

Western Australia

Taxation Administration Act 2003

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Taxation Administration Act 2003

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Western Australia

Taxation Administration Act 2003

**An Act to provide for the administration and enforcement of
legislation dealing with State taxation.**

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Taxation Administration Act 2003*¹.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation¹.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. The taxation Acts

- (1) The following enactments are taxation Acts for the purposes of this Act —
 - (a) this Act;
 - (b) the *Debits Tax Act 2002*;
 - (c) the *Debits Tax Assessment Act 2002*;
 - (d) the *Land Tax Act 2002*;
 - (e) the *Land Tax Assessment Act 2002*;
 - (f) the *Metropolitan Region Improvement Tax Act 1959* as in force from and after the time of commencement of this Act;
 - (g) section 41 of the *Metropolitan Region Town Planning Scheme Act 1959* as in force from and after the commencement of this Act;
 - (h) the *Pay-roll Tax Act 2002*;
 - (i) the *Pay-roll Tax Assessment Act 2002*;
 - (j) the *Stamp Act 1921* as in force from and after the time of commencement of this Act;
 - (k) any other enactment prescribed by the regulations as a taxation Act.

- (2) Each other taxation Act is to be read with this Act as if they formed a single Act.

4. Meaning of terms used in this Act

The Glossary at the end of this Act defines or affects the meaning of some of the words and expressions used in this Act.

5. Crown bound

Subject to any express provision to the contrary, each taxation Act binds the Crown in right of Western Australia and, as far as the legislative power of Parliament permits, in all its other capacities.

Part 2 — Tax administration generally

6. Commissioner of State Revenue

A Commissioner of State Revenue is to be appointed under Part 3 of the *Public Sector Management Act 1994*.

7. Administration of taxation Acts

- (1) The Commissioner is responsible to the Minister for applying and giving effect to the taxation Acts.
- (2) The Commissioner is not subject to Ministerial control or direction in relation to —
 - (a) the interpretation of a taxation Act; or
 - (b) the exercise of a power under a taxation Act.

8. Commissioner's functions

In addition to performing the functions conferred on the Commissioner under a taxation Act, the Commissioner may perform any function conferred on an investigator under a taxation Act.

9. Judicial notice of appointment and signature

All courts and persons acting judicially are to take judicial notice —

- (a) of the fact that a person holds or has held the office of Commissioner; and
- (b) of the official signature of a person who holds or has held the office of Commissioner.

10. Delegation

- (1) The Commissioner may delegate any of the Commissioner's functions under a taxation Act except —
 - (a) the power to delegate under this section;
 - (b) the power to issue an identity card; and

- (c) the power to give an authorisation under section 98(3), 99(1)(a) or 101(2).
- (2) The delegation must be in writing signed by the Commissioner.
- (3) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (4) Nothing in this section limits the ability of the Commissioner to perform a function through an agent.
- (5) The Commissioner is to keep a register of delegates, which may be kept electronically or otherwise.
- (6) If a person exercises, or claims to be entitled to exercise, functions delegated by the Commissioner in relation to a taxpayer or a taxpayer's affairs, the Commissioner must, at the request of the taxpayer, make the relevant entry in the register of delegates, or a print-out of it, available for inspection by the taxpayer or a representative of the taxpayer.

11. Tax investigators

- (1) The Commissioner may appoint a person to be an investigator for the purposes of the taxation Acts.
- (2) The Commissioner is to issue an identity card to each investigator.
- (3) An identity card must —
 - (a) include a statement to the effect that the person identified by the card is an investigator for the purposes of the taxation Acts; and
 - (b) include a photograph of the investigator.
- (4) If a person to whom an identity card is issued ceases to be an investigator, the person must immediately return the card to the Commissioner.

s. 12

Penalty for an offence against subsection (4): \$20 000.

12. Appointed representatives for court proceedings

- (1) The Commissioner may appoint a person to represent the Commissioner —
 - (a) in court proceedings for recovery of tax;
 - (b) in proceedings for an offence against a taxation Act; or
 - (c) in other proceedings before a court or tribunal to which the Commissioner is a party.
- (2) An appointed representative may represent the Commissioner in accordance with the authorisation.

Part 3 — Assessments of tax

Division 1 — Assessments

13. Assessments

- (1) An assessment is a determination —
 - (a) of the amount of tax payable under a taxation Act;
 - (b) that no tax is payable;
 - (c) that a person is liable to pay tax or is exempt from liability to pay tax; or
 - (d) that an instrument, event or transaction is liable to tax or is exempt from tax.
- (2) An assessment may be made in relation to any one or more, or all, the components of the tax payable by a taxpayer.
- (3) The receipt by the Commissioner of an amount as payment of tax does not constitute an assessment of tax liability.

14. Self-assessments

A self-assessment is —

- (a) an assessment made by the taxpayer in a return under a taxation Act; or
- (b) an assessment made by a responsible party in a return or otherwise in accordance with a special tax return arrangement.

15. Official assessments

- (1) An official assessment is an assessment made by the Commissioner.
- (2) The Commissioner must make an official assessment of the tax payable by a person —
 - (a) if the person is or is likely to be liable to pay tax, but is not required to make a self-assessment; or

- (b) when a taxation Act specifically requires the Commissioner to do so.
- (3) The Commissioner may make an official assessment on his or her own initiative, and may do so even if the taxpayer is required to make, or has made, a self-assessment.
- (4) The Commissioner may make an official assessment in any other circumstances at the taxpayer's request.

16. Reassessments

- (1) The Commissioner must make a reassessment —
 - (a) if specifically required to do so under a taxation Act;
 - (b) if specifically required to do so under a direction given in the course of review proceedings; or
 - (c) if a taxation Act provides for a rebate or refund of tax in particular circumstances, and the circumstances were not taken into account when the previous assessment was made.
- (2) Subject to subsection (5), the Commissioner may also make a reassessment —
 - (a) on his or her own initiative, if it appears that a previous assessment is or may be incorrect for any reason; or
 - (b) on the application of the taxpayer.
- (3) A reassessment may be made whether or not any amount of tax has been paid on the previous assessment.
- (4) A reassessment may consolidate 2 or more separate assessments into a single assessment.
- (5) If an assessment is based on a particular interpretation of the applicable law or a particular practice of the Commissioner that was generally applied to assessments of that kind when the assessment was made, then the Commissioner cannot make a reassessment based on the ground that the interpretation or practice is or was erroneous.

[Section 16 amended by No. 55 of 2004 s. 1165.]

17. Time limits on reassessments

- (1) A taxpayer is not entitled to apply for a reassessment more than 5 years after the original assessment was made.
- (2) The Commissioner may make a reassessment at any time after the previous assessment was made if —
 - (a) the Commissioner has been directed, in the course of review proceedings, to make the reassessment; or
 - (b) there are reasonable grounds for suspecting that there has been an evasion of tax, or that the previous assessment was made on the basis of false or misleading information.
- (3) The Commissioner may make a reassessment of the amount of pay-roll tax payable on an original assessment that was made in or in relation to any of the 5 financial years that precede the financial year in which the reassessment is made.
- (4) However, in any other circumstances the Commissioner may only make a reassessment within 5 years after the date of the original assessment or on an application made within 5 years after the date of the original assessment.

[Section 17 amended by No. 55 of 2004 s. 1166.]

18. Effect of reassessment

- (1) A reassessment supersedes the original assessment and any earlier reassessment.
- (2) A reassessment may increase or decrease the amount originally assessed.
- (3) If tax payable on an instrument is reassessed, and the instrument or a duplicate or copy of it is produced to the Commissioner, the Commissioner may stamp it with a stamp denoting the amount of tax (if any) payable under the reassessment and the amount of

tax paid (if any), (but the reassessment takes effect irrespective of restamping).

- (4) A reassessment does not invalidate proceedings for the recovery of tax, but the amount to be recovered is to be amended to take account of the reassessment.
- (5) If an objection to an assessment is lodged but a reassessment is made before the objection is determined, the objection may be continued against the reassessment to the extent that it is liable to the same objection or to an objection that is the same, or similar, in substance.

18A. Withdrawal of assessment

- (1) The Commissioner may, within 5 years after the issue of a notice of assessment, withdraw the assessment.
- (2) An assessment may not be withdrawn if any amount of tax has been paid on the assessment.
- (3) The Commissioner must give a written notice of withdrawal to the taxpayer.
- (4) If an assessment in respect of an event or transaction is withdrawn, the assessment is taken never to have been made and, subject to this Act, the Commissioner may make an assessment in respect of the event or transaction at any time after the first-mentioned assessment is withdrawn.

[Section 18A inserted by No. 66 of 2003 s. 95(2).]

19. Assessments based on estimated or suspected liability

- (1) If the Commissioner suspects on reasonable grounds that a tax liability exists, the Commissioner may make an assessment on the basis of that suspicion and the Commissioner's estimate of the amount of the liability.
- (2) If a tax liability exists, but the Commissioner is not satisfied with the adequacy or reliability of information available to make

an assessment, the Commissioner may make an assessment on the basis of the Commissioner's estimate of the amount of the liability.

20. Assessments when instrument misleading or unavailable

- (1) If there are reasonable grounds for suspecting that an instrument lodged under a taxation Act is inaccurate or misleading, then for the purposes of making an assessment the Commissioner may —
 - (a) subject to subsection (4), create a memorandum of the instrument; and
 - (b) treat the memorandum as if it were the instrument.
- (2) If tax is or may be payable on an instrument required to be lodged under a taxation Act, but the instrument has not been lodged as required, then for the purposes of making an assessment, the Commissioner may —
 - (a) treat a copy of the instrument as if it were the instrument; or
 - (b) subject to subsection (4), if a copy of the instrument is not available — create a memorandum of the instrument, and treat the memorandum as if it were the instrument.
- (3) If tax is or may be payable in relation to an event or transaction, but an instrument required to be lodged under a taxation Act in relation to the event or transaction has not been lodged, then for the purposes of making an assessment the Commissioner may, subject to subsection (4), create a memorandum in substitution for the instrument and for the purposes of the taxation Act and this Act the memorandum is taken to be the instrument lodged by the person required to lodge it under the taxation Act.
- (4) The Commissioner can only create a memorandum of an instrument under subsection (1)(a), (2)(b) or (3) if the Commissioner has, so far as is practicable, made reasonable

efforts to obtain sufficient information to make an accurate assessment.

- (5) The payment of tax on the instrument may be denoted on the copy or memorandum.
- (6) The validity of an assessment and the liability to pay tax on an instrument, event or transaction do not depend on the availability of the instrument or a copy of it, or on the creation of a memorandum of it.
- (7) This section does not limit the powers of the Commissioner under section 19.

[Section 20 amended by No. 66 of 2003 s. 95(3).]

21. Ascertaining value of property, consideration or benefit

- (1) If it is necessary to ascertain the value of any property, consideration or benefit for the purposes of a taxation Act, the Commissioner may require the taxpayer to provide any information in the possession or control of the taxpayer that is relevant to determining the value of the property, consideration or benefit.
- (2) A requirement must specify the date on or before which the taxpayer is required to comply with it.
- (3) A person who does not comply with a requirement commits an offence.

Penalty: \$20 000.

22. Commissioner's power to have valuation made

- (1) For the purposes of a taxation Act, the Commissioner may —
 - (a) have a valuation made of any property, consideration or benefit; or
 - (b) adopt any available valuation of the property, consideration or benefit that the Commissioner considers appropriate.

- (2) The Commissioner may have a valuation made, or adopt a valuation, regardless of whether —
 - (a) the Commissioner has required the taxpayer to provide information under section 21 about the value of the property, consideration or benefit; or
 - (b) the taxpayer has complied with such a requirement.

Division 2 — Assessment notices and returns

23. Assessment notices

- (1) When the Commissioner makes an assessment, he or she must issue an assessment notice.
- (2) However, the Commissioner does not have to issue an assessment notice —
 - (a) if the Commissioner makes a reassessment on his or her own initiative, and no tax is to be paid or refunded as a result of the reassessment provided confirmation is given in writing if requested;
 - (b) if the Commissioner assesses the amount of stamp duty payable on an instrument and then stamps the instrument immediately; or
 - (c) if no tax is payable under an exemption (however expressed) provided under the *Land Tax Assessment Act 2002* or land tax imposed under the *Land Tax Act 2002* is waived under section 56.
- (3) When an assessment notice is issued, the Commissioner must serve it on the taxpayer.
- (4) However, liability to tax is not dependent on service of the assessment notice.

[Section 23 amended by No. 66 of 2003 s. 108(2); No. 82 of 2004 s. 19.]

24. Form of assessment notice

- (1) An assessment notice may be —
 - (a) in the form of an account requiring payment of the amount assessed and of other amounts payable by the taxpayer; or
 - (b) in any other form approved by the Commissioner.
- (2) An assessment notice in relation to an original assessment must —
 - (a) state the amount of tax payable under the primary liability;
 - (b) state the amount of penalty tax payable, if any; and
 - (c) indicate the due date for payment of the tax.
- (3) An assessment notice in relation to a reassessment must —
 - (a) state whether the amount payable is more or less than the amount assessed under the previous assessment;
 - (b) if an amount of tax has been overpaid — state whether the overpaid amount is to be refunded or credited to the taxpayer; and
 - (c) if the amount of tax has been increased, or an amount of tax remains unpaid — state the due date for payment of the amount or amounts to be paid.
- (4) For the purposes of subsection (3)(c), if the due date for payment of the tax has passed when the assessment notice is issued, the assessment notice must specify the due date for payment of any unpaid tax and any penalty tax payable in relation to the unpaid tax.
- (5) The date specified in an assessment notice in relation to an original assessment as the due date for payment must be at least 14 days after the date of the assessment notice.

- (5a) The date specified in an assessment notice in relation to a reassessment as the due date for payment must be at least 28 days after the date of the assessment notice.
- (6) More than one assessment of primary tax or penalty tax, or both, may be included in an assessment notice, whether or not the assessments are made in respect of the same matter.
[Section 24 amended by No. 12 of 2004 s. 9.]

25. Statement of grounds of assessment

- (1) An assessment notice may include a statement of the grounds on which the assessment is made.
- (2) If an assessment notice relating to an assessment of a primary liability does not include a statement of the grounds on which the assessment is made —
 - (a) the taxpayer may request the Commissioner to provide a statement of the grounds; and
 - (b) the Commissioner must serve a statement of the grounds on the taxpayer within 30 days after receiving the request.
- (3) If an assessment notice relating to an assessment of penalty tax does not include a statement of the grounds on which the assessment is made, the Commissioner must serve on the taxpayer a separate statement of the grounds.

Division 3 — Penalty tax

26. Penalty tax for contravention of taxation Act

- (1) A taxpayer is liable to pay penalty tax in the following circumstances —
 - [(a) deleted]*
 - (b) where the taxpayer does not lodge an instrument in accordance with a taxation Act;

- (c) where any other contravention of a taxation Act occurs and, as a result, the taxpayer —
 - (i) avoids or delays the payment of tax; or
 - (ii) avoids or delays the submission of information required for the assessment of tax;
 - (d) where there is a material misstatement or omission in an instrument submitted to the Commissioner by or for the taxpayer under a taxation Act;
 - (e) where the taxpayer fails to provide information required under a taxation Act or (intentionally or unintentionally) provides information that is incorrect, incomplete or misleading;
 - (f) where the taxpayer makes an underestimation to avoid, delay or reduce the payment of tax;
 - (g) where the taxpayer fails to pay (or underpays) tax for which the taxpayer is liable.
- (2) If there are reasonable grounds for suspecting that a taxpayer is liable to pay penalty tax, the Commissioner may assess the amount of penalty tax payable by the taxpayer.
- (3) The amount of penalty tax payable is the amount equal to —
- (a) the amount of the taxpayer's primary liability; or
 - (b) the amount that the taxpayer would have been liable to pay if the circumstances giving rise to the liability to penalty tax had not occurred,

as the case requires.

[Section 26 amended by No. 66 of 2003 s. 95(4).]

27. Penalty tax for late payment

- (1) If tax is not paid by the due date, the taxpayer is liable to pay an amount of penalty tax for late payment equal to 20% of the amount outstanding on the due date.
- (2) However, penalty tax is not payable for late payment of —

- (a) instalments due under a tax payment arrangement; or
- (b) an amount payable under section 47(6) as a result of the cancellation of a tax payment arrangement.

28. Limitation on amount of penalty tax

If the total amount of penalty tax assessed as payable by a taxpayer in relation to a primary liability exceeds, or would but for this section exceed, the amount of the primary liability, the amount of penalty tax payable is reduced to the amount equal to the amount of the primary liability.

29. Remission of penalty tax

- (1) The Commissioner may remit penalty tax wholly or in part.
- (2) Penalty tax may be remitted before or after an assessment of the penalty tax is made.
- (3) If penalty tax is paid and later remitted, the amount remitted is to be refunded or credited against the taxpayer's present or future tax liabilities.

30. Guidelines for imposing penalty tax

- (1) The Commissioner must publish the policy followed by the Commissioner when deciding whether or not to remit penalty tax under section 29.
- (2) The Commissioner must, at the request of a taxpayer, make a copy of the guidelines available to the taxpayer.

Part 4 — Objections and review proceedings

[Heading amended by No. 55 of 2004 s. 1167.]

Division 1 — Procedures and restrictions

31. Procedure for challenging assessments

A taxpayer is not entitled to challenge the validity or correctness of an assessment, or of any other decision for which rights of objection or review are conferred by this Act, except —

- (a) in proceedings by way of objection or in review proceedings; or
- (b) in any other manner specifically provided in a taxation Act.

[Section 31 amended by No. 55 of 2004 s. 1168.]

32. Objections to land valuations

The validity or correctness of a valuation under the *Valuation of Land Act 1978* may only be challenged in proceedings under Part IV of that Act, and not by way of objection against an assessment under this Act based on the valuation.

[Section 32 amended by No. 55 of 2004 s. 1169.]

33. Continuing obligation to pay assessed tax

- (1) An obligation to pay tax is not suspended or deferred by an objection or case stated or by review proceedings.
- (2) An order cannot be made in review proceedings if it would have the effect of suspending or deferring an obligation to pay tax before those proceedings are finally determined.

[Section 33 inserted by No. 55 of 2004 s. 1170.]

Division 2 — Objections

34. Right to object

- (1) A taxpayer may object to —
 - (a) an assessment; or
 - (b) another decision under a taxation Act that affects the taxpayer's liability to taxation.

- (2) However, an objection cannot be made against —
 - (a) the determination of an objection;
 - (b) an assessment of an amount of stamp duty and penalty tax that is assessed under Part IIIC of the *Stamp Act 1921* and specified in a traffic infringement notice issued under section 102 of the *Road Traffic Act 1974*, unless the amount has been paid;
 - [(c) has not come into operation².]*
 - (d) a decision in respect of which a taxation Act specifically provides other procedures for objection or appeal.

- (3) If a reassessment is made and the time for lodging an objection to the previous assessment has expired, an objection may only be made against an increase in liability.
- [(4) has not come into operation².]*

35. Form of objection

An objection must —

- (a) be in writing;
- (b) set out fully and in detail the grounds on which the taxpayer objects to the assessment or decision; and
- (c) be lodged in accordance with section 115.

36. Time for lodging objection

- (1) An objection to an official assessment must be lodged within 60 days after —

- (a) the assessment notice is issued;
 - (b) if the assessment is denoted by stamping in accordance with section 23(2)(b) — the date on which the document was stamped; or
 - (c) if a taxpayer has requested a statement of grounds in accordance with section 25(2)(a) within 30 days of the issue of the assessment — the date on which the Commissioner serves a statement of the grounds.
- (2) An objection to a self-assessment must be lodged within 60 days after the due date for lodging the return related to the assessment.
- (3) An objection to another decision must be lodged within 60 days after the day on which the person affected by the decision was notified of the decision.
- (4) However, the Commissioner may, on application by the taxpayer, extend the time for lodging an objection.
- (5) An application for an extension of time —
- (a) must be made within 12 months after the date on which the objection was to have been lodged under subsection (1), (2) or (3), but may be made before or after that date; and
 - (b) must set out in detail the grounds on which the applicant asks for an extension of time.
- (6) If objection is taken to a decision about self-assessment of tax, the date of the decision is taken to be the date by which the first return affected by the decision is to be lodged by the taxpayer after the taxpayer receives notice of the decision.

37. Consideration of objections

- (1) The Commissioner must consider and determine an objection, having regard to —

- (a) the grounds set out in the objection and any other relevant written material submitted by the taxpayer; and
 - (b) any other information obtained by the Commissioner that is relevant to considering the objection, whether the information was obtained before or after the objection was lodged.
- (2) The onus of establishing that an assessment or decision to which an objection relates is invalid or incorrect lies on the taxpayer.
- (3) If the objection relates to an assessment that was made under section 19(1) on the basis of suspected liability —
- (a) it is not necessary for the taxpayer to establish that there were no reasonable grounds for the suspicion; and
 - (b) the objection is to be allowed if the taxpayer establishes, on the balance of probabilities, that the taxpayer is not liable to the tax (or penalty tax) assessed.
- (4) On determining an objection, the Commissioner must serve on the taxpayer a notice setting out —
- (a) the decision on the objection; and
 - (b) if the objection is disallowed in whole or part — the reasons for the decision.

38. Time limit for determining objections

- (1) The Commissioner must determine an objection within the decision period calculated under subsection (2).
- (2) The decision period is the initial period of 90 days beginning on the day the objection is lodged with the Commissioner, plus the number of days equal to the number of days the Commissioner needs (whether the needed days fall during or after the initial 90-day period) —
- (a) to obtain from the taxpayer information that the Commissioner reasonably requires to determine the objection; or

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- (b) to consider any information provided by the taxpayer after the objection was lodged; or
 - (c) to obtain any advice and assistance from an external agency that the Commissioner reasonably requires to determine the objection.
- (3) The Commissioner must notify the taxpayer, before the end of the initial 90-day period, of any periods by which the decision period has been extended up to the time of notification and, if further delays extending the decision period occur after the initial notification, must keep the taxpayer reasonably informed about the extent and the reasons for the further delays.
- (4) If the Commissioner fails to determine an objection within 120 days of the day that the objection was lodged with the Commissioner, the taxpayer may, by written notice to the Commissioner, require the Commissioner to apply to the State Administrative Tribunal for directions as to any or all of the matters referred to in this section, including but not limited to —
 - (a) the length of the decision period;
 - (b) the time for a taxpayer to comply with a request for information;
 - (c) the information to be provided by the taxpayer;
 - (d) the time for the Commissioner to seek advice and assistance from an external agency.
- (5) On receiving a request under subsection (4), the Commissioner must apply to the State Administrative Tribunal for those directions within 14 days of the written notice.
- [(6) repealed]*
- (7) Non-compliance with subsection (1) does not invalidate a determination on an objection.

[Section 38 amended by No. 55 of 2004 s. 1172; No. 12 of 2005 s. 9.]

39. Reassessment on determination of objection

- (1) If an objection is allowed wholly or in part, the Commissioner must make a reassessment accordingly.
- (2) If, as a result of the reassessment, an amount is to be refunded or credited to the taxpayer, interest at the prescribed rate is payable on the amount from the date of payment to the date of the determination of the objection.

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[Heading amended by No. 55 of 2004 s. 1173.]

40. Right of review

- (1) A person dissatisfied with the Commissioner's decision on an objection or on an application for an extension of time for lodging an objection may apply to the State Administrative Tribunal for a review of the decision.

[(2) repealed]

[Section 40 amended by No. 55 of 2004 s. 1174.]

[41. Repealed by No. 55 of 2004 s. 1175.]

42. Time for review

- (1) An application to the State Administrative Tribunal for a review of a decision must be made within 60 days after notice of the decision is served on the taxpayer.

[(2) repealed]

[Section 42 amended by No. 55 of 2004 s. 1176.]

43. Proceedings before State Administrative Tribunal

- (1) When the State Administrative Tribunal is dealing with a matter brought before it under this Act other than a matter to which subsection (2) or (2aa) applies, the State Administrative Tribunal is to be constituted by, or include —

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- (a) its President or a Deputy President of it; or
 - (b) a senior member of it, as defined in subsection (1) of section 3 of the *State Administrative Tribunal Act 2004*, who is a legal practitioner as defined in that subsection.
- (2) When the State Administrative Tribunal is dealing with a matter brought before it under this Act that relates to an assessment or decision under or for the purposes of the *Debits Tax Assessment Act 2002*, the *Pay-roll Tax Assessment Act 2002*, or the *Stamp Act 1921*, the State Administrative Tribunal is to be constituted by its President, or a Deputy President of it, sitting alone unless subsection (2aa) applies.
- (2aa) A proceeding brought before the State Administrative Tribunal under this Act is included in the operation of section 93 of the *State Administrative Tribunal Act 2004* if it is —
 - (a) a proceeding of a kind described in paragraph (a) of the definition of “minor proceeding” in subsection (1) of that section or included by regulations referred to in paragraph (b) of that definition;
 - (b) a proceeding for the review of a directly reviewable decision; or
 - (c) a proceeding for the review of a decision of the Commissioner under section 47 in connection with extending time for payment of tax or approving payment of tax in instalments,but the effect of a no appeals election made under that section in relation to the proceeding is modified as described in subsection (2ab).
- (2ab) The no appeals election does not prevent the Commissioner from making an appeal under the *State Administrative Tribunal Act 2004* Part 5, without leave, against the decision in the proceeding on a question of law if the Treasurer —
 - (a) certifies in writing that the question is significant for the protection of the revenue of the State; and

- (b) agrees to indemnify each other party to the proceeding in respect of any cost involved in the appeal,

but a decision made by the Supreme Court in dealing with the appeal does not affect the decision in the proceeding from which the appeal arose and the matter cannot be sent back to the State Administrative Tribunal for reconsideration.

- (2a) For the purposes of subsections (1) and (2) —

- (a) a person appointed as a supplementary President of the State Administrative Tribunal under section 139 of the *State Administrative Tribunal Act 2004* is not to be regarded as its President unless the person is a judge, acting judge or auxiliary judge of the Supreme Court; and
- (b) a person appointed as a supplementary Deputy President of the State Administrative Tribunal under section 141 of the *State Administrative Tribunal Act 2004* is not to be regarded as a Deputy President of it unless the person is a judge, acting judge or auxiliary judge of the District Court.

- (2b) Subsections (1) and (2) apply to the constitution of the State Administrative Tribunal at every stage of a proceeding before it, including a directions hearing or other hearing of a procedural nature before the Tribunal.

- (3) If the final reassessment of the taxpayer's liability indicates that tax has been overpaid —

- (a) the taxpayer is entitled to a refund or credit of the overpaid amount; and
- (b) interest on the overpaid amount, calculated at the prescribed rate from the date on which the tax was paid to the date on which the overpaid amount is refunded or credited to the taxpayer, is payable to the taxpayer.

- (4) For the purposes of subsection (3) —

- (a) the final reassessment of a taxpayer's liability is the last assessment to have been made as directed in the course of review proceedings at the time that the case is discontinued or otherwise finally determined; and
- (b) a refund or credit of an overpaid amount, and any payment of interest payable on the overpaid amount need not be made until rights to take review proceedings (including any right that may exist to seek special leave to appeal to the High Court) have been exhausted or have expired, and no further reassessment can be made.

[Section 43 amended by No. 55 of 2004 s. 1177.]

43A. Appeal from decision of State Administrative Tribunal

- (1) An appeal from a decision of the State Administrative Tribunal can be brought on a question of law, of fact, or mixed law and fact, without having first obtained leave to appeal.
- (2) The appeal has to be instituted in accordance with the rules of the Supreme Court and within the period of 28 days after —
 - (a) the day on which the Tribunal's decision is made; or
 - (b) if the Tribunal gives oral reasons for the decision and the appellant then requests it to give written reasons under section 78 of the *State Administrative Tribunal Act 2004*, the day on which the written reasons are given to the appellant.

[Section 43A inserted by No. 55 of 2004 s. 1178.]

44. Cases stated by Commissioner

- (1) The Commissioner may state a case on a question of law arising under a taxation Act and forward the case to the Supreme Court.
- (2) The Supreme Court —
 - (a) is to decide the question of law; and
 - (b) may make orders for costs and other incidental matters.

Part 5 — Payment and refund of tax

Division 1 — Payment

45. When tax is due for payment

- (1) Subject to this section, tax is due for payment on the date fixed by or worked out in accordance with the relevant taxation Act.
- (2) If the relevant taxation Act does not make provision for the date of payment, the tax is due for payment on the date specified in the assessment notice.

[Section 45 amended by No. 12 of 2004 s. 10.]

46. Allocation of payment

When the Commissioner receives a payment from a taxpayer, the payment is to be allocated as follows —

- (a) if it is clear from the circumstances in which the payment is made how the payment is to be allocated — the payment is to be allocated accordingly; and
- (b) in any other case — the payment is to be allocated to the taxpayer's tax liabilities as decided by the Commissioner.

47. Arrangements for instalments and extensions of time

- (1) The Commissioner may approve an arrangement (with or without amendment) —
 - (a) extending the time for paying tax; or
 - (b) providing for the payment of tax in specified instalments.
- (2) An application for approval of a proposed tax payment arrangement must set out the reasons that the taxpayer wants more time to pay the tax.

- (3) A tax payment arrangement may include —
- (a) conditions agreed with the taxpayer providing for the payment (and allowing for the remission) of interest at the prescribed rate or at some other rate fixed by or under the arrangement with the agreement of the taxpayer; and
 - (b) any other conditions the Commissioner considers appropriate.
- (4) The Commissioner may, by notice to the taxpayer, amend a tax payment arrangement —
- (a) by agreement with the taxpayer; or
 - (b) as provided in the conditions of the arrangement.
- (5) The Commissioner may, by notice to the taxpayer, cancel a tax payment arrangement if —
- (a) a payment is not made in accordance with the arrangement; or
 - (b) the taxpayer does not comply with any other condition of the arrangement.
- (6) On cancellation of a tax payment arrangement, the whole of the tax outstanding under the arrangement (together with interest) becomes due and payable as from the date of cancellation or the original due date for payment of the tax to which the arrangement relates (whichever is the later).
- (7) Despite cancellation of a tax payment arrangement, interest continues to accrue at the prescribed rate (or the other rate fixed by or under the arrangement) until the outstanding tax to which the arrangement formerly applied is paid.

[(8) has not come into operation².]

[48. has not come into operation².]

Division 2 — Special tax return arrangements

49. Approval of special tax return arrangements

- (1) The Commissioner may make a special tax return arrangement with a taxpayer or another person in relation to a taxpayer's obligations under a taxation Act.
- (2) Without limiting subsection (1), a special tax return arrangement may be made with —
 - (a) a particular taxpayer in relation to the taxpayer's obligations under a taxation Act;
 - (b) a particular taxpayer in relation to obligations the taxpayer has jointly with other taxpayers under a taxation Act; or
 - (c) an agent in relation to obligations of taxpayers for whom the agent is authorised to act.
- (3) A special tax return arrangement is to be made —
 - (a) in writing; and
 - (b) on terms agreed between the Commissioner and the responsible party.

50. Content of special tax return arrangement

- (1) A special tax return arrangement —
 - (a) may require the lodging of returns, and the self-assessment and payment of tax, in accordance with the arrangement;
 - (b) may require compliance with any other obligations imposed under the conditions of the arrangement;
 - (c) may exempt the taxpayer or taxpayers covered by the arrangement from compliance with specified administrative requirements of a taxation Act;
 - (d) may provide for the stamping or endorsement of instruments with the amount of tax paid or payable

- under the special arrangement, or to denote that tax is not payable in respect of the instrument;
- (e) may require the responsible party to keep specified records;
 - (f) may authorise the responsible party to correct errors of a prescribed kind, or to alter a self-assessment in prescribed circumstances; and
 - (g) may authorise the responsible party to cancel a stamp duty certificate issued by the party under the arrangement and issue a replacement certificate to give effect to any corrections or alterations made in accordance with the arrangement.
- (2) If an instrument that the responsible party is required to include in a tax return would be of no effect until registered under an enactment, then it is a condition of the arrangement that the responsible party is to include the instrument in a return before the instrument is lodged for registration.
- (3) If a condition of a special tax return arrangement is contravened, the responsible party commits an offence.
Penalty: \$20 000.
- (4) A special tax return arrangement does not transfer the taxpayer's tax liability from the taxpayer to the responsible party.

[Section 50 amended by No. 12 of 2005 s. 10.]

51. Instruments stamped or endorsed under a special tax return arrangement

- (1) An instrument stamped or endorsed in accordance with a special tax return arrangement is taken to have been stamped.
- (2) A person who stamps or endorses an instrument so as to suggest or imply that the instrument has been properly stamped or endorsed under a special tax return arrangement commits an

offence unless the instrument is properly stamped or endorsed in accordance with the conditions of the special arrangement.

Penalty: \$20 000.

52. Lodging returns under special tax return arrangement

- (1) A return lodged under a special tax return arrangement must —
 - (a) be in a form approved by the Commissioner;
 - (b) contain the information required by the form; and
 - (c) contain any other information required by the Commissioner that is relevant to assessing the tax payable for the matters covered by the return.
- (2) A return must be lodged within 15 days after the end of the return period, unless the special tax return arrangement or a later agreement between the Commissioner and the responsible party provides otherwise.
- (3) The return period for a special tax return arrangement is a month, unless the arrangement or a later agreement between the Commissioner and the responsible party provides otherwise.
- (4) A responsible party who is required to lodge a return under a special tax return arrangement must lodge the return in accordance with this section and with the arrangement.

Penalty: \$5 000.

53. Amendment or cancellation of arrangement

- (1) The Commissioner may, by agreement with the responsible party, amend the conditions of a special tax return arrangement.
- (2) The Commissioner may, by notice served on the responsible party, cancel a special tax return arrangement.

Division 3 — Refunds of tax

54. Power to make refund

- (1) The Commissioner must refund tax to a taxpayer if —
 - (a) as a result of a reassessment, it appears that an overpayment of tax has been made;
 - (b) the Commissioner is satisfied on an application for a refund under this section that an overpayment of tax has been made; or
 - (c) in the circumstances of a particular case, the Commissioner is required by a taxation Act to make a refund of tax.
- (2) However, instead of repaying the amount to be refunded, the Commissioner may credit the amount of the refund against the taxpayer's existing and future tax liabilities (but the Commissioner must not credit an amount of \$50 or more against future liabilities if the taxpayer requests repayment).
- (3) An application for a refund may only be made —
 - (a) on a ground on which refunds are authorised or required by a taxation Act; or
 - (b) on the ground that the amount paid by the taxpayer exceeds the amount of tax payable in accordance with the relevant assessment.
- (4) An application for a refund under this section must be made —
 - (a) within a period fixed by a taxation Act for making the application; or
 - (b) if no period is fixed by a taxation Act — within 5 years of the date when the overpayment was made.

55. Refund to be passed on in certain cases

- (1) This section applies to payment of any of the following taxes —
 - (a) pay-roll tax;

- (b) duty payable under Part IIIIF or Part IVB of the *Stamp Act 1921*;
 - (c) debits tax.
- (2) If —
- (a) the tax payable by the taxpayer is paid out of money provided by a third party, or a third party reimburses the taxpayer for payment of tax; and
 - (b) the tax is, in whole or part, refunded or credited to the taxpayer (whether under this Division or not),

then the taxpayer is to reimburse the third party in accordance with subsection (3) or (4), as the case requires.

- (3) If the third party provided all the money with which the tax payment was made, or fully reimbursed the taxpayer for the payment, the taxpayer must reimburse the third party with an amount equal to the amount of the refund or credit.
- (4) If the third party contributed part only of the tax payment, or partially reimbursed the taxpayer for the payment, the taxpayer must reimburse the third party with an amount that bears the same proportion to the amount of the refund or credit as the amount of the refund or credit amount bears to the amount of the payment.
- (5) The taxpayer must —
 - (a) make the reimbursement to the third party within 90 days after the refund was paid or credited to the taxpayer or within any longer period allowed by the Commissioner; or
 - (b) if the reimbursement is not made within that period — repay the amount of the refund to the Commissioner or ask the Commissioner to cancel the credit in the taxpayer's favour within 7 days from the end of that period.

Penalty: \$20 000.

- (6) The Commissioner may recover any amount that should have been, but was not, repaid under subsection (5)(b) as if it were unpaid tax.
- (7) No action can be brought in a court to compel the Commissioner to take or refrain from taking proceedings for recovery of the amount refunded or credited to the taxpayer.

Division 4 — Power to waive or write off liability

56. Waiver of tax

- (1) The Commissioner may waive the payment of tax or another amount payable under a taxation Act (for example, interest or legal costs), up to a prescribed limit.
- (2) If the Commissioner waives the payment of tax or some other amount payable under a taxation Act, the liability to make the payment is extinguished.
- [(3) *has not come into operation*².]

57. Writing off tax liability

- (1) The Commissioner may write off a tax liability, or a liability to pay another amount under a taxation Act, if satisfied that action or further action to recover the tax or other amount is impracticable or unwarranted.
- (2) Writing off a liability does not —
 - (a) extinguish the liability; or
 - (b) preclude the Commissioner from taking later action to recover the amount of the liability.

[(3) *has not come into operation*².]

58. Powers subject to *Financial Administration and Audit Act 1985*

This Division is to be read subject to the *Financial Administration and Audit Act 1985*.

[59. *has not come into operation*².]

Part 6 — Recovery of tax

Division 1 — Recovery generally

60. Recovery of unpaid tax

- (1) Unpaid tax is a debt due to the State.
- (2) The Commissioner may recover unpaid tax on behalf of the State by action in any court of competent jurisdiction.

61. Power of court to order payment of tax

When a court convicts a person of an offence against a taxation Act, the court may (in addition to any penalty imposed for the offence) order the convicted person to pay tax outstanding at the time of the conviction.

62. Recovery of costs and interest

In this Part, a reference to tax is to be read as including —

- (a) legal costs incurred by the Commissioner in relation to proceedings for the recovery of the tax;
- (b) costs incurred for lodging a memorial under section 76 or 77;
- (c) interest payable under a tax payment arrangement; and
- (d) prescribed costs.

63. Recovery of tax in cases of joint liability

- (1) If 2 or more persons are jointly liable for tax, the whole of the tax may be recovered from any one or more of them but not so as to recover more than the whole of the tax.
- (2) This section does not affect the right of a taxpayer who pays tax to recover contributions from a person jointly liable for the tax.

64. Notice of administrator's appointment

- (1) A person who is appointed as statutory administrator of a taxpayer's assets must, within 14 days of appointment, or within any longer time allowed by the Commissioner, serve on the Commissioner written notice of the appointment.

Penalty: \$5 000.

- (2) However, in prescribed circumstances a statutory administrator does not have to serve notice of the appointment.
- (3) For the purposes of this section, a person is a **“statutory administrator of a taxpayer's assets”** if the person is —
- (a) a liquidator of a corporate taxpayer;
 - (b) a receiver or receiver and manager of the whole or a part of a taxpayer's property;
 - (c) a taxpayer's trustee in bankruptcy; or
 - (d) a person who holds a prescribed position or prescribed powers in relation to a taxpayer or a taxpayer's affairs.

65. Power to garnishee

- (1) The Commissioner may serve a garnishee notice on a person (the **“garnishee”**) if the Commissioner believes on reasonable grounds that the garnishee —
- (a) holds or may receive money for or on account of a taxpayer;
 - (b) is liable or may become liable to pay money to a taxpayer; or
 - (c) has authority to pay money to a taxpayer.
- (2) A garnishee notice is a notice —
- (a) requiring the garnishee to pay money in the garnishee's possession or control to which the taxpayer is or becomes entitled to the Commissioner up to the amount of a liability for tax stated in the notice; and

- (b) fixing a time for payment (which cannot be before the time the taxpayer becomes entitled to the money).
- (3) The Commissioner may serve a garnishee notice even though the taxpayer's entitlement to the money may be subject to unfulfilled conditions.
- (4) However, a garnishee notice served on the employer of a taxpayer can require the garnishee to pay to the Commissioner the wages payable by the garnishee to the taxpayer in respect of a period only to the extent of the amount by which the amount of the wages exceeds the amount of average earnings for that period calculated on the basis of statistics published in respect of the period by the government statistician.
- (5) The Commissioner must serve a copy of the garnishee notice on the taxpayer.
- (6) If the liability to which a garnishee notice relates is discharged wholly or partly before the time for payment under the notice and the discharge or partial discharge affects the amount to be recovered from the garnishee, the Commissioner must, by notice served on the garnishee and the taxpayer —
 - (a) inform them of that fact; and
 - (b) state whether and, if so, how the garnishee's obligation under the garnishee notice is affected by the discharge or partial discharge of the liability.
- (7) A garnishee who does not comply with a garnishee notice commits an offence.
Penalty: \$20 000.
- (8) A garnishee who is under an obligation to pay money to the taxpayer is taken to have satisfied that obligation to the extent of the payment made under the garnishee notice.

66. Recovery from partnerships

If a tax liability is incurred by or on behalf of a partnership, the tax is recoverable jointly and severally from any one or more of the partners.

67. Recovery from directors of body corporate

- (1) This section applies where the Commissioner believes, on reasonable grounds, that —
 - (a) a body corporate has been trading while insolvent to the knowledge of a director;
 - (b) the Commissioner has issued an assessment notice, which assessment consists of or includes an amount in relation to pay-roll tax, to the body corporate, and the amount assessed in relation to pay-roll tax has not been paid by the due date.
- (2) The Commissioner may serve notice on the director informing the director that the director, along with any other directors of the body corporate on whom the Commissioner serves notice in similar terms, will become jointly and severally liable with the body corporate for the payment of the pay-roll tax unless before the expiry of 28 days from the date of the notice the body corporate remedies its default.
- (3) The Commissioner must serve a notice under subsection (2) by arranging for a copy of the notice to be given to each director personally.
- (4) However, if, after exercising due diligence, it appears to the Commissioner that it is not practicable to give a copy of the notice personally to a director, then the Commissioner may apply to the Supreme Court for an order for substituted service in accordance with section 117(2).
- (5) For the purpose of this section, a body corporate is taken to remedy a default if —
 - (a) the liability is paid;

- (b) the Commissioner by notice to the body corporate offers the body corporate an opportunity to enter into a tax payment arrangement, and the body corporate enters into the tax payment arrangement on conditions satisfactory to the Commissioner;
 - (c) the body corporate enters into voluntary administration under Part 5.3A of the *Corporations Act 2001* of the Commonwealth; or
 - (d) the body corporate goes into liquidation.
- (6) If the body corporate fails to remedy its default within the time specified in the notice to a director under this section, the directors become jointly and severally liable, with the body corporate, for the payment of the tax liability assessed against the body corporate.
- (7) If a body corporate remedies its default by entering into a tax payment arrangement but later contravenes a condition of the arrangement, the body corporate's default is taken to revive and the Commissioner may serve another notice on the directors under this section.
- (8) In proceedings for recovery of tax from a director under this section, it is a defence for the director to establish that —
 - (a) the director took all reasonable steps that were possible in the circumstances to get the body corporate to remedy its default; or
 - (b) the director was unable because of illness or for some other proper reason to take steps to get the body corporate to remedy its default.
- (9) In proceedings for recovery of tax from a director under this section, the onus of establishing that the director did not have the knowledge required by section 67(1)(a) is on the director.
- (10) If a director pays tax or tax is recovered from a director under this section, the director is entitled to be indemnified by the body corporate for the amount paid or recovered.

- (11) This section does not apply in relation to —
- (a) a director of a body corporate to which the *Statutory Corporations (Liability of Directors) Act 1996* applies; or
 - (b) a director of a body corporate that has been incorporated under the *Associations Incorporation Act 1987*.

68. Director of body corporate may apply

- (1) Any person served with a notice under section 67(2) may apply to the Supreme Court for an order setting aside that notice.
- (2) The body corporate, of which a person served with a notice under section 67(2) is a director, may also apply to the court for an order setting aside any such notice.
- (3) An application under subsection (1) or (2) may only be made within 21 days after the notice is so served.
- (4) An application is made in accordance with this section only if, within the time period specified in subsection (3) —
 - (a) an affidavit supporting the application is filed with the court; and
 - (b) a copy of the application, and a copy of the supporting affidavit, are served on the Commissioner.

69. Determination of application where there is a dispute

- (1) This section applies where, on an application under section 68, the court is satisfied that there is a genuine dispute between the body corporate and the Commissioner about —
 - (a) the validity;
 - (b) the merits; or
 - (c) the amount,of the assessment to which the notice relates, so far as that assessment concerns pay-roll tax.

- (2) Where subsection 67(1) applies, the court must, by order —
 - (a) set aside the notice or notices referred to in the application;
 - (b) order the Commissioner to withdraw any other notice served on any director of the body corporate under section 67 which relates to the assessment.

70. Setting aside demand on other grounds

- (1) On application under section 68, the court may by order set aside the notice and order the Commissioner to withdraw any other notice if it is satisfied that —
 - (a) because of a defect in the notice, substantial injustice will be caused unless the notice is set aside; or
 - (b) there is some other reason why the notice should be set aside.
- (2) Except as provided in subsection (1), the court must not set aside a notice merely because of a defect.

71. Effect of order setting aside notice

A notice served on a director of a body corporate under section 67(2) has no effect while there is in force under section 69 or 70 an order setting aside any notice served on any director of that body corporate.

72. Dismissal of application

Unless the court makes, on an application under section 68, an order under section 69 or 70, the court is to dismiss the application.

73. Order subject to conditions

An order under section 69 or 70 may be made subject to conditions.

74. Costs where applicant successful

Where, on an application under section 68, the court sets aside the notice, it may order the Commissioner to pay the applicant's costs in relation to the application.

75. Period of remedying default

Notwithstanding anything contained in section 67, if an application is made in accordance with section 68 for an order setting aside a notice, the period for compliance with that notice and any other notice which has been served on any director of the body corporate to which the notice relates, shall be the period beginning on the day when the demand is served and ending 7 days after the application under section 68 is finally determined or otherwise disposed of.

Division 2 — Charges on land

76. Charge on land to secure land tax

- (1) Unpaid land tax is a first charge on the land for which the land tax is payable —
 - (a) whether or not the land tax is due for payment; and
 - (b) whether or not a memorial of the charge has been registered under section 83.
- (2) If the land tax is not paid by the due date, the Commissioner may lodge a memorial of the charge with the Registrar of Titles.
- (3) If a cheque given in purported payment of land tax is dishonoured on first presentation (even though the due date may not have arrived when the cheque is dishonoured), the land tax is taken not to be paid by the due date for the purposes of subsection (2).
- (4) A charge on land arising under subsection (1) takes priority over all other encumbrances on the land.

- (5) The taxpayer's liability to pay the land tax continues until it is paid, despite any disposition of the land.
- (6) If there is a disposition of the land before the tax is paid, the new owner becomes liable to pay the tax.
- (7) If land tax is assessed in relation to land comprising a number of separate lots or parcels —
 - (a) the charge attaches to each separate lot or parcel; and
 - (b) the amount secured by the charge on an individual lot or parcel is the amount that bears to the total amount of the unpaid tax the same proportion that the unimproved value of the lot or parcel bears to the total unimproved value of the land.
- (8) However, this section does not apply in relation to land owned by, or vested in the State, or any agency or instrumentality of the State, or a local government or any other public statutory authority.

77. Charge on land to secure stamp duty

- (1) If stamp duty payable under item 4, 10, 14A, 15, 17 or 19 of the Second Schedule to the *Stamp Act 1921* on an instrument in relation to land as defined in section 76 of that Act is not paid by the due date because it is taken not to be paid under subsection (5), the Commissioner may lodge a memorial with the Registrar of Titles to create a charge on the land for the unpaid stamp duty.
 - (1a) If stamp duty payable as a result of a reassessment under section 75AG of the *Stamp Act 1921* is not paid by the due date, the Commissioner may lodge a memorial with the Registrar of Titles to create a charge on the land for the unpaid stamp duty.
- (2) If stamp duty payable under Part III BA of the *Stamp Act 1921* in relation to land as defined in section 76 of that Act is not paid by the due date, the Commissioner may lodge a memorial with

the Registrar of Titles to create a charge for the unpaid stamp duty —

- (a) on the land in relation to which the duty is payable; and
 - (b) on land owned by a person who is related to the taxpayer as mentioned in subsection (7).
- (3) However, if stamp duty is assessed under section 76AA of the *Stamp Act 1921* in relation to land as defined in section 76 of that Act, then, at any time after the assessment is made, the Commissioner may lodge a memorial with the Registrar of Titles to create a charge for the unpaid stamp duty —
 - (a) on the land in relation to which the duty is payable; and
 - (b) on land owned by a person who is related to the taxpayer as mentioned in subsection (7).
- (4) The charge arises on the land referred to in subsection (1), (2) or (3) when the memorial is registered under section 83.
- (5) If a cheque given in purported payment of stamp duty is dishonoured on first presentation (even though the due date may not have arrived when the cheque is dishonoured), the stamp duty is taken not to be paid by the due date for the purposes of subsections (1) and (2).
- (6) A memorial under subsection (1) creating a charge on land for stamp duty payable in relation to a transaction cannot be lodged until the title to the land has been transferred in accordance with the transaction.
- (7) A person is related to a taxpayer for the purposes of subsection (2) or (3) if —
 - (a) both the person and the taxpayer are bodies corporate and one is a subsidiary of the other within the meaning of section 76AI(4) of the *Stamp Act 1921*; or
 - (b) the person is a body corporate and a beneficiary under a trust, or a potential beneficiary under a discretionary trust, of which the taxpayer is a trustee.

[Section 77 amended by No. 12 of 2004 s. 11.]

78. Prohibition on dealing with certain charged land

- (1) A memorial lodged under section 76 or 77 may provide that, after it is registered, the Registrar of Titles is not to register any dealing with the land without the consent of the Commissioner unless the Commissioner has lodged a memorial releasing the land from the charge, and the memorial of the release has been registered.
- (2) The registration of a memorial that prohibits dealing with land does not —
 - (a) prevent a person from lodging with the Registrar of Titles an instrument relating to a dealing with the land; or
 - (b) prevent the Registrar of Titles from accepting an instrument relating to a dealing with the land.
- (3) If a memorial of a charge prohibits dealing with land then, on the registration of a memorial releasing the land from the charge, an instrument lodged previously with the Registrar of Titles has effect as if the memorial of the charge had not been registered.

79. Priority of charge

- (1) When a memorial of a charge on land is registered under this Act, the charge is the first charge on the land and has priority over all other mortgages, charges and encumbrances over the land.
- (2) However, if there is another statutory charge on the same land that ranks as a first charge under another Act, the relative priority of the charges is to be determined according to the order of registration.

80. Certificate of land tax secured by charge

- (1) The Commissioner must, on application by the owner or a purchaser of land, issue a certificate —

- (a) stating whether there is a charge on the land under section 76 or 77; and
 - (b) if there is —
 - (i) stating the amount of unpaid land tax or unpaid stamp duty secured by the charge;
 - (ii) in the case of land tax that is yet to be assessed — estimating the amount to be assessed.
- (2) The certificate estops the Commissioner from —
- (a) asserting the existence of a charge not disclosed in the certificate; or
 - (b) asserting that a charge covered (at the date of the certificate) an amount exceeding the amount disclosed in the certificate.
- (3) However, giving an estimate in the certificate of an amount of land tax does not estop the Commissioner from assessing a different amount of land tax if further relevant information becomes available.
- (4) The prescribed fees are payable for the issue of the certificate.

81. Release of land from charge

- (1) If a memorial of a charge on land is registered, then, on payment of the amount secured by the charge, the Commissioner must serve on the taxpayer an instrument releasing the land from the charge.
- (2) However, if land tax is assessed in relation to land comprising a number of separate lots or parcels, the Commissioner is not obliged to release any lot or parcel from the charge unless the whole of the land tax is paid.

82. Form of memorial

- (1) The Registrar of Titles may approve the form of memorials lodged under this Act.

- (2) A memorial must be in a form approved by the Registrar of Titles.

83. Registration of memorials and releases

- (1) When a memorial is lodged under this Act, the Registrar of Titles must register it.
- (2) On the application of the owner of the land accompanied by an instrument of release issued under section 81(1), the Registrar of Titles must register the release of the land from the charge.

84. Notification of mortgagees

When a memorial in relation to land is registered, the Commissioner must notify all mortgagees who hold registered mortgages over the land of the registration of the memorial (but failure to do so does not invalidate the registration of the memorial).

85. Orders for sale of land

- (1) If tax on land or property remains unpaid for 18 months or more after the registration of the charge on the land or property, the Commissioner may apply to the Supreme Court for an order for the sale of the land (or part of the land) so that the proceeds of sale may be applied towards satisfaction of the outstanding tax liability.
- (2) A single application may be made under this section in relation to a number of separate lots or parcels in the same ownership.
- (3) At least 6 months before the Commissioner makes an application to the Supreme Court under this section, the Commissioner must —
- (a) have notice of the intended application published in 2 newspapers —
 - (i) one circulating generally throughout Western Australia; and

- (ii) the other circulating generally throughout Australia;
 - (b) if the whereabouts of the owner of the land is known to the Commissioner — serve notice of the intended application on the owner; and
 - (c) serve notice of the intended application on the holder of any registered encumbrance over the land whose address is known to the Commissioner.
- (4) On an application under this section, the Supreme Court may order the sale of the land and make incidental orders —
 - (a) about how the sale is to be conducted;
 - (b) authorising an officer of the court to execute documents, and to do anything else necessary, for the sale and conveyance of the land;
 - (c) authorising the Registrar of Titles to register a transfer to a purchaser without requiring the duplicate (if any) of the certificate of title or of any other document;
 - (d) directing (subject to subsection (5)) how the proceeds of sale are to be dealt with; and
 - (e) dealing with costs of the proceedings and other incidental matters.
- (5) A sale by order of the Supreme Court is to discharge the land from any mortgage or other encumbrance securing a monetary obligation, but the land remains subject to any lease, easement or other encumbrance.
- (6) The proceeds of the sale are to be applied as follows —
 - (a) firstly, in payment of the costs of the sale;
 - (b) secondly, in payment of costs of proceedings so far as those costs are, by order of the court, to be paid out of the proceeds of sale;
 - (c) thirdly, in discharge of the outstanding tax liability secured by the charge;

- (d) fourthly, in discharge of any outstanding monetary liability secured by a mortgage or other encumbrance securing a monetary obligation; and
- (e) lastly, any remaining balance is to be applied as directed by the court.

86. Means of enforcement not limited to charge

The existence or registration of a charge under this Division does not affect the Commissioner's discretion to proceed for recovery of the outstanding tax in proceedings unrelated to the charge.

Part 7 — Tax records

87. How long tax records are to be kept

A person required to keep a tax record under a taxation Act must, unless the Act otherwise provides, retain the tax record for at least 5 years after —

- (a) the date it was made by the person or, if it was not made by the person, the date it was obtained by the person; or
- (b) if it relates to a transaction, the date of completion of the transaction,

whichever is the later.

Penalty: \$20 000.

88. Form of tax records

- (1) A person required to keep a tax record must ensure that it is kept —
 - (a) in the form of a document in the English language, or in some other form which can be readily converted into a document in the English language or from which a document in the English language can be readily reproduced; or
 - (b) in some other form allowed by the regulations.

Penalty: \$20 000.

- (2) If a person required to keep a tax record does not keep it in the form of a document in the English language, the Commissioner may request the person to convert it to such a document within a reasonable time.
- (3) If the person does not comply with the request, the Commissioner may —
 - (a) have the tax record converted; and
 - (b) recover from the person as a debt the reasonable cost of converting it.

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89. Where tax records are to be kept

- (1) A person required to keep a tax record must keep it in Western Australia unless —
- (a) the taxation Act specifically allows the tax record to be kept elsewhere;
 - (b) the regulations allow the tax record to be kept elsewhere; or
 - (c) the Commissioner gives approval allowing the tax record to be kept elsewhere.

Penalty: \$20 000.

- (2) The Commissioner may require a person who keeps a tax record outside Western Australia to bring it into Western Australia within a reasonable time allowed by the Commissioner.
- (3) A person who does not comply with a requirement under subsection (2) commits an offence.
Penalty: \$20 000.
- (4) The Commissioner may recover as a debt, from a person required to keep a tax record, costs reasonably incurred by the Commissioner as a result of the person's failure to comply with subsection (1) or with a requirement made under this section.
- (5) If a tax record is brought into Western Australia in accordance with a requirement under subsection (2), the tax record does not give rise to any tax liability that would not have existed if it had not been brought into Western Australia.

90. Failure to keep proper tax records

A person commits an offence if the person —

- (a) makes an entry in a tax record knowing the entry to be false or misleading in a material particular;
- (b) keeps a tax record knowing it to be false or misleading in a material particular; or

- (c) within the time during which the tax record is required to be kept, wilfully damages or destroys a tax record.

Penalty: \$20 000 plus 3 times the amount of tax that was avoided or might have been avoided if the false or misleading entry or tax record had been accepted as true.

91. General and specific exemptions

- (1) An exemption of general application may be given by regulation from —
 - (a) the requirement to keep a tax record; or
 - (b) incidental requirements relating to the keeping of a tax record.
- (2) The Commissioner may, by notice to a person, exempt the person from —
 - (a) the requirement to keep a tax record; or
 - (b) other requirements incidental to keeping a tax record.
- (3) An exemption may be given subject to conditions specified in the relevant regulation or notice of exemption.
- (4) The Commissioner may amend or cancel an exemption given to a person under subsection (2) by giving notice to the person of the amendment or cancellation.

Part 8 — Investigations

Division 1 — Investigations

92. Investigations

An investigation may be carried out under this Part for any or all of the following purposes —

- (a) to ascertain whether a tax liability exists;
- (b) to gather any information relevant to making an assessment;
- (c) to gather any information relevant to making a decision under a taxation Act;
- (d) to audit tax records;
- (e) to gather evidence of a suspected contravention of a taxation Act;
- (f) any other purpose relevant to the administration of a taxation Act.

93. Investigations for the purposes of recognised revenue laws

- (1) The Commissioner may, by agreement with the corresponding Commissioner of a recognised jurisdiction —
 - (a) authorise the corresponding Commissioner to carry out an investigation under this Part for the purposes of a recognised revenue law in force in the jurisdiction; or
 - (b) carry out an investigation under this Part on behalf of the corresponding Commissioner for the purposes of a recognised revenue law in force in the jurisdiction.
- (2) The Commissioner may only exercise powers under this section if the law of the recognised jurisdiction has reciprocal provisions providing for investigations by or on behalf of the Commissioner.

- (3) For the purposes of carrying out an investigation under this section for the purposes of a recognised revenue law —
- (a) a reference in this Part to tax is to be read as a reference to tax payable under the recognised revenue law;
 - (b) a reference to a tax liability is to be read as a reference to a tax liability under the recognised revenue law;
 - (c) a reference to a taxation Act is to be read as a reference to the recognised revenue law; and
 - (d) a reference to a contravention of a taxation Act is to be read as a reference to a contravention of the recognised revenue law.
- (4) If the Commissioner authorises a corresponding Commissioner of a recognised jurisdiction to carry out an investigation under this Part —
- (a) a reference in this Part to the Commissioner is to be read as a reference to the corresponding Commissioner;
 - (b) a reference in this Part to an investigator is to be read as a reference to a person authorised to take part in the investigation under a recognised revenue law in force in the recognised jurisdiction; and
 - (c) a reference in this Part to an investigator's identity card, in relation to a person authorised to take part in the investigation under a recognised revenue law in force in the recognised jurisdiction, is to be read as a reference to an identification card or certificate issued to the person under the recognised revenue law.

Division 2 — Obtaining tax records and other information

94. Requirements to provide information and tax records

- (1) The Commissioner may, for investigation purposes, require a taxpayer or any other person —
- (a) to provide oral or written answers to specified questions; or

- (b) to produce to the Commissioner specified relevant material or relevant material of a specified class, in the person's possession or control.
- (2) The Commissioner may make the requirement —
 - (a) if an oral response is required — orally; or
 - (b) in any other case — by notice served on the person to whom the requirement is addressed.
- (3) The Commissioner may require a person to verify written answers to questions by statutory declaration.
- (4) The Commissioner must —
 - (a) allow the person a reasonable time within which to comply with a requirement; and
 - (b) if the requirement is made by notice served on the person, specify the time allowed in the notice.
- (5) A person must comply with a requirement under this section within the time allowed under subsection (4) or within any further time allowed by the Commissioner.

Penalty: \$20 000.

95. Power to require person to attend for examination

- (1) The Commissioner may, for investigation purposes, require a taxpayer or any other person to attend for examination by an investigator.
- (2) A requirement is to be made by notice served on the taxpayer or other person.
- (3) A notice —
 - (a) must indicate the time and place fixed for the examination (which must, if practicable, be reasonably convenient to the person to be examined);
 - (b) must indicate the subject of the examination; and

- (c) may require the person to bring and produce to the examining investigator relevant material in the person's possession or control relating to the subject of the examination.
- (4) An investigator conducting an examination —
 - (a) may require a person attending for examination to make an oath to answer all questions truthfully and may administer the oath;
 - (b) may require the person to answer a question relevant to the subject matter of the examination put by the investigator, or with the consent of the investigator, by another person present at the examination; and
 - (c) may require the person to produce for examination by the investigator relevant material in the person's possession at the examination.
- (5) A person must comply with a requirement under this section.
Penalty: \$20 000.
- (6) A person, other than a taxpayer or a taxpayer's representative, who attends for examination is entitled to be paid the prescribed fees and expenses.

96. Power to retain documents

- (1) The Commissioner may retain any instrument or other document in his possession that is relevant to performing his or her functions under a taxation Act for as long as is necessary —
 - (a) to examine it or copy it, or both;
 - (b) if it is relevant to proceedings that have been or may be instituted — for the purposes of the proceedings;
 - (c) in the case of an instrument on which tax is payable — until the tax is paid;
 - (d) in the case of a document that is relevant to making an assessment — until the assessment is made and any tax payable as a result of the assessment is paid.

- (2) While an instrument or other document is being retained under subsection (1), the Commissioner must permit the inspection of the instrument or document by, or provide a copy of it to —
 - (a) in the case of an instrument within the meaning of the *Stamp Act 1921* — a party to the transaction to which the instrument relates; or
 - (b) in any other case — the person who lodged the instrument or document with the Commissioner.

97. Recording examination proceedings

- (1) An investigator may make a recording of the questions asked by an investigator and the answers given by a person who attends for examination under section 95.
- (2) If an investigator decides to make a record, the investigator must advise the person attending for examination to that effect before recording begins.
- (3) Where an investigator makes a recording under subsection (1), the person attending for examination may request a copy of the recording, and the investigator is to provide a copy to them within 30 days of the date of the request.

Division 3 — Access to premises

98. Entry of premises

- (1) Subject to subsection (2), an investigator may, for investigation purposes, enter and remain on premises to exercise his or her powers of investigation.
- (2) The investigator may only enter residential premises as follows —
 - (a) the investigator may enter the premises at any reasonable time with the consent of the occupier of the premises;

- (b) the investigator may enter the premises in accordance with the authorisation conferred by a warrant;
 - (c) if the investigator believes, on reasonable grounds, that it is urgently necessary to do so in order to prevent the destruction of or interference with relevant material, the investigator may enter the premises at any time without the consent of the occupier and without warrant.
- (3) The investigator must not exercise the power set out in subsection (2)(c) unless the Commissioner has, in the particular case, given the investigator prior authorisation in writing to do so.
- (4) The investigator must, on first encountering a person apparently in a position of authority on the premises, and also on the reasonable request of any other person on the premises —
- (a) display his or her identity card to the person or persons respectively; and
 - (b) if the investigator has entered or is about to enter the premises under a warrant — display the warrant to the person or persons respectively.

99. Powers of investigator while on premises

- (1) When an investigator exercises his or her powers of entry under this Act, except where the power of entry is exercised pursuant to a warrant under section 98(2)(b), the investigator may do any or all of the following —
- (a) search the premises and examine anything on the premises (opening it if necessary and, if given specific prior authorisation in writing by the Commissioner with respect to those premises, breaking it open);
 - (b) take possession of, and remove from the premises, documents, or anything else relevant to the investigation, found in the course of exercising his or her powers under this Act;

- (c) take extracts from or make copies of, or download or print-out, any documents found in the course of carrying out his or her functions under this Act;
 - (d) photograph or film anything on the premises;
 - (e) if anything on the premises that is relevant to the investigation cannot be conveniently removed — secure it against interference;
 - (f) require any person who is on the premises —
 - (i) to state his or her full name and address;
 - (ii) to answer (orally or in writing) questions put by the investigator that are relevant to the investigation;
 - (iii) to give the investigator any information in the person's possession or control that is relevant to the investigation;
 - (iv) to operate or allow the investigator to operate equipment or facilities on the premises for investigation purposes;
 - (v) to give the investigator any translation, code, password or other information necessary to gain access to or to interpret and understand any document or information located or obtained by the investigator in the course of exercising his or her functions under this Act;
 - (vi) to give other assistance that the investigator reasonably requires to carry out the investigation.
- (2) Where an investigator exercises a power of entry pursuant to a warrant under section 98(2)(b), the investigator may only exercise those powers set out in subsection (1) that the warrant specifically authorises the investigator to use.
- (3) A person who —

- (a) does not comply with a requirement under subsection (1)(f); or
- (b) gives an investigator information that the person knows to be false or misleading,

commits an offence.

Penalty: \$20 000.

- (4) An investigator is not authorised to take anything from premises unless he or she —
 - (a) gives the occupier or another person apparently responsible to the occupier a receipt for the thing taken, if requested to do so by the occupier or other person; or
 - (b) if the occupier or a person apparently responsible to the occupier is not present, leaves a receipt for the thing taken, in an envelope addressed to the occupier, in a prominent position on the premises.
- (5) A receipt is to be in a form approved by the Commissioner.
- (6) The Commissioner must ensure that a person from whom a document or anything else is taken under this section and who would otherwise be entitled to possession of it is given a copy of it, or reasonable access to it, as appropriate.
- (7) If an investigator takes possession of anything under this section, the Commissioner must ensure that it is returned to the person entitled to possession of it as follows —
 - (a) if it was taken in connection with the prosecution or possible prosecution of a suspected tax contravention of a taxation Act — as soon as practicable after the relevant prosecution is completed or discontinued or, if no prosecution is commenced, as soon as practicable after the decision is made not to prosecute the suspected contravention;

- (b) if it was an instrument on which duty was payable — as soon as practicable after assessment and payment of the relevant duty;
- (c) in any other case — within 28 days after it was taken.

100. Warrants to enter premises

- (1) If a justice is satisfied on an application supported by evidence on oath that it is reasonably necessary for an investigator to enter premises for investigation purposes, the justice may issue a warrant authorising an investigator —
 - (a) to enter the premises at a time or within a period stated in the warrant; and
 - (b) to exercise the powers of search and investigation conferred by this Part.
- (2) An investigator who applies to a justice or magistrate for a warrant under this section must produce his or her identity card to the justice or magistrate.
- (3) The authority conferred by a warrant may be exercised by the investigator who applied for the warrant or by any other investigator.

[Section 100 amended by No. 84 of 2004 s. 80.]

101. Use of force

- (1) An investigator may use reasonable force —
 - (a) to enter premises under this Part; or
 - (b) to exercise powers under section 99(1)(a) to (e).
- (2) However, if the use of reasonable force is likely to cause damage to property, the investigator is not entitled to use force unless the Commissioner has, in the particular case, given the investigator prior authorisation in writing to do so.

Division 4 — General provisions

102. Complying with information requirements

- (1) A person is not excused from complying with a requirement under this Part to provide information or relevant material on the grounds that complying with the requirement would tend to incriminate the person or render the person liable to a penalty.
- (2) However, information or material provided by the person in compliance with the requirement is not admissible in evidence in any proceedings against the person for an offence against a taxation Act except an offence against section 94(5), 95(5) or 99(3).

103. Legal professional privilege

- (1) A person must provide an official document when so required by the Commissioner or an investigator whether or not that official document would otherwise be protected by legal professional privilege.
- (2) A document, information or relevant material that, at the time it is provided to, or acquired by the Commissioner or an investigator, is claimed to be protected by legal professional privilege —
 - (a) is to be separated from any document, information or relevant material for which no claim is made, retained under secure conditions in a sealed container to which must be affixed the name, address and contact details of the person making the claim and of the person on whose behalf the claim is made, and a statement that the contents are, or may be, subject to legal professional privilege;
 - (b) is not to be viewed, accessed, or otherwise dealt with by the Commissioner or an investigator for any purpose.
- (3) Where no claim is made under subsection (2), but it is apparent on examination by the Commissioner or an investigator that a

document, information or relevant material that has been provided or acquired is, or is likely to be, protected by legal professional privilege, it becomes the duty of the Commissioner or an investigator to comply with subsection (2) in relation to that document, information or relevant material.

- (4) If a claim of legal professional privilege is made for a document, information or relevant material already in the possession of the Commissioner or an investigator, and at the time that the claim is made the document, information or relevant material —
 - (a) has not been examined, accessed, or dealt with for a purpose under a taxation Act, subsection (2) applies as if the claim had been made at the time when it was provided or acquired;
 - (b) is being, or is intended or likely to be, used for a purpose under a taxation Act, its further use is terminated or not to commence, as the case requires, and subsection (2)(a) applies.
- (5) The Commissioner may apply to the Supreme Court or a judge —
 - (a) for a declaration that legal professional privilege does, or does not, apply to a document, information or relevant material provided or acquired under this Part;
 - (b) for an order to extinguish legal professional privilege where it applies to a document, information or relevant material,

and the Commissioner is to give effect to, and act in accordance with, any declaration or order, or other direction made by the court or the judge.

- (6) A person who claims the benefit of legal professional privilege in relation to a document, information or relevant material may apply for an order under subsection (5)(a).
- (7) A document, information or relevant material —

- (a) that is declared to be subject to legal professional privilege under subsection (5)(a); or
 - (b) for which an order under subsection (5)(b) is refused,
- must be returned to the person named under subsection (2)(a) from whom the document, information or relevant material was obtained without delay and remains subject to subsection (2)(b) in the period between publication of the decision of the court or judge and the return.
- (8) Nothing in this section prevents a person entitled to claim legal professional privilege from waiving its application to a document, information or relevant material and a waiver once made cannot later be revoked.
 - (9) A person, either personally or on another's behalf, who claims that legal professional privilege applies to a document, information or relevant material and who knows, or ought to know at the time that claim is made that it is false, misleading, or without substance, commits an offence.
Penalty: \$20 000.

104. Interaction with other Acts

This Part prevails over —

- (a) any law that would otherwise protect from disclosure information about the transfer or ownership of a statutory licence;
- (b) any law that would otherwise protect from disclosure information about payments made for the benefit of employees;
- (c) any law that would otherwise protect from disclosure information about the registration, transfer of registration or ownership of motor vehicles;
- (d) any law that would otherwise protect from disclosure information about the transfer or ownership of mining tenements or petroleum licences;

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- (e) any law that would otherwise protect from disclosure information about the whereabouts of taxpayers; and
- (f) any other prescribed law that would otherwise protect information from disclosure.

Part 9 — Offences

105. General penalty provision

- (1) A person who commits an offence against a taxation Act for which no penalty is specifically provided is liable on conviction to a penalty not exceeding \$20 000.
- (2) If a person does not comply with a requirement made under a taxation Act by the Commissioner or an investigator, and no penalty is specifically provided for the non-compliance, the person commits an offence.
Penalty: \$20 000.

106. Evasion of tax

- (1) A person who, by an intentional act or omission, evades or attempts to evade paying tax that the person is liable to pay, commits an offence.
- (2) A court by which a person is convicted of an offence against subsection (1) must impose a penalty within a range extending from a minimum of 3 times the amount of the primary tax the accused evaded or attempted to evade to a maximum equivalent to the minimum plus \$20 000.

[Section 106 amended by No. 84 of 2004 s. 82.]

107. False or misleading information

- (1) A person must not —
 - (a) provide information to the Commissioner or an investigator knowing it to be false or misleading in a material particular; or
 - (b) provide a tax record to the Commissioner or an investigator knowing it to be false or misleading in a material particular.

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Penalty: \$20 000 plus 3 times the amount of tax that was avoided or might have been avoided if the false or misleading information or tax record had been accepted as true.

- (2) If a person provides the Commissioner or an investigator with information or a tax record that is false or misleading in a material particular then, in proceedings for an offence against this section, the person is presumed to have known that the information or tax record was false or misleading in the material particular unless the contrary is established.

108. Obstructing or misleading an investigator

- (1) A person who hinders or obstructs the Commissioner or an investigator in carrying out functions under a taxation Act commits an offence.

Penalty: \$20 000.

- (2) A person who misleads the Commissioner or an investigator in a way that may affect the carrying out of his or her functions under a taxation Act commits an offence.

Penalty: \$20 000.

109. Offence by body corporate

- (1) If a body corporate commits an offence against a taxation Act each director of the body corporate commits the offence and is liable to the penalty prescribed for an individual who commits the offence.

- (2) It is a defence to a charge of an offence by a director under this section to prove that the accused —

- (a) did not aid, abet, counsel or procure the act or omission of the body corporate concerned; and
- (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission of the body corporate.

[Section 109 amended by No. 84 of 2004 s. 82.]

110. Criminal penalties not to affect civil liabilities

The imposition of a penalty for an offence does not relieve the person on whom the penalty is imposed from a tax liability (including a liability for penalty tax) arising out of the same wrongful act.

111. Time for commencing prosecutions

- (1) A prosecution for an offence against a taxation Act must be commenced within 3 years after the date on which the offence is alleged to have been committed.
- (2) However, if the alleged offence involves tax evasion, an intention to mislead or some other form of dishonesty, a prosecution for the offence may be commenced at any time.

112. Authority required for prosecution

- (1) Proceedings for an offence against a taxation Act may only be taken —
 - (a) by the Commissioner, or under the Commissioner's authority; and
 - (b) in the Commissioner's name.
- (2) A statement in a prosecution notice for an offence against a taxation Act that the prosecution is commenced by the Commissioner or under the Commissioner's authority is to be taken to be proved in the absence of evidence to the contrary.

[Section 112 amended by No. 84 of 2004 s. 80.]

113. General defence

It is a defence to a charge of an offence against this Act consisting of a failure to comply with a requirement imposed by or under this Act to prove that the accused could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates.

[Section 113 amended by No. 84 of 2004 s. 82.]

Part 10 — Miscellaneous

Division 1 — Confidentiality

114. Confidentiality

- (1) The following persons are subject to a duty of confidentiality under this section —
 - (a) the Commissioner or a former Commissioner;
 - (b) a delegate or former delegate of the Commissioner;
 - (c) an investigator or former investigator;
 - (d) an appointed representative, or former appointed representative, of the Commissioner;
 - (e) any other person to whom the information or material is disclosed under a taxation Act;
 - (f) any other person who properly or improperly gains access to the information or material in some other way.

- (2) A person who is subject to a duty of confidentiality under this section must not record, disclose, or make use of information or material obtained under a taxation Act except —
 - (a) for a purpose related to the administration or enforcement of the taxation Act under which the information or material was obtained or another Act administered by the Commissioner or under which the Commissioner exercises statutory functions;
 - (b) as required or allowed by this Act or another law that specifically or by necessary implication overrides the duty of confidentiality imposed by this section;
 - (c) as authorised by the person to whose affairs the information or material relates; or
 - (d) for the purpose of proceedings, or a report of proceedings, arising out of a taxation Act.

Penalty: \$20 000.

- (3) This section does not prevent —
- (a) the disclosure of information or material in connection with the investigation or prosecution of a criminal offence to —
 - (i) the Director of Public Prosecutions for a State or the Commonwealth;
 - (ii) an officer of the police force of a State or the Commonwealth;
 - (iii) an officer of the Australian Securities and Investment Commission; or
 - (iv) an officer of another law enforcement agency established under State or Commonwealth law that is authorised by regulation to receive confidential information under this paragraph;
 - (b) the disclosure of information or material to an official administering a taxation law of the Commonwealth or another State for a purpose related to the administration of such a law;
 - (c) the disclosure of information or material to the Western Australian Department of Treasury and Finance;
 - (d) the disclosure of information about the ownership, sale and capital and rental value of property to the Valuer-General;
 - (e) the disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates;
 - [(f) deleted]*
 - (g) the disclosure of information or material in other circumstances in which its disclosure is permitted by the regulations.
- (4) However, information or material obtained by the Commissioner despite restrictions on its disclosure imposed under some other Act remains subject to those restrictions in the hands of the Commissioner and may only be disclosed under

subsection (2) to the extent the disclosure is consistent with those restrictions.

- (5) If information is lawfully disclosed under this section, this section does not prevent the further disclosure of the information, or the recording or use of the information, for the purpose for which the disclosure was made.
- (6) A court cannot require a person who is subject to a duty of confidentiality under this section to give evidence, or to produce a record contrary to this section except in proceedings arising from the lawful disclosure of information.
- (7) This section does not create a right in any person to be given confidential information.

[Section 114 amended by No. 66 of 2003 s. 100.]

Division 2 — Service of documents

115. Service on the Commissioner

A document may be served on the Commissioner —

- (a) by lodging the document at the Commissioner's office;
- (b) by prepaid post;
- (c) if the regulations authorise service of the document under this paragraph — by faxing a copy of the document to a fax number stated in the regulations; or
- (d) if the regulations authorise service of the document under this paragraph — by sending computer data from which the document can be reproduced, in a format prescribed by the regulations, to an address for the receipt of electronic mail prescribed in the regulations.

116. Service on agent or representative of taxpayer

- (1) A notice or other document to be served on taxpayers who are jointly liable for land tax or debits tax is taken to have been served on both or all the taxpayers if served on any one of them.

- (2) A notice or other document to be served by the Commissioner may be served on —
 - (a) an agent with apparent authority to accept service of the notice or other document; or
 - (b) a person who lodged the application or instrument to which the notice or other document relates.
- (3) A notice or other document to be served by the Commissioner on a partnership is taken to have been served on all members of a partnership if it is served on any member of the partnership.

117. Method of service by Commissioner

- (1) A notice or other document to be served by the Commissioner under a taxation Act may be served on a person by —
 - (a) giving it to the person personally;
 - (b) leaving it for the person to be served at the person's place of residence or business;
 - (c) sending it by prepaid post (including document exchange) addressed to the person at an address appearing on recent correspondence addressed by or on behalf of the person to the Commissioner or otherwise notified to the Commissioner;
 - (d) leaving it for collection by the person to be served, or that person's agent, in a collection box maintained at the Commissioner's office;
 - (e) faxing it or emailing it to a fax number or email address of the person; or
 - (f) communicating it in some other way agreed with the person.
- (2) Where any of the methods of service in section 117(1) are impracticable, or have failed, the Commissioner can apply to the Supreme Court for substituted service.

- (3) The use of a particular method for service of a document on a particular person does not prevent the service of other documents on the same person in a different way.
- (4) If a notice or other document is not served personally, unless the contrary is proved, the document is taken to be served on the business day following the day on which the document was sent to, or left for, the person to whom it is addressed subject to the following exceptions —
 - (a) if the notice or document is sent by post to an address within Australia but outside Western Australia — a further 4 business days are to be allowed;
 - (b) if the notice or document is sent by post to an address outside Australia — a further 10 business days are to be allowed.

118. Non-exclusivity of this Division

The provisions of this Division are in addition to, and do not derogate from, other provisions of an enactment for facilitating service.

Division 3 — Evidentiary provisions

119. Evidentiary value of assessment notice

An assessment notice (or a copy of an assessment notice) is admissible as evidence in proceedings under a taxation Act and, in the absence of proof to the contrary, is proof of —

- (a) the making of the assessment;
- (b) the amount of tax assessed;
- (c) the identity of the person liable for the tax;
- (d) the due date for paying the tax; and
- (e) any other fact stated in the notice.

120. Evidentiary status of copies and reproductions of documents

- (1) In proceedings under a taxation Act, a copy of a notice or other document issued by the Commissioner —
 - (a) is, if produced by or on behalf of the Commissioner, admissible in the same way as the original; and
 - (b) has the same evidentiary value as the original.
- (2) For the purposes of the law of evidence, if 2 or more documents are produced from the same computer data (or from computer data recording the same information), they are both or all to be regarded as originals.

121. Evidentiary certificates

- (1) The Commissioner may issue —
 - (a) a certificate of the making of an assessment including details of the assessment;
 - (b) a certificate stating that an assessment was served on a taxpayer on a particular date by a specified means;
 - (c) a certificate stating that a person identified in the certificate was authorised by delegation under this Act to exercise specified functions of the Commissioner on a specified date or over a specified period;
 - (d) a certificate stating that a return had not been received at the Commissioner's office by a specified date;
 - (e) a certificate stating that a person identified in the certificate failed to comply with a requirement made under a taxation Act to provide documents or information within the time allowed by the Commissioner; or
 - (f) a certificate stating that a person identified in the certificate was not registered under a specified provision of a taxation Act on a date specified in the certificate.

- (2) A certificate issued under this section is evidence of the facts stated in the certificate and, in the absence of evidence to the contrary, is proof of those facts.

122. Extracts from register of delegates

A copy or print-out of an entry in the register of delegates kept under section 10 is evidence of the facts stated in the copy or print-out and, in the absence of evidence to the contrary, is proof of those facts.

123. Averments in charges

In proceedings for an offence against a taxation Act —

- (a) an allegation in the charge that the accused is a party to a specified instrument or transaction is, in the absence of evidence to the contrary, evidence of the alleged fact;
- (b) an allegation in the charge that the accused had on a specified date a specified liability under a taxation Act is, in the absence of evidence to the contrary, evidence of the existence of the alleged liability; and
- (c) an allegation in the charge that the accused was, on a specified date, under an obligation to lodge a return under a specified provision of a taxation Act is, in the absence of evidence to the contrary, evidence of the existence of the alleged obligation.

[Section 123 amended by No. 84 of 2004 s. 80 and 82.]

124. Presumption of regularity

- (1) Proceedings taken in a court or tribunal in the name of the Commissioner are presumed, in the absence of evidence to the contrary, to have been duly taken by the Commissioner, or on the Commissioner's authority.
- (2) In proceedings under a taxation Act, compliance by the Commissioner or an investigator with the requirements of the

taxation Acts is presumed, in the absence of evidence to the contrary.

Division 4 — Exemption from personal liability

125. Exemption from personal liability

- (1) The Commissioner or an investigator is not personally liable for anything done or omitted to be done in good faith and without negligence in the performance or purported performance, of a function under a taxation Act.
- (2) Subsection (1) does not relieve the State of any liability that, but for that subsection, it might have had for the acts or omissions of the Commissioner or an investigator.

Division 5 — Regulations

126. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to this Act.
- (2) Regulations may create offences and provide, in respect of an offence so created, for the imposition of a fine not exceeding \$5 000.
- (3) A regulation made under section 104(f) may not be contained in regulations dealing with any other matter and is to disclose in its title that it is a regulation which removes the protection given by a law from the disclosure of information.

127. Practices

- (1) The Commissioner is to publish all existing practices relating to the assessment of tax.
- (2) The Commissioner cannot establish or direct a practice to be observed unless the Commissioner first publishes that practice.

Glossary

[s. 4]

Unless the contrary intention appears —

“address” of a person means —

- (a) the address of the person’s residence or place of business;
or
- (b) if the person has a post office box for receiving personal or business mail — the address of the post office box;

“appointed representative” means a person appointed under section 12 to represent the Commissioner in proceedings under a taxation Act;

“approved” means approved by the Commissioner;

“assessment” means a determination of a kind referred to in section 13(1), whether the determination is made by way of a self-assessment, an official assessment or a reassessment;

“assessment notice” means a notice under section 23;

“charge”, in relation to land, means a charge on the land created under section 76 or 77;

“Commissioner” means the Commissioner of State Revenue appointed in accordance with section 6;

“corresponding Commissioner”, in relation to a recognised jurisdiction in which a recognised revenue law is in force, means the person responsible for administering the recognised revenue law;

“decision” includes a direction;

“directly reviewable decision” means a decision under a taxation Act that is expressed by the Act to be directly reviewable;

“document” includes information stored or recorded by any means;

“due date” means —

- (a) in relation to the payment of tax — the date on which the tax is due for payment under section 45(1) or (2), as the case requires;
- (b) in relation to lodging a return — the date by which the return is required to be lodged under a taxation Act;

“garnishee” has the definition given in section 65;

“group” means 2 or more persons who are grouped together for the purposes of a taxation Act;

“identity card” means an identity card issued to an investigator under section 11;

“instrument” means —

- (a) a statement, conveyance, transfer, lease, licence, policy of insurance or any other document of a kind referred to in the Second Schedule to the *Stamp Act 1921*;
- (b) a statement or return that is required under a taxation Act for the assessment of tax;
- (c) a memorandum created by the Commissioner under section 20;
- (d) a document or other record on which, or in relation to which, tax is payable under a taxation Act;
- (e) anything else that is to be regarded as an instrument under the provisions of another taxation Act;
- (f) a copy, duplicate or counterpart of an instrument or document referred to in another paragraph of this definition;

“investigation purposes” means any or all of the purposes for which an investigation may be carried out under section 92 or 93;

“investigator” means a person appointed to be an investigator under section 11;

“official assessment” has the definition given in section 15(1);

“official document” means an instrument and any other record or document that is —

- (a) kept under or for the purposes of a taxation Act;
- (b) required to be stamped under or for the purposes of a taxation Act; or
- (c) required to be lodged with the Commissioner under or for the purposes of a taxation Act;

“original assessment”, in relation to a reassessment of tax payable under a taxation Act, means a self assessment (if any) made in relation to the tax, or the first official assessment made in

relation to the tax if no self-assessment was made, but does not include a reassessment;

“penalty tax” means —

- (a) penalty tax payable under section 26;
- (b) penalty tax payable under section 27 for late payment of tax; or
- (c) penalty tax payable under sections 75JE, 75JF, 76I(2)(b), 76J(2)(b) or 112NA(2) of the *Stamp Act 1921*;

“person” includes a group;

“premises” means —

- (a) land (whether built on or not);
- (b) a building or structure on land; or
- (c) a vehicle,

and includes a part of premises;

“previous assessment”, in relation to a reassessment of tax, means the assessment that was or is to be reviewed by the reassessment whether the reviewed assessment was an original assessment or an earlier reassessment;

“primary liability” for tax means a liability for tax exclusive of any liability for penalty tax;

“publish”, for the purposes of sections 30 and 127, means —

- (a) arrange for a summary of a new policy or a change in policy to be advertised in the *Gazette*; and
- (b) arrange for the current policy to be made available, at no cost, on an appropriate internet site or from the Office of State Revenue;

“reassessment” does not include an original assessment;

“recognised jurisdiction” means the Commonwealth or another State;

“recognised revenue law” means —

- (a) a law of the Commonwealth or another State corresponding to a taxation Act; or
- (b) a law of the Commonwealth or another State declared by regulation to be a recognised revenue law;

“record” means any thing or process —

- (a) upon or by which information is recorded or stored; or
- (b) by means of which a meaning can be conveyed in a visible or recoverable form,

whether or not the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning;

“Registrar of Titles” means the Registrar of Titles or the Registrar of Deeds and Transfers;

“relevant material” means an instrument, record or anything else that is relevant to —

- (a) ascertaining whether a tax liability exists;
- (b) assessing the amount of a tax liability;
- (c) deciding an application for a rebate or refund of tax, or an exemption from tax, or any other application under a taxation Act;
- (d) auditing records relevant to the assessment of tax; or
- (e) ascertaining whether a contravention of a taxation Act has occurred;

“responsible party”, in relation to a special tax return arrangement, means the person with whom the arrangement is made as mentioned in section 49(1);

“review proceedings” means —

- (a) proceedings on an application under section 40;
- (b) proceedings on appeal under Part 5 of the *State Administrative Tribunal Act 2004* (as affected by section 43A) from a decision on an application under section 40; or
- (c) proceedings on appeal from a decision on an appeal referred to in paragraph (b) or this paragraph;

“self-assessment” has the meaning given in section 14;

“special tax return arrangement” means an arrangement approved under section 49;

“State” includes the Northern Territory and the Australian Capital Territory;

“tax” means —

- (a) tax, duty or another impost, or an instalment of tax, duty or other impost, that is payable under a taxation Act; or
- (b) penalty tax payable under a taxation Act;

“tax liability” means a liability to pay tax (including a liability that has not fallen due for payment);

“taxation Act” means an enactment specified as a taxation Act under section 3(1);

“taxpayer” means —

- (a) a person who is or may be liable to pay tax;
- (b) a responsible party who is required to pay tax on behalf of another taxpayer under a special tax return arrangement;
or
- (c) a person of a prescribed class who is subject to statutory obligations relating to the assessment or payment of tax;

“tax payment arrangement” means an arrangement approved under section 47;

“tax record” means a record required to be kept under a taxation Act or under a special tax return arrangement;

“Valuer-General” means the Valuer-General appointed under section 6 of the *Valuation of Land Act 1978*;

“vehicle” includes a train, vessel or aircraft.

[Glossary amended by No. 66 of 2003 s. 95(5) and 108(3); No. 12 of 2004 s. 12; No. 55 of 2004 s. 1183.]

Notes

- ¹ This is a compilation of the *Taxation Administration Act 2003* and includes the amendments made by the other written laws referred to in the following table^{1a, 3}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Taxation Administration Act 2003</i>	1 of 2003	20 Mar 2003	Act other than s. 34(2)(c), (4) and (5) ⁴ , 41(2) and (4), 47(8), 48, 56(3), 57(3), 59 and 127 and the definition of “non-reviewable” in the Glossary ² : 1 Jul 2003 (see s. 2 and <i>Gazette</i> 27 Jun 2003 p. 2383); s. 127: 2 Jan 2004 (see s. 2 and <i>Gazette</i> 19 Dec 2003 p. 5137)
<i>Business Tax Review (Assessment) Act (No. 2) 2003</i> s. 95, 100 and 108 ⁵	66 of 2003	5 Dec 2003	s. 108: 1 Jul 2003 (see s. 2(5) and <i>Gazette</i> 27 Jun 2003 p. 2383); s. 95(1)-(4) and (5)(a): 1 Jan 2004 (see s. 2(1) and (2) and <i>Gazette</i> 30 Dec 2003 p. 5721); s. 100: 1 Jul 2004 (see s. 2(3)); s. 95(5)(b): 1 Jul 2004 (see s. 2(1) and (2) and <i>Gazette</i> 21 May 2004 p. 1711)
<i>Revenue Laws Amendment and Repeal Act 2004</i> Pt. 4	12 of 2004	29 Jun 2004	29 Jun 2004 (see s. 2(1))
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 124 ⁶	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Revenue Laws Amendment (Tax Relief) Act 2004</i> Pt. 3 ⁷	82 of 2004	8 Dec 2004	8 Dec 2004 (see s. 2(1))
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))

Short title	Number and year	Assent	Commencement
<i>Revenue Laws Amendment Act (No. 2) 2005 Pt. 4</i>	12 of 2005	30 Aug 2005	30 Aug 2005 (see s. 2(1))

Reprint 1: The Taxation Administration Act 2003 as at 14 Oct 2005 (includes amendments listed above)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnote referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Taxation Administration Act 2003 s. 34(2)(c) and (4), 47(8), 48, 56(3), 57(3) and 59²</i>	1 of 2003 (as amended by No. 55 of 2004)	20 Mar 2003	To be proclaimed (see s. 2)
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15⁸</i>	38 of 2005	12 Dec 2005	To be proclaimed (see s. 2)

² On the date as at which this compilation was prepared, the *Taxation Administration Act 2003 s. 34(2)(c) and (4), 47(8), 48, 56(3), 57(3) and 59* (as amended by the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004*) had not come into operation. They read as follows:

“

34. Right to object

- (2) ...
 - (c) a directly reviewable decision;
- (4) Where a decision of the Commissioner is by any of the taxation Acts declared to be directly reviewable a taxpayer may, within 60 days of being notified in writing of the decision, apply to the State Administrative Tribunal for a review of the decision.

[Section 34 amended by No. 55 of 2004 s. 1171.]

47. Arrangements for instalments and extensions of time

- (8) A decision of the Commissioner under this section in connection with extending time for payment of tax or approving payment of tax in instalments is directly reviewable.

[Section 47 amended by No. 55 of 2004 s. 1179.]

48. No action to compel approval of tax payment arrangement

No action can be brought in a court to compel the Commissioner to approve a tax payment arrangement.

56. Waiver of tax

- (3) A decision by the Commissioner to waive tax, or not to waive tax, is directly reviewable.

[Section 56 amended by No. 55 of 2004 s. 1180.]

57. Writing off tax liability

- (3) A decision by the Commissioner to write off a liability, or not to write off a liability, is directly reviewable.

[Section 57 amended by No. 55 of 2004 s. 1181.]

59. No action to compel waiver or writing off

- (1) No action can be brought in a court to compel the Commissioner to waive payment of tax or to write off a tax liability.
(2) Subsection (1) does not prevent an appeal from a decision of the State Administrative Tribunal.

[Section 59 amended by No. 55 of 2004 s. 1182.]

”

³ The amendment to s. 114(3)(f) in the *Workers' Compensation Reform Act 2004* s. 174 is not included because the paragraph it seeks to amend was deleted by the *Business Tax Review (Assessment) Act (No. 2) 2003* s. 100.

⁴ Section 34(5) of this Act had not come into operation when it was repealed by the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* s. 1171(3).

⁵ The *Business Tax Review (Assessment) Act (No. 2) 2003* s. 100(3) reads as follows:

“

100. Taxation Administration Act 2003 amended and transitional

- (3) The amendment effected by this section does not apply in relation to a policy of insurance of the kind described in that section 114(3)(f) if the period for which the insurance is effected commenced on or before 29 June 2004.

⁶ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

⁷ The *Revenue Laws Amendment (Tax Relief) Act 2004* Pt. 4 reads as follows:

“

Part 4 — Reassessment

20. Certain instruments to be assessed again

(1) In this section —

“**Commissioner**” means the Commissioner of State Revenue appointed in accordance with the *Taxation Administration Act 2003* section 6;

“**duty**” means duty payable under the *Stamp Act 1921*;

“**former provisions**” means the provisions of the *Stamp Act 1921* that are amended by the *Revenue Laws Amendment (Tax Relief) Act (No. 2) 2004* Part 4, as those provisions were enacted immediately before 29 October 2004;

“**instrument**” means a conveyance or transfer of property or a contract, agreement or other instrument that is chargeable with duty as a conveyance or transfer of property;

“**new provisions**” means the provisions of the *Stamp Act 1921* as amended by the *Revenue Laws Amendment (Tax Relief) Act (No. 2) 2004* Part 4.

(2) The Commissioner must make an assessment under the new provisions of the duty on any instrument —

(a) which was first executed on or after 29 October 2004;

and

(b) on which duty has been assessed under the former provisions.

(3) Subsection (2) does not authorise the Commissioner to make an assessment under the new provisions of the duty on an instrument to the extent (if any) to which the former provisions apply in relation to it under the *Revenue Laws Amendment (Tax Relief) Act (No. 2) 2004* section 9(2)(b).

(4) The *Taxation Administration Act 2003* sections 18 and 54(1)(a) apply in relation to an assessment under subsection (2) as if it were a reassessment under section 16 of that Act.

”.

Consequential amendments

⁸ On the date as at which this compilation was prepared, the *Planning and Development (Consequential and Transitional Provisions) Act 2005* s. 15, which gives effect to Sch. 2, had not come into operation. It reads as follows:

“

15. Acts in Schedule 2 amended

The Acts mentioned in Schedule 2 are amended as set out in that Schedule.

”

Schedule 2, cl. 67 reads as follows:

“

Schedule 2 — Consequential amendments

[s. 15]

67. Taxation Administration Act 2003

After section 3(1)(g) the following paragraph is inserted —

“

(ga) section 200 of the *Planning and Development Act 2005*;

”

”