dutiable transaction on which nominal duty is chargeable if —

(a) the new profit à prendre is created to replace another timber sharefarming profit à prendre (the *old profit à prendre*) ~~in the following circumstances~~ that has been surrendered for no consideration; and

~~(i) the~~ (b) the old profit à prendre was registered under the *Transfer of Land Act 1893* in relation to the whole of a lot, but the benefit of the old profit à prendre ~~is~~ was in relation to a portion of the lot; ~~only; and~~

~~(ii)c~~ the ~~surrender is part of replacing the old~~ new profit à prendre ~~with another profit à prendre~~ is created in relation to ~~the lot (the new profit à prendre)~~ that is ~~limited to~~ that portion of the lot; ~~only; and~~

~~(iii)d~~ the ~~same~~ person ~~who has~~, or persons who ~~have~~, had the benefit of the old profit à prendre ~~will have~~ are the same as the persons acquiring the benefit of the new profit à prendre; and

~~(iv) — e)~~ there is no consideration ~~is provided in relation to~~, or agreement for consideration, for the ~~surrender~~;

~~(b) — the~~ acquisition.

[Regulation 4B inserted: Gazette 8 Oct 2019 p. 3619-20.]

[5A, 5B. Deleted: Gazette 8 Oct 2019 p. 3619.]

5. Circumstances in which persons acquiring interests under 1 arrangement or in concert are not related persons prescribed (Act s. 162(1A)(b))

(1) For the purposes of ~~new dutiable property by the creation~~ section 162(1A)(b) of a profit à prendre in the

Act, section 162(1)(h) and (i) of the following Act do not apply in circumstances —

- ~~— (i) — where the profit à prendre is a new profit à prendre~~acquisitions are made as defined in paragraph (a)(ii); part of —
- ~~— (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) (a) a listed entity demerger; or~~
~~(b) a hybrid demerger.~~

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

~~[Regulation 5B inserted: 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~~applies in determining under section 162 of the Act whether persons are related persons in relation to an acquisition —

- ~~— (a) — the name and address of —~~
 - ~~— (i) — the of an interest in a 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 if the 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 occurs (as determined under section 186176 of the Act;) on or after 13 June 2019.~~
- ~~_____ (g) the consideration for the relevant acquisition.~~

(3) In this regulation, a reference to a provision of the Act includes a reference to that provision as applied by section 205ZE of the Act.

[Regulation 5 inserted: Gazette 8 Oct 2019 p. 3620.]

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: Gazette 1 Apr 2010 p. 1341-2.]

7. Classes of vehicles, 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*;

~~carriage of passengers or goods between prescribed places has the meaning given in the *Interstate Road Transport Act* section 3(1);~~

farming land has the meaning given in section 99(1) of the Act;

~~*Interstate Road Transport Act* means the *Interstate Road Transport Act 1985* (Commonwealth);~~

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;

~~(c) a motor vehicle or trailer that was registered under the Interstate Road Transport Act section 9 and whose registration was in force immediately before the close of 30 June 2018.~~

~~[(c) deleted]~~

- (3) For the purposes of section 244(b) of the Act, ~~these classes of person are prescribed —~~

~~(a) the class of persons who own a tractor or tractor plant for which the vehicle licence charge payable for which is reduced under the Road Traffic (Vehicles) Regulations 2014 regulation 81; is prescribed.~~

~~(b) persons who own a motor vehicle or trailer referred to in subregulation (2)(c).~~

- (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;

~~(e) the carriage of passengers or goods between prescribed places or any purpose incidental to carriage of that kind.~~

[(e) deleted]

*[Regulation 7 amended: Gazette 22 Jun 2018 p. 2194-5;
8 Oct 2019 p. 3620-1.]*

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.

8A. Events that do not result in automatic revocation of exemption for relevant reconstruction transaction prescribed (Act s. 264A(3)(b))

- (1) For the purposes of section 264A(3)(b) of the Act, section 264A of the Act does not apply to a notifiable event that occurs in relation to a relevant reconstruction transaction if the notifiable event results from —
 - (a) a listed entity demerger; or
 - (b) a hybrid demerger.
- (2) This regulation applies to a relevant reconstruction transaction that occurs on or after 13 June 2019.

[Regulation 8A inserted: Gazette 8 Oct 2019 p. 3621.]

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: 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: Gazette 27 Mar 2009 p. 933.]

Notes

¹— 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.~~ [For provisions that have come into operation, and for](#) information about any ~~reprint~~ [reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.](#)

Compilation table

Citation	Gazetta Publi shed	Commencement
<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))
Reprint 1: The <i>Duties Regulations 2008</i> as at 24 Feb 2012 (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))
<i>Duties Amendment Regulations 2016</i>	24 May 2016 p. 1536	r. 1 and 2: 24 May 2016 (see r. 2(a)); Regulations other than r. 1 and 2:

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Notes

Uncommenced provisions table

Citation	Gazetted Published	Commencement
		25 May 2016 (see r. 2(b))
<i>Duties Amendment Regulations 2018</i>	22 Jun 2018 p. 2193-5	r. 1 and 2: 22 Jun 2018 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2018 (see r. 2(b))
Duties Amendment Regulations 2019 Pt. 1 and 2	8 Oct 2019 p. 3617-21	Pt. 1: 8 Oct 2019 (see r. 2(a)); Regulations other than Pt. 1 and 3: 9 Oct 2019 (see r. 2(c))

Uncommenced provisions table

To view the text of the uncommenced provisions see [Subsidiary legislation as made on the WA Legislation website](#).

<u>Citation</u>	<u>Published</u>	<u>Commencement</u>
Duties Amendment Regulations 2019 Pt. 3	8 Oct 2019 p. 3621	Operative on commencement of Community Titles Act 2018 s. 11 (see r. 2(b))