

WESTERN AUSTRALIA

TAXATION (RECIPROCAL POWERS) ACT 1989

(No. 18 of 1989)

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WESTERN AUSTRALIA

TAXATION (RECIPROCAL POWERS) ACT

No. 18 of 1989

AN ACT to make provision for the reciprocal enforcement of
taxation laws and for connected purposes.

[Assented to 1 December 1989]

The Parliament of Western Australia enacts as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Taxation (Reciprocal Powers) Act 1989*.

Commencement

2. This Act shall come into operation on such day as is fixed by proclamation.

Interpretation**3. (1)** In this Act, unless the contrary intention appears—

“authorized officer” means the Commissioner, a corresponding Commissioner and any person authorized for the relevant purpose by the Commissioner or a corresponding Commissioner;

“books” includes any register or other record of information, any document and any accounts or accounting records (within the meaning of the *Companies (Western Australia) Code*) however compiled, recorded or stored;

“Commissioner” means the person holding the office of Commissioner of State Taxation under the *Public Service Act 1978*;

“corresponding Commissioner” in relation to a State Taxation Act, means the holder of an office declared under subsection (2) to be a corresponding office in relation to the office of Commissioner under that Act;

“corresponding law” means a law of the Commonwealth or of another State declared under subsection (4) to be a corresponding law for the purposes of this Act;

“recognized revenue law” means a law of the Commonwealth or another State declared under subsection (2) to be a recognized revenue law for the purposes of this Act;

“relevant goods” means goods to which a recognized revenue law applies;

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

“State Taxation Act” means the—

Business Franchise (Tobacco) Act 1975;

Financial Institutions Duty Act 1983;

Land Tax Assessment Act 1976;

Pay-roll Tax Assessment Act 1971;

Stamp Act 1921,

and any other Act prescribed by regulation for the purposes of this definition.

(2) The Governor may, by order published in the *Gazette*, declare—

- (a) a law of the Commonwealth or of a State (other than Western Australia) that provides for the levying and collection of a tax, fee, duty or other impost, to be a recognized revenue law for the purposes of this Act;
- (b) an office under a recognized revenue law to be a corresponding office for the purposes of this Act in relation to the office of Commissioner under a State Taxation Act.

(3) An order under subsection (2) may not be made unless the Commonwealth or the State concerned, as the case may be, has made provision by law to confer on the Commissioner powers similar to those conferred on corresponding Commissioners by this Act.

(4) If satisfied that a law of the Commonwealth or a State (other than Western Australia) corresponds to this Act, the Governor may, by order published in the *Gazette*, declare that law to be a corresponding law for the purposes of this Act.

PART 2—INVESTIGATIONS

Investigations by corresponding Commissioners

4. (1) If the Commissioner has given approval in writing to a proposed investigation by a corresponding Commissioner into a matter arising under a recognized revenue law, the corresponding Commissioner may, while the approval is in force and subject to and in accordance with any condition attached to that approval, exercise, or authorize in writing a person to exercise, any power conferred by section 6, 7, or 8.

(2) The Commissioner may, in writing given to the corresponding Commissioner, revoke an approval given under subsection (1) or revoke or vary any condition attached to such an approval.

Investigations on behalf of corresponding Commissioners

5. (1) If, in relation to a matter arising under a recognized revenue law, a corresponding Commissioner requests in writing the Commissioner to exercise on behalf of the corresponding Commissioner any power conferred by section 6, 7, or 8, the Commissioner, or a person authorized in writing for the purpose by the Commissioner, may exercise that power on behalf of that corresponding Commissioner.

(2) A power referred to in subsection (1) is exercisable—

- (a) subject to and in accordance with any condition attached by the Commissioner; and
- (b) except where inconsistent with any condition attached under paragraph (a), subject to and in accordance with any condition specified by the corresponding Commissioner either when making the request under subsection (1) or subsequently.

(3) The Commissioner may, in writing given to the corresponding Commissioner, revoke or vary any condition previously attached by the Commissioner under subsection (2) (a).

Investigation powers

6. (1) Powers that may be exercised under sections 4 and 5 are—

- (a) power to have full and free access at all reasonable times to all premises (subject to subsection (2)) for the purpose of ascertaining whether a recognized revenue law is being or has been contravened;
- (b) power to inspect all books kept on those premises and power to require any person whom the authorized officer concerned reasonably believes to have custody or control of those books to produce them for inspection;
- (c) without limiting paragraph (b), power to inspect and power to require a person to produce for inspection any books in the custody or under the control of the person, being books that relate, or which the authorized officer concerned reasonably believes relate, to the question of whether or not a recognized revenue law is being or has been contravened;
- (d) if any books inspected, produced or required to be produced in accordance with paragraph (b) or (c)—
 - (i) are not in writing;
 - (ii) are not written in the English language; or
 - (iii) are not decipherable on sight,

power to require the person who has custody or control of those books to produce a statement in the English language and decipherable on sight setting out the contents of those books;

- (e) power to make and take away copies of the whole or any part of a book inspected or produced in accordance with paragraph (b) or (c) or a statement produced in accordance with paragraph (d);
- (f) power to require a person to answer any question relating to—
 - (i) any books inspected, produced or required to be produced in accordance with paragraph (b) or (c);
 - (ii) any statement produced in accordance with paragraph (d);
 - (iii) the carrying on by any person of a business involving distributing, transporting, selling or purchasing relevant goods; or
 - (iv) financial transactions relating to a person who is or has been carrying on a business of a kind referred to in subparagraph (iii);
- (g) in order to make copies of books or of parts of books which may be inspected in accordance with paragraph (b) or (c) or any statements which are produced in accordance with paragraph (d), power to take away and retain, for such period as may be reasonably necessary, any such books or statements; or
- (h) if the authorized officer concerned reasonably believes that any such books or statements are evidence of an offence arising under a recognized revenue law, power to take away and retain those records or statements until proceedings for the offence have been disposed of.

(2) Subsection (1) (a) does not empower an authorized officer to enter a part of premises that is used for residential purposes without either the consent of the occupier of that part or a search warrant.

(3) When taking away any book or statement under this section, an authorized officer must tender an appropriate receipt to the person from whom it is taken.

(4) Except as provided by subsection (6), a person is not excused from answering a question under subsection (1) (f) on the ground that the answer might tend to incriminate the person or to make the person liable to a penalty.

(5) An answer given by a person in response to a question referred to in subsection (4) is not admissible against the person in any criminal proceedings brought against the person in a Western Australian court, except proceedings for an offence under section 13 or 14.

(6) A person who would not, but for this subsection, be excused from answering a question put to the person under subsection (1) (f) in connection with a matter arising under a recognized revenue law is so excused unless that law provides that the answer is not admissible in criminal proceedings brought against the person by or on behalf of the Commonwealth or of that State or an authority of the Commonwealth or that State.

(7) If—

- (a) an answer to a question referred to in subsection (1) (f); or
- (b) any information whatever,

is given to an authorized officer by an officer of a corporation which is carrying on or has carried on an activity to which a recognized revenue law applies, the answer or information is, for the purposes of any legal proceedings against the corporation under this Act, binding on and admissible in evidence against the corporation, unless it is proved that the answer or information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

(8) The provisions of subsection (7) are in addition to any enactment or rule of law relating to the binding effect and admissibility in evidence of statements made by an officer of a corporation.

Search warrants

7. (1) If a justice is satisfied by a complaint on oath made by an authorized officer that there is reasonable ground for suspecting that there are on particular premises that are used for residential purposes—

- (a) books that relate to the question of whether or not a recognized revenue law is being or has been contravened; or
- (b) relevant goods that are relevant to the assessment or collection of a licence fee relating to relevant goods,

the justice may issue a search warrant in the prescribed form authorizing an authorized person to enter and search the premises or a part of the premises specified in the warrant.

(2) A person authorized under subsection (1) who enters premises or a part of premises in accordance with a search warrant issued under that subsection may—

- (a) search the premises or part of the premises;

- (b) exercise any of the powers conferred on an authorized officer by section 6 (1) (b) to (h); and
- (c) if the person finds on the premises books of a kind referred to in subsection (1) (a), seize those books.

(3) Section 6 (3) to (7) applies when a person authorized under subsection (1) has entered premises in accordance with a search warrant issued under that subsection in the same way as it applies when an authorized officer has entered premises in accordance with section 6 (1).

Power to obtain information and evidence

8. (1) An authorized officer who has authority under section 4 or 5 to exercise the power conferred by this section, may, subject to any condition that may be applicable under section 4 or 5, by notice in writing require a person—

- (a) to furnish the authorized officer with such information as the authorized officer requires; or
- (b) to attend and give evidence before the authorized officer,

for the purpose of inquiring into or ascertaining the person's or any other person's liability or entitlement under the recognized revenue law and may require the person to produce all books in the person's possession or under the person's control relating to that liability or entitlement.

(2) The authorized officer may require the information or evidence to be given on oath or affirmation, and either orally or in writing, or to be given by statutory declaration, and for that purpose the authorized officer may administer an oath or take an affirmation.

(3) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

PART 3—DISCLOSURE OF INFORMATION

**Disclosure of information to
Commonwealth and State officers**

9. (1) The Commissioner and any person authorized by the Commissioner may communicate any information respecting the affairs of a person disclosed or obtained under this Act or a State Taxation Act to any of the following—

- (a) the Commissioner, Second Commissioner or a Deputy Commissioner under any law of the Commonwealth relating to taxation or to any person authorized by such a Commissioner, Second Commissioner or Deputy Commissioner;
- (b) the Commissioner or any other officer of any State administering any law of the State relating to taxation or to any person authorized by such a Commissioner or other officer.

(2) If the Commissioner, or any person authorized by the Commissioner, consents to the communication by a person mentioned in subsection (1) (a) or (b) of information disclosed to or obtained by the person under this Act, the person and any person designated by the person, may communicate the information—

- (a) to any other person so mentioned; or
- (b) to any person to whom, or for any purpose that, the person is permitted under a law of the Commonwealth or the State concerned, to communicate information obtained under or in connection with the administration or execution of that law.

(3) Except as provided by this section or by a State Taxation Act, a person shall not disclose information or publish any book or part of a book obtained by that or another person under this Act unless the disclosure or publication is made—

- (a) with the consent of, and in accordance with any conditions imposed by, the person from whom the information or book was so obtained;
- (b) in connection with the administration or execution of—
 - (i) this Act; or
 - (ii) a law of the Commonwealth or of a State providing for the levying and collection of a tax, fee, duty or other impost; or
- (c) for the purpose of any legal proceedings arising out of any such Act or law or of a report of any such proceedings.

Penalty: \$10 000.

Information obtained under a corresponding law

10. A person shall not disclose information or publish any book or part of a book obtained by that or another person under a corresponding law for the purposes of a State Taxation Act unless the disclosure or publication is made—

- (a) as authorized under that corresponding law;
- (b) in connection with the administration or execution of that State Taxation Act; or
- (c) for the purposes of any legal proceedings arising out of this section or of that State Taxation Act or of a report of any such proceedings.

Penalty: \$10 000.

PART 4—MISCELLANEOUS**Certification of copies by
corresponding Commissioner**

11. (1) If the corresponding Commissioner concerned has certified a copy of an original book, or part of an original book, lodged with, or kept or issued by, that Commissioner or some other corresponding Commissioner under a recognized revenue law to be a true copy, a document purporting to be such a copy is, subject to subsection (2), receivable in all judicial proceedings in Western Australia relating to a matter arising under a State Taxation Act as evidence as if the document were the original book.

(2) Subsection (1) does not apply in relation to a document purporting to be certified under that subsection if—

- (a) in the case of proceedings for an offence, evidence is adduced that the document is not a true copy; or
- (b) in any other case, it is proved on a balance of probabilities that the document is not a true copy.

(3) If—

- (a) in accordance with a recognized revenue law, a copy is made of an original book or of a part of such a book;

- (b) in accordance with a power or duty under that law, the corresponding Commissioner concerned or another corresponding Commissioner has certified the copy to be a true copy of the original book or part of the original book; and
- (c) that corresponding Commissioner has certified a copy of the primary copy or of a part of that copy to be a true copy,

a document purporting to be a copy certified under this subsection to be a primary copy of an original book or of part of such a book is, subject to subsection (4), receivable in all judicial proceedings in Western Australia relating to a matter arising under a State Taxation Act as evidence as if the copy so certified were the original book.

(4) Subsection (3) does not apply in relation to a copy purporting to be certified under that subsection if—

- (a) in proceedings for an offence, evidence is adduced that—
 - (i) the copy is not a true copy of the primary copy or copy concerned; or
 - (ii) the primary copy is not a true copy of the original book or part of the original book concerned; or
- (b) in any other proceedings, it is proved on a balance of probabilities that—
 - (i) the copy is not a true copy of the primary copy or part of the primary copy concerned; or
 - (ii) the primary copy is not a true copy of the original book or part of the original book concerned.

Certification of copies by the Commissioner

12. On being requested to do so by a corresponding Commissioner, the Commissioner may—

- (a) certify a copy of a book, or part of a book, lodged with or kept or issued by the Commissioner under a State Taxation Act; and
- (b) supply that copy to that corresponding Commissioner for use in legal proceedings brought under or for the purposes of enforcing a recognized revenue law or a corresponding law.

Obstruction etc. of authorized officer

13. (1) A person shall not—

- (a) hinder or obstruct an authorized officer, or any person assisting an authorized officer, in the exercise of any of the powers conferred by section 6, 7 or 8; or
- (b) fail or refuse to comply with a requirement made under section 6 or 8.

Penalty: \$1 000 or imprisonment for 3 months, or both.

(2) A person is not guilty of an offence under subsection (1)—

(a) unless—

- (i) it is established by the prosecutor that the authorized officer concerned identified himself or herself as such an officer at the relevant time;
- (ii) where the offence arises under subsection (1) (a), it is established by the prosecutor that the person was informed by the authorized officer concerned, or otherwise knew, that that officer was empowered to exercise the particular power concerned; or
- (iii) where the offence arises under subsection (1) (b), it is established by the prosecutor that the authorized officer concerned warned the person that a failure or refusal to comply with the requirement was an offence; or

- (b) if, where the offence arises under subsection (1) (b) in relation to a failure or refusal to comply with a requirement to answer a question, the person satisfies the court that the person did not know, and could not with reasonable diligence have ascertained, the answer to the question.

False or misleading statements

14. (1) A person shall not give an answer, whether orally or in writing, to a question put to that person by an authorized officer under this Act that is false or misleading in a material particular.

(2) A person shall not, in providing information in accordance with this Act, make any statement or representation that is false or misleading in a material particular.

(3) A person is not guilty of an offence under subsection (1) or (2) if the person satisfies the court that, when the answer, statement or representation was made, the person believed on reasonable grounds that it was neither false nor misleading.

Penalty: \$5 000 or imprisonment for 12 months, or both.

Regulations

15. The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Consequential amendments

16. The Acts referred to in the first column of Schedule 1 are amended in the manner set out in the second column.

SCHEDULE 1

(Section 16)

CONSEQUENTIAL AMENDMENTS

<i>Short title of Act</i>	<i>Amendment</i>
1. <i>Business Franchise (Tobacco) Act 1975</i> [Reprinted as at 20 August 1987].	In section 5— (a) subsection (1) is repealed; and (b) in subsection (2) (a), “subsection (1)” is deleted and the following inserted— “ the <i>Taxation (Reciprocal Powers) Act 1989</i> ”.
2. <i>Financial Institutions Duty Act 1983</i> [Act No. 65 of 1983 as amended by Acts Nos. 86 of 1983, 19, 110 and 111 of 1984, 22 and 81 of 1985 and 31 of 1987].	In section 8— (a) in subsection (1), paragraphs (a) and (b) are deleted; and (b) in subsection (2), after “subsection (1)” the following is inserted— “ or in the <i>Taxation (Reciprocal Powers) Act 1989</i> ”.
3. <i>Land Tax Assessment Act 1976</i> [Reprinted as approved 1 December 1982 and amended by Acts Nos. 87 of 1984, 31, 40 and 98 of 1985, 69 of 1986 and 31 of 1988].	(1) In section 11 (2), “and section 12” is deleted and the following substituted— “ , section 12 and the <i>Taxation (Reciprocal Powers) Act 1989</i> ”. (2) Section 12 (2) is repealed.

*Short title of Act**Amendment*

4. *Pay-roll Tax Assessment Act 1971*
[Reprinted as at 1 June 1988 and
amended by Acts Nos. 29 and 30 of
1988].

In section 5—

- (a) in subsection (1), by inserting
after “subsection (2)” the
following—
“ or the *Taxation (Reciprocal
Powers) Act 1989*, ”;
and
(b) in subsection (2), by deleting
paragraph (a).

5. *Stamp Act 1921*
[Reprinted as at 21 March 1989 and
amended by Act No. 3 of 1989].

In section 9—

- (a) subsection (1) is repealed;
and
(b) in subsection (2) (a), by deleting
“(1) or (1a)” and substituting
the following
“ (1a) or in relation to the
*Taxation (Reciprocal
Powers) Act 1989* ”.
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