TAXATION ADMINISTRATION BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives

To provide an administrative framework to support the *Duties Bill 2001*, incorporate the arrangements currently provided for under the *Revenue Laws (Reciprocal Powers) Act 1988*, and then to progressively apply the new administrative arrangements to the *Pay-roll Tax Act 1971* and the *Land Tax Act 1915*.

Reasons for the Bill

Currently, each tax law administered by the Office of State Revenue contains separate provisions dealing with the administration of that law, resulting in significant duplication and inconsistency across provisions which largely should be uniform. Also, the existing provisions do not always reflect or adequately address current taxation practice or technological advancements.

The *Taxation Administration Bill 2001* provides a foundation for improvement in taxation administration by rationalising the administrative provisions which support the *Duties Bill 2001*, and progressively the *Pay-roll Tax Act 1971* and the *Land Tax Act 1915*, in addition to incorporating arrangements currently provided for under the *Revenue Laws (Reciprocal Powers) Act 1988*. It also provides clear guidelines for taxpayers in meeting their taxation obligations.

Specifically, the outcomes of the enactment of new taxation administration legislation will be improved arrangements for taxpayers and their advisers, lower compliance costs in meeting taxation obligations, recognition of the effect of technological and business changes on taxation administration, achievement of greater consistency across taxes and improved administrative efficiency.

Achievement of Objectives

Operation of the Taxation Administration Bill 2001

Part 1 of the *Taxation Administration Bill 2001* establishes the relationship between it (upon its proclaimed commencement) and each revenue law. Initially, the *Taxation Administration Bill 2001* will apply to the *Duties Bill 2001* when enacted. The new taxation administration legislation will then be applied progressively to the *Pay-roll Tax Act 1971* and the *Land Tax Act 1915*.

The *Taxation Administration Bill 2001* will also replace the arrangements currently provided for under the *Revenue Laws (Reciprocal Powers) Act 1988*, enabling its repeal.

In interpreting a revenue law, it must be read together with the *Taxation Administration Bill 2001*. That is, the revenue law and the *Taxation Administration Bill 2001* form a legislative package with each supporting the operation of the other. However, there may be cases where the revenue law will override the *Taxation Administration Bill 2001* if the generic administrative provision is inappropriate in a particular circumstance. Any such overriding of the taxation administration legislation will be made clear in the revenue law. Also, administrative provisions that are specific to a particular revenue law will be dealt with in that law rather than in the *Taxation Administration Bill 2001*.

The new taxation administration legislation will bind all persons, including the State and, to the extent possible, the other States and the Commonwealth.

The Commissioner of State Revenue

Under the revenue laws, there is an office of Commissioner which generally has the responsibility for administering those laws. However, that office has various titles according to the legislation being administered. Also, the various powers under the revenue laws may be exercised by the Commissioner, Deputy Commissioner or Assistant Commissioner in certain circumstances. To address these inconsistencies, there will be a Commissioner of State Revenue who will have responsibility for administering and enforcing the tax laws. The Commissioner will have the powers necessary to perform the Commissioner's functions, including those specified in the tax laws. The offices of Deputy Commissioner and Assistant Commissioner have not been continued legislatively but may be continued administratively.

The Commissioner may delegate, or, where appropriate, allow for the subdelegation of, his powers to an appropriately qualified public service employee. The Commissioner may also engage contractors and consultants as necessary. For example, the Commissioner may engage agents to assist with debt recovery processes.

Assessments

An assessment is the process of determining tax liability, with the revenue laws specifying the basis on which liability for primary tax arises. Assessments are made by the Commissioner but may also be made on the Commissioner's behalf by self assessors under the self assessment arrangements included in the *Taxation Administration Bill 2001*.

Currently, the *Stamp Act 1894* does not treat all taxpayers consistently as it contemplates the making of an assessment only where liability is determined by the Commissioner and not where liability is determined by the taxpayer or an agent under the returns arrangements. Therefore, rights of objection differ depending on how liability is determined, and rights of redetermination of liability and the imposition of penalties are also inconsistent.

The assessment arrangements included in Part 3 of the *Taxation Administration Bill 2001* address existing deficiencies by properly providing for and accommodating an effective self assessment regime. This will mean that a person whose tax liability is determined under the self assessment arrangements will have the same rights of objection and reassessment as others.

The making of an assessment will underpin the ascertainment of tax liability for all taxes and will be the basis on which all subsequent rights flow (e.g. redetermination of liability, the making of refunds and the exercise of review rights). All tax liability (i.e. primary tax, penalty tax and unpaid tax interest accrued at the time of assessment) will be assessed. Where penalty tax and assessed interest are to be remitted, that too will be effected by assessment.

The times within which reassessments may be made largely will be consistent, regardless of whether the reassessment is made to increase or decrease tax liability. There are some exceptions to allow reassessments to be made outside the usual limitation period and the *Duties Bill 2001* also specifies cases where the limitation period will not apply.

The intention of the reassessment arrangements is that the objection and appeals processes will be the principal way in which taxpayers may have a tax liability reviewed if they disagree with the liability determined under an assessment. However, as there will be some cases where taxpayers may not become aware that an assessment was made on an incorrect basis, whether by the Commissioner or by self assessment, the Commissioner has a discretion to make reassessments other than as a result of a successful objection or appeal. Nevertheless, this discretionary power to make reassessments outside the objection and appeal framework cannot be used as a means of obtaining de facto review rights and any reassessments made in these circumstances shall, except in limited circumstances, be made in accordance with the legal interpretations and assessment practices applied by the Commissioner at the time of making the original assessment.

Part 3 includes an obligation for taxpayers to advise the Commissioner on becoming aware of information that reveals that the correct liability for tax is more than that previously assessed. The requirement is designed to ensure that all taxpayers pay the correct amount of tax where they become aware that an assessment was incorrect and the tax was underassessed. It is not directed to instances where taxpayers or their advisers may simply hold a different view of the legal interpretations applied by the Commissioner in making the assessment. Guidelines for the remission of penalty tax will ensure that proper regard is had to the reasons for the understatement of liability and the taxpayer's culpability, if any.

As the service of an assessment notice is integral to many administrative matters that follow the making of an assessment, the circumstances in which taxpayers are taken to have been served with an assessment notice are clearly specified.

Payments and refunds

To comply with their obligations, taxpayers need adequate information about tax payment methods and the time within which payment must be made. In addition, as it is necessary for the Commissioner to be able to collect tax promptly when due, the Commissioner requires sufficient power to recover debts effectively. Part 4 of the *Taxation Administration Bill 2001* establishes payment methods, timeframes for making payment, how payments will be allocated by the Commissioner to tax liabilities and how debts will be recoverable by the Commissioner. In relation to payment methods, there is scope for additional methods to be prescribed by regulation. This recognises that, with the increasing use of e-commerce,

flexibility is required. Any regulation made will also specify when the payment is taken to be made.

In some cases, times for payment will be specific to particular taxes and the relevant revenue law will establish the payment time.

In limited cases where payment of tax would cause the taxpayer significant financial hardship, Part 4 will allow the Commissioner to extend the time for payment. Effectively, an extension will suspend debt recovery proceedings until the extended date for payment passes but will not affect the accrual of interest on unpaid tax. However, any payment arrangement will be subject to the Commissioner's right to terminate the arrangement at any time and recover the outstanding tax.

Given the significant benefit that an extension of time to pay tax provides taxpayers, no rights of review will be available for any decision made by the Commissioner regarding whether or not to approve or terminate an arrangement. This ensures that the Commissioner cannot be compelled to defer the date for recovering tax legally payable under the tax laws.

The *Taxation Administration Bill 2001* specifies the circumstances in which taxpayers may be entitled to refunds of amounts overpaid under a tax law and the conditions and time limits for making those refunds. Specific provisions for making refunds may also be included in a revenue law but not otherwise.

In tandem with the approach taken for reassessments decreasing liability, where taxpayers cannot compel the making of a reassessment outside the objection and appeal processes, rights of refund are generally linked to the making of a reassessment decreasing liability. In this way, taxpayers who dispute their tax liability cannot compel the making of a refund where there is no right to a reassessment.

The “windfall gains” provisions of Part 4 ensure that the benefit of any refund is passed on to the person who bore the incidence of the tax. The Commissioner may also hold a refund amount for application against a taxpayer’s current tax law liability or a future liability where it is expected to shortly arise.

Part 4 also provides the Commissioner with the power to recover unpaid tax law amounts as debts due to the State, with the total amount of a debt being recoverable from one or more of the taxpayers who are liable for the amount.

In addition, the Commissioner may issue a garnishee notice on a third party requiring that person to pay monies to the Commissioner to satisfy a

taxpayer's debt in full or in part. These arrangements balance the garnishee's interests with the State's revenue needs in promptly collecting tax due where a taxpayer fails to pay the amount as required. That is, a garnishee is not required to pay an amount to the Commissioner until the garnishee holds the amount for the taxpayer. Also, in making payment to the Commissioner, the garnishee is taken to have acted with the taxpayer's authority and to have satisfied an obligation to pay the amount to the taxpayer. The Commissioner may have regard to the taxpayer's living costs and other matters when deciding the way that a garnishee requirement will apply.

Unpaid tax interest and penalty tax

In the context of collecting State taxes, the policy objective in imposing interest is to encourage payment of tax on time and to compensate the State for the period that tax has been unpaid. The payment of tax can be deferred by a number of means, including the late lodgement of documents, failing to disclose all relevant information when lodging documents and thereby causing an assessment to be issued for a lesser amount than it would otherwise have been, and failing to pay tax by the required time.

Under Part 5 of the *Taxation Administration Bill 2001*, interest will be imposed on tax that is unpaid during any period or periods of late lodgement, failure to provide information or late payment. Also, where an increased reassessment of tax is made, interest will be imposed in respect of the increased amount from the due date of the original assessment, or the earlier date if there have been preceding periods of non-compliance, until the correct amount of tax is paid in full. Interest may also be payable by the Commissioner in respect of overpaid tax in certain circumstances.

In addition to the imposition of interest on unpaid tax amounts, there are also cases where administrative sanctions are necessary where taxpayers have failed to comply with their tax obligations. Such sanctions act as an incentive for compliance with the tax laws and also recognise that it may not always be feasible or cost effective to institute prosecution action for non-compliance. Part 5 of the *Taxation Administration Bill 2001* therefore provides for the imposition of penalty tax in certain circumstances. These penalties are intended as an alternative to the prosecution of a taxpayer where an offence has been committed in the same circumstances and are largely consistent with the approach taken by all revenue authorities, both Commonwealth and State, in relation to administrative sanctions.

Part 5 also allows for the full or partial remission of unpaid tax interest and penalty tax. As is the case with other discretions conferred on the Commissioner, administrative guidelines will specify the matters to which regard may be had in making a remission decision. In particular, where a reassessment increasing liability is made solely because of an error originally made by the Commissioner, there will be a full remission of the resulting unpaid tax interest and penalty tax. Rights of objection and appeal are available where a taxpayer is dissatisfied with the Commissioner's decision in relation to an assessment that includes unpaid tax interest or penalty tax.

Review of taxation decisions

Part 6 of the *Taxation Administration Bill 2001* establishes three categories of decisions that determine the rights of review that apply as a result, being:

- decisions reviewable by way of objection and appeal;
- decisions reviewable under the *Judicial Review Act 1991*; and
- non-reviewable decisions.

The objection process provides a no cost system of internal review of assessments by an independent decision maker. Any decisions or conduct forming part of the process of, or leading up to the making of, an assessment are subject to review as part of the review of that assessment. Consistent with the general obligation on taxpayers to notify the Commissioner of information relating to a tax liability, all relevant material is required to be provided with an objection. Where a taxpayer is dissatisfied with the objection decision, there is a right to a full merits review by a single judge of the Supreme Court, subject to the satisfaction of certain conditions. The Supreme Court will, however, return the matter to the Commissioner for reconsideration of the objection where material new evidence is introduced, keeping costs to a minimum.

This approach clarifies, and achieves consistency between, taxpayers' rights of review across the revenue laws by ensuring that there are rights of objection and appeal regardless of whether tax has been assessed under the self assessment arrangements or otherwise. It also ensures that the time at which these rights arise, and the basis on which the review is undertaken, is clear.

With this expansion of taxpayers' rights of review under the *Taxation Administration Bill 2001*, judicial review rights will be limited so that,

where there are rights of objection and appeal, whether or not they are exercised, there are no separate rights of review under the *Judicial Review Act 1991*. Decisions that are not either assessment decisions, non-reviewable decisions or decisions disallowing in whole or in part an objection, will continue to be subject to review under the *Judicial Review Act 1991*. Failure by the Commissioner to make a decision will also continue to be subject to judicial review.

Finally, there is a limited class of decisions which are non-reviewable. In addition to being outside the scope of the objection and appeal processes, these decisions cannot be challenged, reviewed or called into question in any other way, including under the *Judicial Review Act 1991* or otherwise. Generally, non-reviewable decisions are those that may be made in the Commissioner's absolute discretion in order to confer a special advantage on a person. Examples of non-reviewable decisions include a decision by the Commissioner to refuse to extend the time for lodging an objection, a decision in relation to a request for an extension of time to pay tax, and a decision not to make a reassessment where the taxpayer has not exercised rights of objection.

Given the nature of the review rights exclusion, the declaration of a decision as being non-reviewable does not affect the rights of, for instance, the Parliamentary Commissioner for Administrative Investigations in conducting a review under the *Parliamentary Commissioner Act 1974*. (Also see section 13(10) of that Act).

Investigations

To protect the State's revenue, the Commissioner must be empowered to investigate compliance and non-compliance with the tax laws, including cases of avoidance or evasion. Investigations establish whether there is a tax liability, facilitate the timely collection of tax payable and encourage voluntary compliance by taxpayers.

The powers provided for under Part 7, which may also generally be exercised by an investigator, include the following:

- to require the provision of information or documents;
- to require a person to attend before the Commissioner or an investigator to provide information, orally or in writing, or to produce documents;
- to enter places, subject to specified conditions;
- to exercise various powers, having entered a place;

- to seize or retain documents or other things; and
- to authorise, conduct, or assist in the conduct of, interstate investigations.

These powers may be exercised for any purpose related to the administration or enforcement of the tax laws or a recognised law, including where new evidence introduced on appeal is referred back to the Commissioner for reconsideration of the objection. This would allow, for instance, the conduct of an investigation which seeks to establish the basis on which a particular tax scheme that had been widely marketed to the community was undertaken, or whether or not particular activity by one person or a group of people may constitute a breach of the tax laws.

Persons appointed by the Commissioner will be public service employees whom the Commissioner is satisfied have the necessary skills and experience to conduct investigations. Each investigator will be issued with an identity card that must be produced when exercising powers in relation to places.

Access to a place without a warrant will be permitted in specified circumstances, including with consent, when a public place is open to the public or, where an enterprise is conducted from a place, when it is being conducted or the place is otherwise open for entry (except that part of the place used as a residence). That is, access to places where an enterprise is conducted is not limited to usual hours of business if the enterprise actually operates at other hours. A warrant will be required for access to places in other cases.

Under reciprocal arrangements with interstate Commissioners, investigations powers will also be exercisable for the purposes of interstate tax laws where those laws have been declared as recognised laws by regulation. This will reflect existing arrangements under the *Revenue Laws (Reciprocal Powers) Act 1988*, which enables persons administering recognised laws in other States and Territories to seek permission to conduct investigations in Queensland, or for the Commissioner to conduct investigations on their behalf. The powers that may be exercised in these cases will be the same as may be exercised for a Queensland tax law.

The *Revenue Laws (Reciprocal Powers) Act 1988* also provides for the sharing of information between jurisdictions. These arrangements will now be provided for either under Part 8 for the tax laws or under the specific legislation administered by the Office of State Revenue where that legislation is not a revenue law for the *Taxation Administration Bill 2001*.

As a result, the *Revenue Laws (Reciprocal Powers) Act 1988* will be repealed.

To ensure the continued integrity of the State's revenue collection arrangements, a person will not be entitled to refuse to provide information or documents on the grounds that it may be incriminating. This ensures that the Commissioner can obtain all information necessary to properly determine tax liability.

However, the use of the information in criminal proceedings will be limited to those cases where the falsity or misleading nature of the information or document is relevant e.g. where the information or documents so provided are false. Where information or documents are obtained under a recognised law of another jurisdiction, the use of the information or documents in criminal proceedings will be restricted in the same manner as if they had been obtained under the *Taxation Administration Bill 2001*.

The *Taxation Administration Bill 2001* does not affect the doctrine of legal professional privilege.

Confidentiality

In administering the tax laws, the Commissioner is provided with a range of information, some of a general nature and some of a specific nature, which may relate to the personal, business or commercial affairs of taxpayers. Given the nature of the information and the fact that the Commissioner may compel its provision, appropriate limitations on the disclosure of the information by the Commissioner, staff, former staff and others acquiring the information, are necessary. However, the disclosure of information for appropriate purposes is also necessary.

Part 8 of the *Taxation Administration Bill 2001* establishes the obligation of confidentiality for certain information while specifying the circumstances in which that information may be disclosed and the consequences arising where information is disclosed in breach of the provisions. The confidentiality obligations are dependent on the class of information involved, imposing greater limitations on the circumstances in which personal confidential information may be disclosed. That is, personal confidential information may only be disclosed by the Commissioner in the circumstances mentioned in the *Taxation Administration Bill 2001*. On the other hand, the remaining component of confidential information, which relates to information that is more in the

nature of general information, may be disclosed as considered appropriate by the Commissioner.

A person administering a tax law cannot be compelled to provide confidential information to a court in a proceeding or to a party to the proceeding, or to state whether or not the person has received particular confidential information or the identity of a source of confidential information, except where the proceeding is for the administration of a tax law.

As the intention of Part 8 is to protect the confidentiality of certain information and is not intended as a general enabling provision for the dissemination of information by the Commissioner, the Commissioner's decision not to disclose confidential information will be non-reviewable.

Finally, in recognition of the nature of personal confidential information, Schedule 1 of the *Freedom of Information Act 1992* will be amended to include Part 8 of the *Taxation Administration Bill 2001* to the extent that it applies to personal confidential information. This will be achieved by consequential amendments effected under Part 14 of the *Taxation Administration Bill 2001* and will ensure that the disclosure of this information may be refused under section 48 of the *Freedom of Information Act 1992* where the requirements of that section are satisfied.

Record keeping

The Commissioner's ability to ensure compliance with the tax laws depends on the power to conduct investigations, which in turn depends on the retention of records by taxpayers to enable their tax law liability to be determined. Part 9 of the *Taxation Administration Bill 2001* requires taxpayers to keep, or cause to be kept, the records necessary for that purpose. The term "keep" includes the making of records as well as retaining existing records.

Records must be kept in a way that ensures they can be readily produced to the Commissioner if needed. They must also be written in English with amounts expressed in Australian currency, or in an easily convertible form. Where this is not done, the Commissioner may require their translation or may recover the costs where the Commissioner arranges for the conversion.

Records must be kept until the later of 5 years after the record was made or obtained, 5 years after completion of the transaction or matter to which the record relates, or 2 years after the end of a period during which a person

must continue to satisfy conditions in relation to liability under a revenue law.

Enforcement and legal proceedings

The *Taxation Administration Bill 2001* includes provisions imposing obligations to do or not to do certain things. To ensure compliance, it is appropriate that a failure to comply with the obligation constitutes an offence.

Part 10 provides for a number of offences which have general application across the tax laws. In addition, the *Taxation Administration Bill 2001* includes specific offences which relate to obligations imposed under particular provisions of the Bill. These offences are included in the Part which contains the particular obligation.

If a person fails to comply with an obligation under the tax laws, action may need to be taken to enforce compliance. Also, legal proceedings arise where a taxpayer lodges an appeal against an assessment decision. Part 10 of the *Taxation Administration Bill 2001* therefore includes provisions relevant to these legal proceedings, including who can conduct the proceeding, how proceedings for offences are taken, and the sanctions which may be imposed by the court. In addition, to ensure the effectiveness of taxation arrangements, executive officers of a corporation are required to ensure compliance by the corporation with its tax law obligations.

In relation to proceedings under a tax law, provisions dealing with the evidentiary value of the following matters in such a proceeding are included in Part 10:

- the Commissioner's signature;
- a statement made by the Commissioner starting a proceeding;
- a certificate signed by the Commissioner;
- copies of assessment notices; and
- copies of documents.

Giving and lodging documents

The tax laws require documents to be given to the Commissioner in a variety of circumstances. In addition, the tax laws provide for the giving of documents by the Commissioner to other persons. The way and time in

which those documents are given is relevant for a number of other matters. For example, the time within which a person may object to an assessment is determined by the time that the person is given the assessment notice.

The *Taxation Administration Bill 2001* therefore clarifies how and when documents must be given to or by the Commissioner and also allows for the later inclusion of additional methods of service by making a regulation and the specification in the regulation of when these documents will be taken to be given. For instance, e-commerce initiatives may be accommodated in this way.

Miscellaneous provisions

The main issues addressed in Part 12 of the *Taxation Administration Bill 2001* are the Commissioner's power to extend the time for complying with lodgement or information requirements and the protection of officials from civil liability.

Transitional provisions and consequential amendments

The *Taxation Administration Bill 2001* contains a number of transitional provisions and consequential amendments necessary to ensure the efficient transition from the *Stamp Act 1894* to the *Duties Bill 2001* and *Taxation Administration Bill 2001*.

Chapter 17 of the *Duties Bill 2001* provides for the continued application of the *Stamp Act 1894* once repealed where instruments were signed or transactions entered into before the commencement of the *Duties Bill 2001*. However, this is subject to anything provided to the contrary in the *Taxation Administration Bill 2001*.

The *Taxation Administration Bill 2001* recognises that there are a number of provisions under the new legislation that may appropriately be applied for matters arising under the repealed *Stamp Act 1894* after the commencement of the *Taxation Administration Bill 2001*. On this basis, the repealed *Stamp Act 1894* is declared to be a revenue law on and from commencement of the *Taxation Administration Bill 2001*, subject to stated exceptions. For instance, none of the assessment provisions under Part 3 of the *Taxation Administration Bill 2001* will apply for any matter arising under the *Stamp Act 1894*. Rather, the assessment arrangements under the repealed Act continue to apply.

Alternatives to the Bill

With the rewrite of the *Stamp Act 1894* through the *Duties Bill 2001*, it was necessary to either remake the current administrative provisions in the new legislation or to enact new administration legislation. To achieve greater consistency in taxation administration and improve arrangements for taxpayers and the Office of State Revenue, the latter approach was considered appropriate. Legislation to support these arrangements is therefore necessary.

The intention of the *Taxation Administration Bill 2001* is that it provide an administrative framework that may be consistently applied to the *Duties Bill 2001* initially, and then to the *Pay-roll Tax Act 1971* and *Land Tax Act 1915* when appropriate.

Estimated Cost for Government Implementation

There will be costs involved in implementing the legislative package comprised of the *Duties Bill 2001* and *Taxation Administration Bill 2001*, including the cost of system upgrades, form redevelopment and the provision of education on the new legislation to the public. However, the new legislative arrangements will provide significant ongoing benefits for Government, the Office of State Revenue and the public.

Consistency with Fundamental Legislative Principles

In developing the *Taxation Administration Bill 2001*, careful consideration has been given to ensuring that any potential breaches of fundamental legislative principles ("FLPs") are minimised. However, there are some cases where a particular approach has been considered essential to ensure the continued integrity of revenue collection arrangements in Queensland. These cases are as follows.

Obligations of executive officers, partners and management members

Compliance with tax law obligations underpins the effective operation of the State's revenue collection arrangements. While voluntary compliance is encouraged through a variety of means, it is also essential that sanctions apply as a disincentive for non-compliance. If it were otherwise, efficient and effective revenue collection would be compromised. In the case of compliance by corporations, it is the executive officers who are generally in

a position to ensure compliance. The *Taxation Administration Bill 2001* reflects this position but provides appropriate defences.

That is, if a corporation commits an offence under a tax law, the corporation's executive officers are taken to have committed the offence of failing to ensure the corporation's compliance with the tax law requirement. However, it will be a defence for an executive officer to prove that they exercised reasonable diligence to ensure compliance or were not in a position to influence the corporation's conduct.

In addition, where a revenue law declares a partnership or unincorporated association to be a person and, as a result, an offence is taken to have been committed by that entity, the partners or members are taken to have committed the offence. This preserves the outcome that would have been achieved had the entity not been declared to be a person.

Rights of review

Although the *Taxation Administration Bill 2001* provides comprehensive rights of review under the objection and appeals arrangements, or through the *Judicial Review Act 1991* where the review rights under the Bill are not relevant for particular decisions, there are a limited number of decisions for which rights of review are considered inappropriate. As outlined below, these decisions are principally those that may be made in the Commissioner's discretion to confer a special benefit on a person that would not otherwise exist but for the discretion.

- Refusal by the Commissioner to make an assessment where a self assessment is required to be made. The self assessment arrangements under the *Taxation Administration Bill 2001* and the *Duties Bill 2001* facilitate the efficient and effective collection of tax. Where a person is required to self assess tax liability, the basis on which that obligation arises and how it is to be discharged is made clear under the legislation and in guidelines issued by the Commissioner.

  However, there will be some limited cases, including for transactions involving particularly complex matters, where the Commissioner will consider it appropriate to exercise a discretion to directly make an assessment. However, it is inappropriate that this discretion be reviewable as it would compromise the ongoing assessment arrangements adopted by the Office of State Revenue. Taxpayers whose liability is self assessed may lodge an objection to an assessment made if

dissatisfied with the interpretation required to be applied for the self assessment.

- The making of a compromise assessment. As these assessments may only be made by agreement between the taxpayer and the Commissioner, review rights are unnecessary and inappropriate. Taxpayers who have any concerns with the basis on which liability was proposed to be determined under an assessment would not enter into a compromise assessment agreement, preserving their rights of review in relation to the assessment ultimately made on an alternative basis.

- Refusal to make a reassessment decreasing liability outside of the objection and appeal processes and the making of reassessments based on the Commissioner's interpretations and practices. The principle underlying the *Taxation Administration Bill 2001* is that the objection and appeal processes are the appropriate way in which assessments may be reviewed and liability decreased where appropriate. Taxpayers who are satisfied with the liability assessed will not seek to exercise these rights. However, there will be cases where taxpayers later become aware that an error was made on an assessment and tax was overpaid e.g. a self assessor has been accounting for tax incorrectly due to a consistent calculation error. It is therefore appropriate that the Commissioner have a discretion to make a reassessment to decrease liability even though the time for exercising review rights has expired. However, it is not appropriate that the non-exercise of this discretion allow for a reopening of the taxpayer's formal rights of review. Accordingly, a decision to refuse to make a reassessment to decrease liability outside of the objection and appeal processes will be non-reviewable.

  To ensure that questions of law cannot be reopened in this context, the Commissioner may only make a reassessment to decrease liability where that reassessment accords with the legal interpretations and assessment practices applied by the Commissioner for assessing liability in similar cases when the original assessment was made. To ensure taxpayer certainty, the same limitation applies where the Commissioner makes a reassessment to increase liability. The Commissioner's decision as to what constituted his interpretations and practices is also non-reviewable as taxpayers may otherwise be able to obtain de

facto review rights where their objection and appeal rights for the assessment had expired.

- Refusal to extend the time for paying tax or changing a payment arrangement. To ensure the State's revenue needs are met and also to ensure equity between taxpayers, tax should be paid on time. However, there will be limited cases where enforcement of this obligation would cause significant financial hardship and may be counter productive from a revenue perspective e.g. where it results in a taxpayer declaring bankruptcy for instance.

  Accordingly, the Commissioner has a discretion to agree to payment arrangements to defer the time for payment, including through instalment arrangements. However, given the significant nature of this decision, it is appropriate that the Commissioner's decision regarding a payment arrangement decision cannot be called into question.

- Refusal to extend the time for lodging an objection. Taxpayers who are dissatisfied with an assessment decision may lodge an objection against the decision. The process for making the objection, including the time within which it must be lodged, is notified as part of the assessment notice for the assessment or as part of a self assessor's registration details. To ensure revenue certainty and taxpayer equity, the time limits for lodging an objection should be consistently applied. However, as there will be cases where taxpayers are unable to comply with this requirement through no fault of their own, the Commissioner has a discretion to extend the lodgement time. However, given the significance of such a decision and for equity reasons, it is appropriate that review rights do not arise in relation to a refusal to extend the time.

- Refusal to provide access to information. Part 8 of the *Taxation Administration Bill 2001* imposes a prohibition on the release of confidential information, subject to limited disclosure exceptions which depend on the nature of the information. These provisions are intended to ensure the continued confidentiality of information obtained under the tax laws and not to create a right of access to that information. Rather, the *Freedom of Information Act 1992* remains the appropriate basis for seeking access to such information. Accordingly, a decision by the Commissioner to refuse access to confidential information under Part 8 will not be subject to review.

- The production of a copy of an assessment notice signed by the Commissioner is declared to be conclusive evidence of the proper making of the assessment. The declaration is limited in its application to the extent necessary to support the *Taxation Administration Bill 2001* review model and to ensure that additional, alternative review rights are not created which allow a person to challenge an assessment outside of the objection and appeal process. Evidence provided in this way is generally conclusive only of the proper making of an assessment and is conclusive evidence of the correctness of the amount and all particulars of the assessment only in proceedings other than an appeal from an objection decision.

The *Taxation Administration Bill 2001* also precludes the application of the *Judicial Review Act 1991* for those decisions for which there is a right of review under the objection and appeal arrangements in Part 6. This approach reflects the fact that, subject to limited exceptions, appeals to the Supreme Court against decisions relating to an assessment are available.

This review is a full merits review, ensuring that matters of disputed liability for any amount included in an assessment, or for any decision leading up to or forming part of the making of an assessment, may be judicially reviewed. The availability of review rights under the *Judicial Review Act 1991* in these cases is therefore unnecessary. However, with the exception of non-reviewable decisions and objection decisions, the latter being subject to review under the appeal processes, other decisions under the tax laws may be subject to review under the *Judicial Review Act 1991*. This approach to judicial review rights accords with that taken for income tax purposes.

Access to places

To ensure that all necessary information and documents are available to allow proper determination of tax liability, the *Taxation Administration Bill 2001* provides investigators with the power to enter places without a warrant in specified circumstances, being where consent is obtained or where it is a public place open to the public. In addition, although access to places by investigators is generally first negotiated with the taxpayer or occupant, there are limited cases where access to a place must be taken without prior notice to ensure that the continued existence of information relevant to the determination of tax liability is not jeopardised.

The ability to act quickly to access and secure the information or documents will be essential on some occasions. The *Taxation Administration Bill 2001* therefore also allows access without a warrant to places used for conducting an enterprise where access is taken when the enterprise is being conducted or the place is otherwise open for entry. In other cases, including where the place is used for residential purposes, a warrant will be necessary.

Having accessed a place, the investigator may then exercise other specified powers, including the power to seize documents or other things. Again, these powers are necessary to ensure that all relevant information and documents are available to determine tax liability. The conditions on which seized documents and things may be retained and returned are also specified in the Bill.

Protection against self-incrimination

Under the *Taxation Administration Bill 2001*, a person may not fail to comply with an information or lodgement requirement on the basis that complying may incriminate the person. However, as the principle in abrogating the self incrimination privilege is to ensure that the Commissioner can access all relevant information to properly determine a taxpayer's tax liability, any information so obtained cannot be used in criminal proceedings except where the falsity or misleading nature of the information is relevant.

This approach recognises that taxpayers often uniquely possess the information necessary to enable the Commissioner to determine whether or not they have properly satisfied their tax liabilities, so that any refusal to provide that information would preclude the making of an accurate assessment of liability. It is therefore considered to strike an appropriate balance between revenue protection for the State and taxpayers' rights.

Transitional regulation making power

As noted, the *Taxation Administration Bill 2001* and the *Duties Bill 2001* form a legislative package and represent a significant change in, and improvement to, the current stamp duty legislative arrangements. The *Taxation Administration Bill 2001* recognises the significance of the changes being effected through conferral of the power to make transitional regulations to facilitate the transition from the *Stamp Act 1894* to the new legislative package where the *Taxation Administration Bill 2001* does not make provision or sufficient provision for those matters. This power is essential given the nature of the legislative reforms as, in its absence, the

State's revenue collection arrangements may be compromised if taxpayers identified any anomalies which allowed them to avoid the obligations which the Parliament intended them to have.

Although the transitional regulations may operate retrospectively, they cannot commence earlier than the commencement date for the *Taxation Administration Bill 2001*. As the regulations may be made for matters for which the *Taxation Administration Bill 2001* does not make provision or sufficient provision, the provision is not considered to be a "Henry VIII" clause. Further, the scope of the power is limited by the provision that any transitional regulations, as well as the provision conferring the power, will expire 5 years after the commencement date for Part 13 of the *Taxation Administration Bill 2001*. This 5 year period is necessary to accord with the approach taken under the *Duties Bill 2001*.

Other provisions

The remaining provisions of the *Taxation Administration Bill 2001* are not considered to raise FLP issues.

Consultation

The draft *Taxation Administration Bill 2001* and an accompanying Explanatory Memorandum were made available during April and May 2001 for public consultation. In addition, a public seminar was conducted by the Office of State Revenue during this period. Consultation was also undertaken with the Department of Justice and Attorney-General on a number of specific issues.

NOTES ON PROVISIONS

Clause 1 cites the short title of this Act.

Clause 2 specifies that the Act will commence on a date to be fixed by proclamation.

Clause 3 provides that the Act's purpose is to make general provision for the administration and enforcement of the revenue laws, being those laws declared under section 6 to be revenue laws. Part 13 also makes specific

provision regarding the repealed *Stamp Act 1894* being a revenue law for the purposes of the transitional provisions.

In interpreting a revenue law, it must be read together with the *Taxation Administration Act 2001* as if they formed a single Act. That is, the revenue law and the *Taxation Administration Act 2001* form a legislative package with each supporting the operation of the other. However, there may be cases where the revenue law will override the operation of the *Taxation Administration Act 2001*, including where the generic administrative provision is inappropriate in a particular case. Also, administrative provisions which are specific to a particular revenue law will be dealt with in that law rather than in the *Taxation Administration Act 2001*.

Clause 4 provides that all persons, the State and, to the extent possible, the other States and Commonwealth, are bound by the Act. However, nothing in the Act makes the State liable to be prosecuted for an offence.

Clause 5 provides that the dictionary in schedule 2 of the Act defines particular words used in the Act.

Clause 6 provides that, on and from the commencement of this section, the *Duties Act 2001* is a revenue law.

Clause 7 provides for the appointment of a Commissioner of State Revenue. Under Part 13, the person who was the Commissioner of Stamp Duties under the repealed *Stamp Act 1894* immediately before the commencement of the Part is the Commissioner of State Revenue.

Clause 8 provides that the Commissioner is responsible for the administration and enforcement of the tax laws.

Clause 9 provides that the Commissioner has the powers given under the tax laws and the power to do anything necessary to perform the Commissioner's functions, including to engage consultants and contractors.

Clause 10 allows the Commissioner to delegate his or her powers and, when exercising the Commissioner's power of delegation, to allow the further subdelegation of those powers to appropriately qualified persons.

Clause 11 sets out the circumstances in which the Commissioner must make an assessment, as well as when the Commissioner may make an assessment. Assessments must be made by the Commissioner if the taxpayer's liability is not required or permitted to be made by self assessment and the Commissioner is satisfied the taxpayer has a tax liability. The Commissioner cannot be compelled to make an assessment of

a self assessment matter or where there will be no tax liability, but may do so. A decision not to make an assessment where the Commissioner is not required to do so is non-reviewable.

Clause 12 provides the Commissioner with the discretion to make a compromise assessment. The Commissioner may make a compromise assessment where it is difficult or impractical to accurately determine the taxpayer's tax liability due to complexity, uncertainty or another reason. For instance, the volume of documents and transactions associated with a particular matter, and the legal complexity arising from the facts, may mean that accurate determination of liability could take a significant time, which may be inappropriate given the amount of tax involved.

As the compromise assessment may only be made on the basis of a written agreement with the taxpayer, the taxpayer has no further rights of review in relation to it. As noted under section 17, a reassessment of a compromise assessment may only be made in limited cases.

Clause 13 specifies the circumstances in which the Commissioner may make a default assessment. These include cases where the time for complying with an information or lodgement requirement has not ended but the Commissioner believes it is necessary to make an immediate assessment.

In making a default assessment, the Commissioner may make it as though all relevant documents were in existence and in the Commissioner's possession. The default assessment shall also be made for the amount the Commissioner reasonably believes to be the taxpayer's liability. This recognises that, in the absence of all relevant information and documents, it may not be possible to accurately determine the liability for tax but that this should not preclude the Commissioner from making an assessment. Under section 17, a reassessment may be made if further information becomes available which satisfies the Commissioner that the liability for tax under the default assessment was not correct.

Clause 14 details the effect of making a self assessment which is required or permitted to be made under a revenue law. On lodgement of a return, an assessment of tax is deemed to be then made by the Commissioner, the liability for tax is taken to be the amount disclosed in the return, and the return is taken to be the notice of assessment with which the taxpayer is deemed to have been served at that time.

Clause 15 provides that a self assessor must have regard to any directions given by the Commissioner when making a self assessment. For instance, if administrative guidelines have been issued regarding the

Commissioner's interpretation of a particular provision of a revenue law that is relevant to the matter, the self assessor must make the self assessment on that basis. Rights of objection under Part 6 may then be exercised if the taxpayer does not agree with the Commissioner's interpretation.

Clause 16 clarifies that, where the Commissioner makes an assessment of a self assessment matter other than in the course of making a default assessment, the assessment is to be made as if the matter was not required to be self assessed. This has the effect that only those provisions of the tax laws relating to assessments made directly by the Commissioner apply to the matter e.g. lodgement times, rather than those provisions relating to self assessments.

Clause 17 specifies the circumstances in which the Commissioner may exercise a discretion to make a reassessment. As provided under section 25, a reassessment does not replace the previous assessment but varies it by increasing or decreasing the taxpayer's liability for tax or changing the basis on which that liability was assessed without changing the liability.

Subject to the time limitations outlined in sections 21 and 22, the Commissioner may make a reassessment at any time, including where an objection or appeal against the previous assessment has not been decided.

The Commissioner cannot be compelled to make a reassessment under this section decreasing liability for tax, and a decision not to make such a reassessment is non-reviewable, except as specifically provided in the circumstances described in sections 18 and 19. This means that, where a taxpayer is dissatisfied with an assessment but, for any reason, has not exercised a right of objection or appeal, the Commissioner cannot be compelled to make a reassessment to decrease liability. Nevertheless, where the Commissioner is satisfied that an assessment was incorrect and the requirements of section 20 are satisfied, the Commissioner has a discretion (but no obligation) to reassess.

Reassessments may be made on a compromise, default or self assessment basis in the same way as original assessments. That is, the Commissioner may reassess an assessment on a compromise basis under section 12. Similarly, the Commissioner may make a default reassessment under section 13 for the amount that the Commissioner reasonably believes is the taxpayer's liability, if any of the circumstances outlined in section 13 apply (e.g. where, following an investigation, the Commissioner is not satisfied about the accuracy or completeness of a document lodged and this affects the original assessment made).

Clause 18 specifies the two general circumstances in which the Commissioner is required to make a reassessment, these being in relation to the withdrawal or reinstatement of penalty tax where a proceeding for an offence is started or is withdrawn, or where a provision of a revenue law requires the making of a reassessment in particular circumstances.

Clause 19 specifies the additional two circumstances in which the Commissioner is required to make a reassessment, these being where the Commissioner allows an objection to an assessment either in whole or in part, or where a court makes a decision about the taxpayer's tax law liability. If a court makes a decision about the taxpayer's liability, the Commissioner may defer making the reassessment until the time for further appeal has expired or any further appeal is decided or withdrawn. The limitation periods in sections 21 and 22 do not apply for a reassessment made under this section.

Clause 20 provides that a reassessment generally must be made in accordance with the Commissioner's legal interpretations and assessment practices that applied at the time of making the original assessment. This applies whether the reassessment is to increase or decrease liability for tax. The relevant interpretations and practices are those that were applied by the Commissioner at the relevant time when assessing liability for tax in similar circumstances. The Commissioner's decision regarding what constituted his legal interpretations and assessment practices at the relevant time will be non-reviewable, ensuring that the objection and appeal process is used as the basis for challenging questions of law where a taxpayer considers that an assessment was overstated. This provision will not apply in practice to reassessments made under section 19 as the reassessment will be made in accordance with the objection or court decision.

To the extent that retrospective legislative amendments change the Commissioner's legal interpretations and assessment practices, any reassessment of an original assessment that is affected by these amendments must be made on the basis of the changes.

The Commissioner may make a reassessment to increase tax liability where a court's decision in relation to a particular matter is appealed, an original assessment is made on the basis of the court's decision during the time that the appeal is being decided, and the appeal decision confirms in whole or in part the Commissioner's previous legal interpretations and assessment practices. This applies whenever a court's decision is contrary to the Commissioner's legal interpretations and assessment practices that would have otherwise applied at the time of making the original assessment

and is not limited to decisions of Queensland courts or the particular taxpayer to whom the original decision or appeal related.

Clause 21 provides that a reassessment decreasing a taxpayer's liability must be made in the limitation period, although this time period may be extended where a taxpayer asks for a reassessment under section 17 within the limitation period. The limitation period is defined in Schedule 2.

Clause 22 provides that a reassessment increasing a taxpayer's liability must be made in the limitation period, although this time period may be extended in any of the circumstances outlined in subsection 22(2).

Clause 23 provides that a reassessment may be made outside the limitation period where there is a current appeal on a matter which is yet to be determined and the taxpayer agrees to the reassessment. This allows matters to be resolved by agreement of both parties instead of proceeding with the appeal. In addition, the limitation period will not apply where the Commissioner is required to make a reassessment under sections 18(a) or 19. Where a reassessment is made under section 18(b), the limitation period will apply unless the provision of the revenue law requiring the reassessment declares the limitation period will not apply.

Clause 24 specifies when a self assessor may make a reassessment.

Clause 25 specifies the effect of making a reassessment.

Clause 26 requires that notice of the making of an assessment must be served on the taxpayer. An assessment notice must contain specified information. Further information may also be included in the assessment notice even though it does not form part of the assessment.

More than one assessment may be included in an assessment notice. This recognises that, although one return may relate to multiple transactions for several taxpayers, separate assessments are necessary to ensure that each taxpayer has the same individual rights and obligations as would have been the case if only that taxpayer's liability had been included in the return. For instance, each taxpayer may object to the assessment made for that person's liability for tax even though other assessments were also made under the one return.

As noted for section 14, deeming provisions apply in relation to assessment notices for self assessments.

Clause 27 allows the Commissioner to make an assessment on the information which the Commissioner considers relevant and which is then available to the Commissioner. This section contemplates that an assessment may be made even though some relevant information has been

excluded at that time, which may be contrasted to the case for a default assessment where all relevant matters are determined by the Commissioner when making the assessment. Once all relevant information has been obtained, a reassessment may then be made under section 17.

Clause 28 recognises that there may be cases where the Commissioner is unaware of all relevant matters when making an assessment or where an assessment is made on the basis of a taxpayer continuing to satisfy certain conditions which are not ultimately satisfied. Where a taxpayer becomes aware of facts that reveal that the correct liability for tax is more than that previously assessed, an obligation is imposed to notify the Commissioner so that a correct assessment may be made. Failure to advise the Commissioner within 30 days of so becoming aware will constitute an offence under section 120. Alternatively, penalty tax may be imposed under section 58 where a reassessment is ultimately made.

Example

A taxpayer lodged a contract for the sale of commercial land valued at $10,000,000 knowing that a stamp duty liability would be incurred. However, the taxpayer received an assessment notice which contained a typographical error that provided the duty payable was nil. Section 28 requires the taxpayer to advise the Commissioner of this error within 30 days of receiving the assessment notice.

Clause 29 specifies the methods by which tax must be paid to the Commissioner and includes the power to specify additional payment methods by regulation to provide the flexibility to accommodate new payment initiatives.

Clause 30 specifies when tax payable under a tax law must be paid. Due to the definition of “tax” in Schedule 2, this section also applies to a liability for penalty tax and for unpaid tax interest to the extent that it is assessed interest. In relation to a default assessment made because of a failure to make a self assessment, the start date for unpaid tax interest under section 54 may be earlier than the payment date for the default assessment.

Clause 31 specifies the time for payment of late payment interest. Because late payment interest is payable as it accrues, no notice is required to advise the taxpayer of the amount payable.

Clause 32 specifies the time for payment of other amounts payable under a tax law (e.g. fees payable under a revenue law) where the time for payment is not specified in the relevant law.

Clause 33 provides that the Commissioner may specify an earlier time for payment than that which would otherwise apply under sections 30 or 32. This time cannot be earlier than when the notice specifying the payment date is given. For example, if there is reason to believe that a taxpayer may leave Australia before paying a tax liability, the Commissioner may specify that an amount included in an assessment is immediately payable.

Clause 34 provides the Commissioner with a discretion to extend the normal time for payment in cases of significant financial hardship. Any extension is subject to the Commissioner's right to terminate the arrangement at any time and recover the amount outstanding. To ensure that the Commissioner cannot be compelled to defer the date for recovering tax legally payable under the tax laws, there is no right of review of any decision made by the Commissioner regarding whether or not to approve or terminate a payment arrangement. Unpaid tax interest under section 54 continues to accrue on the unpaid tax, despite approval of a payment arrangement.

Clause 35 specifies when tax agents must pay amounts received for a taxpayer's tax law liability. Failure to pay the amount when required is an offence.

Clause 36 provides that an entitlement to a refund of an amount paid under a tax law is exclusive to Part 4, Division 2. This limitation also applies where the amount was purportedly paid under the law e.g. where the provision under which the payment was made is subsequently held to be an invalid exercise of legislative power. However, as is the case generally under section 3, a revenue law may make specific provision for refund entitlements.

Clause 37 specifies the two circumstances in which an entitlement to a refund arises. These are where a reassessment is made to decrease liability for tax or where a taxpayer receives a notice stating that the amount payable is less than the amount actually paid. For instance, a refund entitlement of $100 will arise where a taxpayer has paid $400 in late payment interest but the notice given to the taxpayer advising of the late payment interest liability states that $300 is payable. The period for making a reassessment to decrease liability is specified in Part 3, with there being no specific limitation on the period within which a refund may then be made. In the case of refunds made in other cases, there is a five year limitation period following the initial overpayment of the amount.

The Commissioner may offset the refund against any current or future tax liability in the circumstances stated in section 38. Any refund is also subject to the windfall gains provision contained in section 39.

Clause 38 operates subject to section 39 and provides that refunds may be offset against any current tax law liability of the taxpayer or any future tax law liability that becomes payable within 60 days after the refund entitlement arises. If the amount is not applied within the required time, it must be immediately refunded.

Example

On 14 October, the Commissioner makes a reassessment to decrease a taxpayer's tax law liability by $1,000. The full amount previously assessed had been paid. The Commissioner also gives a notice to the taxpayer at the same time advising that the late payment interest that had accrued and been paid in relation to the previous assessment is decreased by $100. The Commissioner reasonably believes that an assessment for $2,000 will be made within 60 days of the assessment notice for the reassessment and the late payment interest notice being given. The Commissioner may therefore hold the refund amount for 60 days. A new assessment for $900 is made on 5 November.

As the full amount of the refund entitlement is not applied to the assessment and no further liability is expected to arise within the 60 days, the Commissioner must immediately refund the unapplied amount of $200.

Clause 39 provides that a refund or application of an overpaid amount may only be made if the Commissioner is satisfied that the taxpayer has not received, and will not receive, an amount as tax from another person for any part of the tax paid or, where an amount in relation to the tax paid has been received as tax from another person, the taxpayer will reimburse the other person for the amount received from that person. Such reimbursement must be made within the period specified. If the taxpayer fails to reimburse the amount received from the other person, there is an obligation to advise and repay that amount to the Commissioner, together with interest. Failure to comply with this requirement is an offence. Similarly to section 36, this section applies for tax paid or purportedly paid under a tax law.

Example

ABC Hire Co, which is in the business of hiring goods, discovers that hiring duty on 100 hire transactions has been accounted for at a higher rate than appropriate under the Duties Act 2001. As a result,

reassessments are made to reduce the tax payable to reflect the correct rate of duty.

As ABC Hire Co has recovered the duty from the persons who hired the goods, it must satisfy the Commissioner that all of the tax for which a refund is sought will be repaid to those hirers within 90 days of receiving the refund.

ABC Hire Co subsequently is unable to contact 10 of the hirers to make the reimbursement. As a result, the tax that relates to the assessments for those 10 transactions must be repaid to the Commissioner within 7 days of the end of the 90 day period, together with interest at the prescribed rate on the amount to be repaid.

Clause 40 specifies when payments are taken to be received by the Commissioner.

Clause 41 provides that payments are to be allocated by the Commissioner between a taxpayer's assessment liabilities. Although a payment may have been received from a taxpayer with a request to apply the payment to a particular assessment, the Commissioner may decide to apply the payment in full or partial extinguishment of another assessment if that is considered appropriate in the circumstances.

Clause 42 specifies the order in which payments received by the Commissioner are to be applied to a taxpayer's assessment liability. Payments are first applied to amounts that do not bear interest i.e. amounts payable under a tax law other than late payment interest or tax e.g. fees payable under a revenue law, and then to other amounts payable under a tax law other than primary tax e.g. penalty tax and unpaid tax interest. The balance of the payment, if any, is then applied to primary tax, regardless of any request or direction by the taxpayer. The order of payments specified under this section is also used to determine the amount of unpaid primary tax on which unpaid tax interest accrues under section 54.

Clause 43 provides for the waiver of payment of a tax law liability.

Clause 44 clarifies the effect of writing off a tax law liability under the *Financial Administration and Audit Act 1977*.

Clause 45 provides for the recovery of amounts payable under a tax law.

Clause 46 provides for the adjustment of amounts in recovery proceedings to reflect a reassessment of tax.

Clause 47 provides that, where more than one taxpayer is liable to pay an amount under a tax law, the Commissioner may recover all or part of the

amount from one or more of them. This does not affect a taxpayer's rights to recover a contribution from another person.

Clause 48 specifies when an administrator must advise the Commissioner of the administrator's appointment. Failure to inform the Commissioner as required is an offence.

Clause 49 specifies the Commissioner's powers and remedies against an administrator and the extent to which an administrator is liable for payment of a tax law liability of the taxpayer for whom they are appointed administrator. This provision is not intended to override the general rules regarding priority of creditors.

Clause 50 allows the Commissioner to recover a debt under a tax law by serving a garnishee notice on a person who holds, or may receive money, for or on account of the taxpayer, on a person who is liable or may become liable to pay money to the taxpayer, or on a person who has authority to pay money to the taxpayer, even though the taxpayer's entitlement to the money may be subject to unfulfilled conditions.

Payment under the garnishee notice is not required until the garnishee actually holds the money for, or is liable to pay the amount to, the taxpayer. The amount required to be paid by the garnishee may be the full amount of the debt, a lesser amount, or amounts at intervals. This would allow the Commissioner, when issuing the garnishee notice and requiring payment by the garnishee, to take account of reasonable living costs for which the taxpayer requires some of the monies held by the garnishee.

Clause 51 specifies the time for which a garnishee notice has effect.

Clause 52 provides for the adjustment of the amount required to be paid under a garnishee notice if part or all of the debt is satisfied before the due date of the garnishee notice. If the debt is fully discharged, the Commissioner must withdraw the notice.

Clause 53 specifies the effect of payment by a garnishee under a garnishee notice.

Example

Taxpayer C has a tax debt of $5,000 which is unpaid. The Commissioner is aware that the taxpayer receives regular dividend payments of $1,000 from XYZ Pty Ltd and that these payments are the taxpayer's principal source of income. To extinguish the debt, the Commissioner gives a garnishee notice to XYZ requiring the payment to the Commissioner of $500 each fortnight until a total of $5,000 has been paid. A copy of the notice is also provided to Taxpayer C, together with the details of the debt

to which the notice relates. As each dividend amount becomes payable to taxpayer C each fortnight, XYZ is required to comply with the obligation to pay the $500 stated in the garnishee notice.

If Taxpayer C subsequently fully extinguishes the debt outstanding by direct payment to the Commissioner, a notice withdrawing the garnishee notice must be given to XYZ and the taxpayer. Further, in paying the amounts to the Commissioner, XYZ is taken to have acted under Taxpayer C's authority and to have satisfied its obligation to pay the dividend amounts to Taxpayer C.

Clause 54 imposes unpaid tax interest ("UTI") as follows.

- Clause 54(1) requires a taxpayer to pay UTI on any amounts of primary tax payable by the taxpayer that are unpaid from time to time.
- Clause 54(2) specifies the period over which interest will accrue on a daily basis i.e. on and from the start date until the primary tax is fully paid. Where the prescribed interest rate changes, the new rate applies for amounts unpaid on and from that time.
- Clause 54(3) provides that any UTI that has accrued when an assessment is made e.g. due to failure to comply with a lodgement or information requirement, must be included in the assessment. This interest is referred to as assessed interest. In the absence of full payment by the taxpayer on the date that the assessment is made, UTI will continue to accrue until full payment is made, with the assessment notice stating the way in which this will occur. This interest is referred to as late payment interest.
- Clause 54(4) specifies the way in which the start date for calculating UTI is determined for various assessments. For a self assessment or reassessment of a self assessment, the start date is the day after the return was required to be lodged. Similarly, where a default assessment is made for a tax liability that should have been self assessed, or a reassessment of such a default assessment is made, the start date is the day after the return was required to be lodged.

  For other original assessments, the start date is the day after the due date for the assessment, unless the taxpayer has failed to lodge documents or provide information on time. Where there are delays in meeting lodgement or information requirements, the due date for payment is effectively deferred. Therefore, in these circumstances, the start date will be brought forward to

reflect the period of non-compliance with the lodgement or information requirement. This recognises that, but for the non-compliance, the due date would have been earlier by that period. The start date for a reassessment of such an assessment is determined in the same way as for the assessment.

Example

If a taxpayer lodges an instrument for assessment 5 days late, the UTI start date will be the day after the 5th day before the assessment due date and interest will accrue on and from the 4th day before the assessment due date on any unpaid primary tax. Although the Commissioner may not commence recovery proceedings for unpaid tax until after the assessment due date, interest will accrue on and from the earlier UTI start date if the primary tax has not then been paid in full. If the taxpayer pays the primary tax 5 days earlier than the due date (i.e. before the UTI start date), UTI will not be payable. The taxpayer therefore has an opportunity to retrieve the situation by putting the revenue in the same position as if the late lodgement had not occurred.

If a taxpayer has failed to lodge a document or provide information on time and the UTI start date is earlier than the date on which the assessment is made, the amount of UTI that has accrued at the time that the assessment is made must be included in the assessment. In any case where UTI may accrue before the due date for the assessment, the assessment notice will also state the basis on which the UTI may accrue once the assessment issues.

- Clause 54(5) provides that, for the purposes of calculating UTI, any period of non-compliance with a requirement to lodge a document or provide information is taken to end on the day that a default assessment is issued. Also, a period of non-compliance is inclusive of the day on which the lodgement or information requirement is complied with.

- Clause 54(6) specifies the manner in which UTI is calculated for reassessments. On the making of a reassessment, any UTI previously imposed must be recalculated according to the reassessed amount of primary tax, with the UTI then calculated replacing that previously assessed or accrued. This is so regardless of whether the reassessment is made to increase or decrease primary tax liability.

Example

An original assessment was issued to a taxpayer for $1,000 in primary tax and was due for payment on 14 October. Due to the late payment of that assessment, late payment interest accrued and was paid by the taxpayer. Upon the making of a reassessment for $1,500, the Commissioner must recalculate the interest on the new primary tax amount of $1,500 on and from the start date for the original assessment (i.e. on and from 15 October). UTI will continue to accrue on any primary tax outstanding from that date until the new primary tax amount of $1,500 has been paid in full. This is so notwithstanding that a due date for payment is allowed under the reassessment (i.e. the due date is relevant for recovery, and not UTI accrual, purposes). The UTI that has accrued to the date of the reassessment will be assessed and notified in the assessment notice, with late payment interest accruing until the increased liability is fully paid.

Clause 55 clarifies the liability for UTI of a taxpayer who, because of a regulation made under section 147, was taken to be given an assessment notice at a different time to another taxpayer who is also liable for tax under the assessment.

Clause 56 provides that UTI is to be calculated as outlined in section 54, regardless of any payment arrangement or extension of time for complying with a lodgement or information requirement.

Clause 57 specifies the order of application of payments when determining the unpaid primary tax on which UTI accrues.

Example

An original assessment was issued to a taxpayer for $1,000 in primary tax and, due to the taxpayer's failure to pay the primary tax on the due date, interest of $13 has accrued. The taxpayer makes a part payment of $500. The $500 will firstly be applied to the UTI of $13 and the remaining $487 will be applied to reduce the amount of unpaid primary tax. UTI will continue to accrue on the unpaid primary tax amount of $513 until it is fully paid.

Clause 58 imposes penalty tax in certain circumstances as follows.

- Clause 58(1) provides that a taxpayer is liable for penalty tax where the Commissioner makes a default assessment due to failure by the taxpayer to lodge a document, provide information or make a self assessment as required. Penalty tax is also payable where the Commissioner makes a reassessment of a

default assessment issued in these circumstances whether or not the liability under the reassessment increases or decreases. In addition, penalty tax is payable in respect of a reassessment increasing the amount of primary tax from that stated in the original assessment.

- Clause 58(2) specifies the rate of primary tax and requires that any penalty tax imposed be included in the relevant assessment.

Example

An original assessment is issued for $1,000 in primary tax and is paid on time i.e. no UTI is imposed. A reassessment is made for $1,500 in primary tax. Penalty tax will be imposed in respect of the $500 increase in primary tax and will be included in the reassessment. UTI will also accrue on a daily basis on and from the start date on any unpaid portion of the new primary tax amount of $1,500.

- Clause 58(3) enables the Commissioner, in specified circumstances, to increase a taxpayer's liability for penalty tax by up to 20% of the penalty tax that otherwise applies under subsection 58(2).
- Clause 58(4) clarifies the manner in which penalty tax is calculated for reassessments of assessments in which penalty tax was previously imposed. As was the case for UTI, on the making of a reassessment, any penalty tax previously imposed must be recalculated according to the reassessed amount of primary tax, with the penalty tax so calculated replacing that previously assessed.

Example

A default assessment is issued for $1,000 in primary tax due to a taxpayer's failure to make a self assessment. Penalty tax of $750 will be imposed and included in the assessment. A reassessment is subsequently issued for $2,000. The penalty tax is recalculated as $1,500, being 75% of the new primary tax amount of $2,000. If the reassessment was made instead for $800 in primary tax, the penalty tax would be recalculated as $600, being 75% of $800.

Clause 59 ensures that, where the Commissioner commences a proceeding against a taxpayer for an offence and penalty tax has been imposed for the taxpayer's act or omission that constitutes the offence, penalty tax is no longer payable. That is, penalty tax is imposed as an alternative to prosecution for the same wrongdoing. If, however, the

Commissioner withdraws the proceeding, the taxpayer's penalty tax liability will be reinstated by a reassessment.

Similarly, if the penalty tax is increased under subsection 58(3)(a), for instance, for a failure to notify the Commissioner and a prosecution is subsequently commenced for that failure, the additional penalty is only payable if the Commissioner subsequently withdraws the proceeding. Any remaining penalty that is additional to the penalty premium will remain payable if it is not referable to the act or omission for which the prosecution is started.

Clause 60 enables the Commissioner to remit all or part of the UTI or penalty tax imposed under Part 5, providing that the remission must be made by way of an assessment for penalty tax and assessed interest.

Clause 61 requires the Commissioner to pay interest to a taxpayer on a refund of an overpaid amount, where ordered to do so by the Supreme Court in certain circumstances.

Clause 62 ensures that the circumstances outlined in section 61 are the only circumstances in which interest is payable by the Commissioner, subject to an express intention to the contrary under a revenue law.

Clause 63 provides taxpayers with the right to object to an assessment, other than a compromise assessment which is a non-reviewable decision the effect of which is described in section 76. A taxpayer may seek review of a decision or conduct leading up to or forming part of the process of making an assessment only by objecting to the assessment.

Example

Following an investigation, the Commissioner determines that there has been a transfer of a Queensland business asset and the Duties Act 2001 requires the parties to lodge a statement with the Commissioner. The taxpayers have no rights of objection to the decision that there has been a transfer of a Queensland business asset. However, on the making of an assessment following the lodgement of the statement, or on the making of a default assessment if no statement is lodged, rights of objection then arise.

A right of objection also exists in relation to a reassessment that results in an increase in liability or that, under section 18(b), results in a decrease in liability. The right of objection is limited to the extent of the changes made under the reassessment.

Example

A taxpayer's rights of objection for an assessment have expired. Nevertheless, following a request by a taxpayer seeking a reduction of $1,000 in the amount of the tax liability assessed on an original assessment, the Commissioner determines that there were two grounds on which the original assessment was incorrect, one resulting in an overstatement of the tax liability by $800 (and not the $1,000 as claimed by the taxpayer) and the other resulting in an understatement of tax liability by $3,000. As a result, the Commissioner makes a reassessment to, on one hand, increase the tax liability by $3,000 and, on the other, reduce the tax liability by $800, resulting in an overall increase in tax liability of $2,200. The taxpayer may object to the changes which resulted in the tax liability increasing by $3,000 but may not object to the Commissioner refusing to reduce the tax liability by the full amount of the $1,000 initially requested.

Clause 64 provides that an objection may be made on any grounds. Where a revenue law provides that this Part applies to a decision under the revenue law and provides for an objection right in relation to that decision, the grounds of the objection are limited to whether the particular circumstances apply for the instrument or transaction to which the decision relates. This provides for a limited right of objection where the Commissioner determines that circumstances requiring reassessment under section 18(b) do not exist, and refuses to make a reassessment or determines that the circumstances apply partially only and reassesses only to that extent.

Clause 65 outlines the manner in which an objection must be made and the material which must be provided with the objection. The Commissioner is also given a non-reviewable discretion to extend the time in which an objection must be lodged.

Clause 66 places the onus of proof for an objection on the person making the objection.

Clause 67 requires the Commissioner to fully or partially allow the objection or disallow it, and specifies who may determine the objection.

Clause 68 requires the Commissioner to provide written notice to an objector of the Commissioner's decision on the objection and, where the objection has been fully or partially disallowed, to include certain information in the notice which will assist the taxpayer to decide whether or not to lodge an appeal.

Clause 69 provides taxpayers with the right to appeal to a single judge of the Supreme Court where dissatisfied with the Commissioner's decision on

objection, provided that the full amount of tax and late payment interest payable under the assessment have first been paid.

Clause 70 specifies the way in which an appeal to the Supreme Court is started and prevents the Court from extending the time in which the notice of appeal must be filed with the Court. The grounds of appeal are limited to the grounds of the objection unless otherwise ordered by the Supreme Court.

Clause 71 specifies the options available to a taxpayer where the Commissioner issues a reassessment following the commencement of an appeal by the taxpayer. These arrangements ensure that no greater rights of review are available for an appeal against the reassessment than if the taxpayer had instead first lodged an objection against the reassessment.

Clause 72 places the onus of proof for an appeal on the appellant.

Clause 73 requires the Supreme Court to adjourn the hearing of an appeal for the Commissioner to reconsider the objection decision where new evidence material to that decision is introduced. In reconsidering the objection, the Commissioner has all rights and powers, including investigation powers, that would ordinarily be available when determining an objection under the Act. This ensures that the correct amount of tax can be determined at minimum cost to the parties and to the Court. It also overcomes delaying tactics adopted by some taxpayers.

Clause 74 requires the Supreme Court to fully or partially allow the appeal or disallow it.

Clause 75 specifies the meaning of the term "non-reviewable decision" and clarifies that it includes a decision or conduct leading up to or forming part of a decision or determination declared to be non-reviewable.

Clause 76 ensures that a non-reviewable decision cannot be reviewed, challenged or called into question in any way, whether by judicial or quasi judicial review.

Clause 77 ensures that, where rights of review are available under Part 6, Parts 3 and 5 of the *Judicial Review Act 1991* do not apply. This is so regardless of whether or not a taxpayer chose to pursue those rights of review. That is, rights under the *Judicial Review Act 1991* do not arise for an assessment simply because a taxpayer failed to lodge an objection against an assessment or to lodge an appeal against a disallowed objection within the times required under the Act.

Clause 78 provides for the making of a regulation to prescribe laws of the Commonwealth or another State or Territory to be recognised laws if

there is corresponding provision in a law of that jurisdiction allowing for the conduct of investigations for the tax laws or for another law administered by the Commissioner. The declaration of a law as a recognised law is relevant for Division 3 of Part 7 and for Part 8.

Clause 79 specifies the purposes for which a power under Part 7 may be exercised. This allows, for instance, the exercise of powers to determine the extent to which a particular tax scheme was marketed to the public or whether or not particular activity by one person or a group of people may constitute a breach of the tax laws.

Clause 80 provides for the appointment of qualified public service employees as investigators.

Clause 81 specifies that an investigator's appointment is conditional and the exercise of powers may be limited.

Clause 82 provides for the issue of an identity card to an investigator.

Clause 83 requires that an investigator, in exercising powers of entry to places and powers on having taken entry, must first produce his or her identity card or have it clearly displayed for inspection. The obligation to produce an identity card does not apply for the exercise of the other powers under Part 7.

If circumstances do not permit the production of the identity card to the person at that time, the investigator must do so as soon as reasonably possible. The requirement to produce an identity card before exercising the relevant powers does not apply if the investigator is entering a public place when it is open to the public. Similarly, the requirement does not apply if an investigator is entering land around premises to contact the occupier or if the investigator is entering part of the place that the investigator considers members of the public are allowed to enter to contact the occupier.

Clause 84 specifies when an investigator ceases to hold office.

Clause 85 specifies how an investigator may resign from office.

Clause 86 requires an investigator to return his or her identity card upon ceasing to be an investigator.

Clause 87 provides the Commissioner and investigators with the power to require the provision of information or documents in a person's knowledge, possession or control, by giving the person written notice. Under section 10, the Commissioner may delegate a person other than an

investigator to require the giving of information or documents, for example, for the purpose of making an original assessment.

The notice must specify the information or documents to be produced and the time and way in which they are to be provided. This power is not limited to information or documents held by a taxpayer but applies for anyone who has the required knowledge or who possesses or controls the required documents.

Clause 88 provides the Commissioner and investigators with the power to require a person, by written notice, to attend before the Commissioner or investigator at a reasonable time and place to provide information or documents within the person's knowledge, possession or control. The information may be required to be given on oath or the information or documents verified by statutory declaration.

Similarly to section 87, the powers that may be exercised under this section are not limited to taxpayers but apply to anyone who has the required knowledge or who possesses or controls the required documents. However, anyone other than taxpayers or their representatives, who is required to attend under section 88 is entitled to be paid the expenses prescribed under a regulation.

Clause 89 provides for the recording of questions asked by the Commissioner or investigator, and information given by the persons attending, under section 88. The recording must be done with the person's knowledge and upon request, the person is to be provided with a copy of the recording.

Clause 90 provides investigators with power of entry to places in specified circumstances. Investigators are entitled to enter places without a warrant with the consent of the occupier, where it is a public place open to the public, or where it is a place where an enterprise is conducted and entry is made when the enterprise is being conducted or when the place is otherwise open for entry. Where a place is used for conducting an enterprise and part of it is used as a residence, entry to the part used as the residence must be by consent or under a warrant.

Example

A building is used as licensed premises and the usual hours of operation of the enterprise are 8pm to 3am. As an enterprise is being conducted there, an investigator may access the place between those hours, without consent or a warrant. If the place is closed to the public after 3am but is open for administrative staff during normal day-time business hours, the

investigator may access the place during those hours also, without consent or a warrant.

The extent of entry to land around a place or to part of a place where an investigator is seeking the occupier's consent to enter the place is specified. Entry to places under other circumstances must be under a warrant.

Clause 91 specifies the process for seeking consent to enter a place.

Clause 92 specifies the process for obtaining a warrant.

Clause 93 specifies the matters for which a magistrate must be satisfied to issue a warrant. A warrant may be issued if entry to a place is required to monitor or enforce compliance with a tax law. For instance, an investigator may require a warrant to enter residential premises to determine whether or not a person resides there as required for the purpose of a concession claimed by that person.

Clause 94 provides for a magistrate to issue a special warrant in particular circumstances e.g. where there is urgency or the investigator is in a remote location. The process for applying for and issuing the special warrant is also specified.

Clause 95 specifies the things that investigators are required to do, or make a reasonable attempt to do, before exercising entry under a warrant. These things need not be done in certain circumstances.

Clause 96 specifies the powers that investigators may exercise after having entered a place. Upon entering a place, investigators may, amongst other things, search and examine the place, undertake an inspection, photograph anything in the place and take copies of documents. They may also secure documents or things for a reasonable time at the premises to safeguard against concealment, interference, loss, or destruction. Tampering or interfering with secured things without the investigator's approval is an offence.

Investigators may take into a place any person, equipment or materials reasonably required for conducting the investigation. For example, if the Commissioner appoints a valuer under the *Duties Act 2001*, the valuer may, for conducting the valuation, accompany an investigator who is entering the place.

The occupier of the place must provide reasonable assistance and information necessary to assist the investigator. For example, the person must provide electricity and photocopying facilities, and answer questions about how to access electronic systems.

Clause 97 provides for the retention of documents by the Commissioner or an investigator where the person who was required to furnish those documents under a written notice consents. Documents may also be retained without consent if the Commissioner or investigator reasonably believes the documents evidence a contravention of a tax law, including where the documents have not been lodged as required or tax in relation to the document has not been properly paid, or the Commissioner or investigator reasonably believes retention is necessary to prevent concealment, loss, destruction or alteration of the document. Similarly, documents can be retained to enable subsequent copying or inspecting, or to enable translation into English.

An investigator exercising powers of entry to places may seize a document or thing in similar circumstances to those for retention of documents mentioned above.

The seizure of a document or thing does not affect any lien or security over it.

Clause 98 provides that receipts must be issued for items that are seized or retained by the Commissioner or an investigator, unless giving a receipt would be unreasonable or impracticable because of the nature, condition or value of the item.

Clause 99 requires the Commissioner to return seized items to the owner within the stated timeframes. Documents for which tax is payable may be held until the tax is paid in full.

Clause 100 specifies who may inspect and copy retained items and when that may be done. This right applies to the owner of the document or thing, as well as any person who would be entitled to inspect it if it were not in the Commissioner's possession.

Clause 101 provides that retained items will be forfeited if they cannot be returned to the owner. This will include instances where, despite reasonable efforts and inquiries by the Commissioner, the owner cannot be located.

Clause 102 specifies the status of, and processes for dealing with, forfeited things.

Clause 103 allows investigators to use reasonable assistance and force in the exercise of their investigative powers, including the use of contractors to assist e.g. locksmiths to assist with entry to premises.

Clause 104 provides that the Commissioner and investigators may inspect and copy public records free of charge. This recognises that access

to any records free of charge is possible under section 87 but that the giving of a notice for access is unnecessary where the records are already open for public inspection.

Clause 105 specifies the process to be adopted where an investigator or a person acting under the investigator's direction damages property when exercising or purportedly exercising a power under Division 2 of Part 7.

Clause 106 specifies the process for persons to claim compensation for the repair or replacement of property damaged because of the exercise or purported exercise of a power under Division 2 of Part 7.

Clause 107 provides for investigations to be conducted in Queensland in relation to any matter connected with the administration or enforcement of a recognised law. As provided for under section 78, a law of another jurisdiction must first be declared under a regulation to be a recognised law before Division 3 will apply to that law.

The Commissioner can make a written arrangement for the investigation on receiving a written application from the corresponding Commissioner. Amongst other things, the arrangement must specify the application of Part 7 to the investigation e.g. the basis on which compensation will be paid by the corresponding Commissioner where there is a claim under section 106.

As these arrangements replace those under the *Revenue Laws (Reciprocal Powers) Act 1988*, that Act will be repealed by the *Taxation Administration Act 2001*.

Clause 108 provides that a reciprocal investigator is subject to the supervision and direction of the Commissioner, and requires that investigator to report to the Commissioner as required during the investigation and upon its conclusion.

Clause 109 requires the Commissioner to issue a written certificate of authorisation to interstate investigators conducting a reciprocal investigation. This certificate must be produced, together with the identity card issued to the reciprocal investigator under the relevant recognised law, when exercising a power under Subdivisions 3 and 4 of Division 2, Part 7.

Clause 110 provides for the way that the Act is to be interpreted in relation to the conduct of reciprocal investigations. References to an investigator are taken to be references to interstate investigators, except in limited circumstances. For instance, the provisions in Subdivision 1 of Division 2, Part 7 dealing with appointment of an investigator by the Commissioner and the issue of identity cards do not apply as separate arrangements for these matters would apply under the relevant recognised

law. References to a tax law and a tax law liability are also deemed to be references to the relevant recognised law or liability under that law.

Clause 111 prohibits the disclosure of confidential information that has been acquired by an official in the official's capacity, except where expressly permitted under Part 8. The obligation of non-disclosure extends to persons who are or have been public service employees and to other persons, performing functions under or in relation to the administration or enforcement of a tax law.

The extent to which disclosure is permitted depends on whether the information is personal confidential information or other confidential information. The disclosure of personal confidential information, being information that identifies, or is likely to identify, a person or disclose information about the person's affairs, is allowed only in the circumstances stated in subsection 111(2). These circumstances include the following:

- to the person to whom the information relates, or to another person where express or implied consent to the release has been given by, or where the person is acting for, the person to whom the information relates e.g. a taxpayer writes to a member of Parliament raising issues regarding liability under a tax law;
- where another law expressly requires the disclosure;
- for the performance of a function in relation to a tax law or another law administered by the Commissioner e.g. for administering the *Fuel Subsidy Act 1997*; and
- to a person in relation to a recognised law or another law about taxation revenue.

Other confidential information, which is more general in nature e.g. tax collection statistics, may also be disclosed in the circumstances considered appropriate by the Commissioner.

As the intention of Part 8 is to protect the confidentiality of specific information and is not intended as a general enabling provision for the dissemination of information by the Commissioner, section 111 confirms that it creates no right in any person to be given confidential information and provides that a decision by the Commissioner to refuse to disclose such information is non-reviewable.

Clause 112 deals with the further disclosure of confidential information that has been either knowingly acquired by a person who is not entitled to it or has been received by a person who ought to know that the information is confidential. An example of the former case is where a facsimile stating

that the information contained in it is confidential and intended for the addressee only is received by another person. An example of the latter case is where information has been disclosed to a person under section 111.

Information disclosed by the Commissioner under section 111 may be further disclosed in the circumstances specified. For instance, there is no limitation on the further disclosure by the person to whom the information relates.

Clause 113 provides that a person engaged in administering or enforcing a tax law cannot be compelled to disclose confidential information or matters relating to that confidential information in the course of legal proceedings, unless those proceedings are for the administration of a tax law.

Clause 114 requires a person to keep records that are necessary to establish the person's tax law liability. In this regard, the requirement to keep records includes an obligation to make the necessary records.

Clause 115 provides that, although records are not required to be kept in Queensland, they must be readily accessible by the Commissioner.

Clause 116 provides that the required records must be written in English and amounts must be expressed in Australian currency. Alternatively, they must be kept in a way that is capable of being readily converted into those forms.

Clause 117 provides that the Commissioner may require certain documents or information to be translated into English and converted into Australian currency. The obligation for conversion does not apply only to a taxpayer. If the Commissioner's requirement is not met, the Commissioner may have the material translated or converted and the cost of doing so will be recoverable from the person by the Commissioner.

Clause 118 specifies the period for keeping records.

Clause 119 provides that records must not be wilfully damaged or destroyed. This prohibition extends to persons other than taxpayers to whom the particular record relates.

Clause 120 creates an offence where a person fails to comply with a notification requirement without reasonable excuse. For instance, it is an offence to fail to notify the Commissioner as required under section 28.

Clause 121 creates an offence where a person fails to comply with an information or lodgement requirement without reasonable excuse.

Clause 122 creates an offence where a person gives the Commissioner or an investigator a document containing information that the person knows or should reasonably know is false or misleading in a material particular. A document can be false or misleading because it is incomplete. A defence is also provided.

Clause 123 creates an offence where a person states anything to the Commissioner or an investigator that the person knows or should reasonably know is false or misleading. A statement can be false or misleading because of the omission of information.

Clause 124 provides that a person must comply with an information or lodgement requirement even though the information or document provided may be incriminating. However, any such incriminating information or document will not be admissible against the person in criminal proceedings, except proceedings in relation to the falsity or misleading nature of the information or document. This protection extends to evidence directly or indirectly derived from the information or document but does not apply where the information or documents are sourced independently by another agency in a manner unrelated to the disclosure under the *Taxation Administration Act 2001*.

Example

A taxpayer is given a notice under section 87 requiring the production of all information and documents relevant to an assessment of tax liability previously made. The taxpayer is aware that one of the documents discloses that the valuation declared at the time was significantly understated, and that tax was therefore underassessed.

The taxpayer must provide all of the information and documents requested. The information and documents obtained may be used to make a reassessment to reflect the tax properly payable and may also be used in any resulting appeal against the reassessment or in recovery proceedings. However, the information may not be used to prosecute the taxpayer for an offence under the tax laws. For instance, the taxpayer cannot be prosecuted for the offence of failing to advise the Commissioner as required under section 28 or for providing false or misleading documents and information under sections 122 and 123.

If, in providing the required documents and information, the taxpayer provided false or misleading documents or made false or misleading statements to the investigator, the taxpayer may be prosecuted for an offence in relation to the falsity of those documents and information.

Clause 125 provides similarly to section 124 where information or documents relevant to a tax law were required to be given under a recognised law.

Clause 126 creates an offence where a person obstructs the Commissioner or an investigator when exercising a power under a tax law, or a person assisting the Commissioner or investigator.

Clause 127 creates an offence where a person pretends to be an investigator.

*Clause 12*8 provides that the evidentiary provisions under Division 2 of Part 10 apply to a proceeding under or in relation to a tax law.

Clause 129 specifies the evidentiary status of the Commissioner's name and signature, and documents signed by the Commissioner.

Clause 130 specifies the evidentiary status of a statement made by or for the Commissioner in a complaint starting a proceeding.

Clause 131 specifies the evidentiary status of a certificate purporting to be signed by the Commissioner.

*Clause 13*2 specifies the evidentiary value of a document signed by the Commissioner purporting to be a copy of an assessment notice. The validity of an assessment is not affected because a provision of a tax law has not been complied with. For instance, although a notice of assessment may not include all of the matters required under section 26, the validity of the assessment made is unaffected.

Clause 133 specifies the admissibility and evidentiary value of a copy of a document made or issued by the Commissioner or in the Commissioner's possession.

Clause 134 specifies how the Commissioner may authorise a person to represent the Commissioner in recovery, offence and other proceedings under a tax law to which the Commissioner is a party, and the status of the authorised person in those proceedings.

Clause 135 provides that proceedings for prosecution of an offence against a tax law will be by way of summary proceedings.

Clause 136 specifies the time within which a proceeding for an offence against the tax laws must start.

Clause 137 sets out the powers of a court in proceedings for the prosecution of an offence. In addition to imposing a penalty for an offence, the court may also order the convicted person to comply with the relevant provision, and to pay any amounts owing under the tax law. Also, if

satisfied that the purpose of the act or omission relating to the offence was to avoid a tax law liability, the court may order payment of up to twice the amount of that liability. For instance, if the person is convicted of an offence under section 122 because the person deliberately provided the Commissioner with false documents to ensure that an underassessment of liability of $5,000 resulted, the court may order the person to pay $10,000 in addition to any penalty imposed under section 122.

In making an order, the court is not limited to these orders and may make any order it has power to under the *Penalties and Sentences Act 1992* or any other law.

Clause 138 provides that, where a person has been convicted of an offence against a particular provision of a tax law and is again convicted of an offence against the same provision within 5 years, the court may impose a penalty up to twice the maximum penalty applicable for the offence.

Clause 139 specifies the regard that can be had in a prosecution for an offence to the acts or omissions of a person's representative when seeking to prove the person's state of mind or where acts taken to be done or omitted to be done by the person are relevant.

Clause 140 provides that the executive officers of a corporation must ensure compliance by the corporation with the tax laws and that, where a corporation commits an offence against a tax law, the corporation's executive officers are taken to have also committed an offence, being the offence of failing to ensure compliance by the corporation. Subject to stated defences, evidence that a corporation has been convicted of an offence is evidence that each of the executive officers committed the offence of failing to ensure compliance by the corporation.

Clause 141 provides that, subject to specified defences, an offence is committed by the partners of a partnership or the management members of an unincorporated association where a revenue law declares the partnership or unincorporated association to be a person and, because of this declaration, the partnership or unincorporated association is taken to have committed an offence against a tax law.

Clause 142 clarifies when Part 11 of this Act applies for the giving of documents.

*Clause 14*3 specifies the circumstances in which a document will be taken to have been given to the Commissioner.

Clause 144 specifies the time at which a document will be taken to have been given to the Commissioner.

Clause 145 provides that, where a taxpayer is required to lodge or give a document, the taxpayer complies with the requirement only if all relevant documents are lodged or given. In addition, where an approved form is required to be lodged or given, it must be adequately completed. For instance, where an approved form requires the inclusion of particular information to enable the proper determination of tax liability and that information is not included with the form, the approved form will not be taken to have been lodged until the missing information is provided. This means that unpaid tax interest under section 54 may apply where the missing information is provided after the due date for lodging the approved form.

Clause 146 specifies the circumstances in which a document will be taken to have been given by the Commissioner to agents of taxpayers and members of partnerships and unincorporated associations.

Clause 147 recognises that, although the giving of a document to one taxpayer should generally be taken to be the giving of the document to all taxpayers who are liable under the transaction, there may be some limited cases where that approach is inappropriate. In those cases, a regulation may prescribe the exceptions to this general principle.

Clause 148 specifies the manner in which a document will be taken to have been given by the Commissioner.

Clause 149 specifies the time at which a document will be taken to have been given by the Commissioner.

Clause 150 provides certain officials with protection from civil liability in respect of an act done, or omission made, honestly and without negligence under a tax law. The provision attaches to the State the liability that would otherwise attach to the official in these circumstances. For this section, a reference to an investigator does not include a reference to an interstate investigator.

Clause 151 permits the Commissioner to extend the date for compliance with a lodgement or information requirement where the Commissioner considers it would be unreasonable to require compliance by the due date.

Clause 152 provides for the rounding down of amounts to the nearest 5 cents.

Clause 153 provides that the Commissioner may approve forms.

Clause 154 provides for the making of regulations and the imposition of penalties under the regulations.

Clause 155 provides for the repeal of the *Revenue Laws (Reciprocal Powers) Act 1988*. The relevant investigation and information disclosure provisions have been incorporated into this and other Acts administered by the Commissioner.

Clause 156 contains definitions for Division 2 of Part 13.

Clause 157 provides for the application of the Act to the repealed *Stamp Act 1894* as in force immediately before its repeal. The principle is that, except to the extent stated, the repealed *Stamp Act 1894* is taken to be a revenue law for the purposes of the *Taxation Administration Act 2001*.

For example, where a document is given to or by the Commissioner in relation to a matter arising under the repealed *Stamp Act 1894*, Part 11 applies. In contrast, a liability arising under the *Stamp Act 1894* cannot be assessed under Part 3 but rather must be assessed under the *Stamp Act 1894*, as saved under the *Duties Act 2001*.

As it is necessary to read the Act and the repealed *Stamp Act 1894* as if they formed a single Act, but because terms used in the repealed Act, for instance, may not accord directly with those used in the *Taxation Administration Act 2001*, the necessary changes to provisions of this Act are deemed to be made to enable its application. For instance, this Act refers to reassessments as the basis for changing a liability determined under an assessment whereas the repealed *Stamp Act 1894* refers to the amendment of assessments. The relevant references in the *Taxation Administration Act 2001* will be taken to be changed as necessary to accord with the references in the repealed *Stamp Act 1894*.

Also, where there are provisions in this Act and the repealed *Stamp Act 1894* in respect of the same matter, the provisions in this Act prevail.

Clause 158 clarifies that the confidentiality obligations in Part 8 apply to information acquired or received under the repealed *Stamp Act 1894* prior to commencement.

Clause 159 ensures that the requirement for an administrator to notify the Commissioner under this Act upon becoming aware of a liability under the repealed *Stamp Act 1894* is not imposed retrospectively.

Clause 160 ensures that the increase in the maximum penalty under section 138 for a further offence, where the first offence was under the repealed *Stamp Act 1894*, applies only where the further offence is committed on or after commencement. It also ensures that the maximum penalty under section 138 may be increased where the first offence was committed against a provision of the repealed *Stamp Act 1894* and a

subsequent offence is committed against a corresponding provision of a tax law.

Clause 161 provides for the transition from the office of Commissioner of Stamp Duties to Commissioner of State Revenue.

Clause 162 provides that a reference in an Act or document to the Commissioner of Stamp Duties or an investigating officer under the repealed *Stamp Act 1894* is, if the context permits, to be read as a reference to the Commissioner of State Revenue or an investigator.

Clause 163 provides for the making of a regulation to ensure the effective transition from the operation of the *Stamp Act 1894* to the operation of this Act and the *Duties Act 2001*, where this Act does not provide or sufficiently provide for that transition. The regulation may have limited retrospective effect. Provision is also made for the expiry of this section and any regulation made under it.

Clause 164 and Schedule 1 make a number of consequential amendments to other Acts necessary on the commencement of this Act.

Schedule 2 contains a dictionary of significant terms used in this Act.

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