

TAXATION ADMINISTRATION BILL 2001

EXPLANATORY MEMORANDUM

This Explanatory Memorandum provides detailed notes on the operation of each clause of the Taxation Administration Bill 2001. The Attachment provides a table of taxation Act provisions that correspond to the clauses of the Taxation Administration Bill.

PART 1 – PRELIMINARY

Clause 1: **Short title**

This clause provides that the Act is to be cited as the Taxation Administration Act 2001.

Clause 2: **Commencement**

This clause provides the commencement provisions for the Taxation Administration Act.

Subclause (1) provides that the Act comes into operation on a day fixed by proclamation. It is intended that the commencement date will be 1 January 2003. This should allow sufficient time between Royal Assent and Proclamation for taxpayer and staff training to be conducted, computing enhancements to be put in place and other administrative functions to be finalised.

Subclause (2) provides that different days may be fixed under subclause (1) for different provisions. It is not intended that a staggered commencement will be necessary.

Clause 3: **The taxation Acts**

This clause identifies the scope of application of the Bill, and provides clarification on how it is to interact with the taxation Acts.

Subclause (1) lists those Acts that will be governed by the Taxation Administration Act. It should be noted that only section 41 of the Metropolitan Region Town Planning Scheme Act 1959 has been prescribed, on the basis that it contains the taxing provision.

Paragraph (k) allows further taxation Acts to be prescribed. There are currently no further Acts intended to be governed by this legislation, however, the ability to prescribe other Acts in the future has been inserted for flexibility.

Subclause (2) provides direction on how the Taxation Administration Act and the other taxation Acts are to be

interpreted. This allows definitions in both Acts to be transposed.

Clause 4: **Meaning of terms used in this Act**

This clause sets out the status of the Glossary at the end of the Bill.

Clause 5: **Crown bound**

This clause specifically provides that the Taxation Administration Act and any of the other taxation Acts bind the Crown in the right of Western Australia. These Acts bind the Crown as far as the legislative power of the Western Australian Parliament permits. However, the power operates only to the extent that there is no express provision to provide otherwise in a taxation Act.

PART 2 – TAX ADMINISTRATION GENERALLY

The provisions in this Part deal with the persons able to perform administrative functions under the taxation Acts. The powers also include provisions dealing with the manner in which powers are to be conferred on officers who perform the functions of the Commissioner.

For the purposes of these provisions, it should be noted that section 87 of the Criminal Code provides for an offence for any person who “impersonates a public officer” or “falsely represents himself to be a public officer”. A public officer includes the Commissioner, a delegate of the Commissioner or an investigator. The offence is a misdemeanour and a penalty of 2 years imprisonment applies.

Clause 6: **Commissioner of State Revenue**

This clause describes the Commissioner of State Revenue. It provides that a Commissioner of State Revenue is to be appointed under Part 3 of the Public Sector Management Act 1994.

Clause 7: **Administration of taxation Acts**

This clause sets out the relationship between the Commissioner and the Minister. The term “Minister” is governed by section 12 of the Interpretation Act 1984. It is intended that the Taxation Administration Act will be included in the portfolio of the Treasurer, as he currently has portfolio responsibility for the existing taxation Acts.

It was considered desirable to set out the relationship between the Commissioner and the Minister in regard to the administration of taxation matters. This is considered appropriate as there is not, nor should there be,

Government or political intervention in the administration of taxpayers' personal affairs.

This provision will statutorily remove any doubt that the Commissioner could be subject to Ministerial control or direction in the administration of taxation Acts. This principle is not explicitly stated in the existing taxation Acts, however, the general administration power in each of those Acts has been interpreted on the basis of the principles explicitly stated in this Bill.

It should be noted that this power does not remove any responsibility the Commissioner has to report to the Minister on the efficacy of the tax laws, or any powers the Minister has with regard to the efficient administration of government Departments.

Clause 8: Commissioner's functions

This clause provides that the Commissioner may perform any function conferred on an investigator in addition to those functions conferred on him under a taxation Act.

This power is necessary, as certain functions under Part 8 of the Bill are directly conferred on investigators, not the Commissioner.

Clause 9: Judicial notice of appointment and signature

This clause has been included to assist with Western Australian legal proceedings.

By way of background, section 56 of the Evidence Act 1906 lists persons whose signatures will be taken on judicial notice. The Commissioner of State Revenue is not on that list.

Rather than have the Commissioner gazetted for the purposes of section 56, it was considered appropriate to insert a corresponding provision in the Taxation Administration Bill, which will allow the Commissioner's signature to be taken on judicial notice.

Clause 10: Delegation

This clause provides powers allowing the Commissioner to delegate functions. The provisions should be read in conjunction with sections 58 and 59 of the Interpretation Act 1984, which provide additional delegation powers in respect of all Western Australian Acts.

Subclause (1) enables the Commissioner to delegate any of his functions under a taxation Act. However, this

subclause prevents him from delegating the following powers:

- the actual power of delegation under this clause;
- the power to issue an identity card under clause 11; and
- the power to give a specific authorisation in respect of investigation matters set out in clauses 90(3) (entry of residential premises), 91(1)(a) (breaking open things during a search) and 93(2) (use of force where property damage is likely).

Subclause (2) requires that a delegation must be made in writing.

Subclause (3) provides that a delegated function, when performed by a delegate, is taken to have been performed by the Commissioner for the purposes of the taxation Acts. This ensures that State Revenue officers have appropriate powers to perform the day-to-day revenue collection operations.

Subclause (4) provides that this section does not limit the ability of the Commissioner to perform a function through an agent.

Subclause (5) provides that the Commissioner must keep a record of all delegations made under this provision and the register may be kept electronically. Under current practice, such delegations are kept in writing and signed under the hand of the Commissioner. While this practice will continue, an electronic register is also proposed, which will enable easier monitoring for training and performance review tasks.

Subclause (6) provides a right for a taxpayer or their representative to inspect a delegation, in relation to delegated powers that have been exercised in dealing with the taxpayer's affairs. This clause was inserted as a result of a request made during the in-camera consultation process for delegations to be as transparent as possible. Under clause 114, an extract from this register can be used as evidence of the facts stated therein.

Clause 11: Tax investigators

This clause provides powers to appoint investigators and issue an identity card that contains a statement certifying that the person is an investigator appointed by the Commissioner.

An investigator is required to show an identity card on request when exercising powers under the investigation provisions (Part 8).

Subclause (1) provides that a person may be appointed by the Commissioner to be an investigator. The appointment of an investigator is necessary due to the construction of Part 8. The investigation powers have been directly conferred on the investigators under that Part. In appointing an investigator, it is recognised that the powers in Part 8 require specialised training.

Subclause (2) provides that an identity card is to be issued by the Commissioner to each investigator.

Subclause (3) provides that an identity card must state that the person identified by the card is an investigator for the purposes of the taxation Acts. In addition, the certificate must include a photograph of the delegate. These requirements are considered appropriate for identification purposes.

Subclause (4) requires that the delegate must return the identity card to the Commissioner when the delegation has been revoked. An offence penalty of \$20,000 is applicable for failure to return an ID card. It should be noted that the penalty clause has been specifically phrased to have application only to subsection (4) in accordance with the requirements of section 72 of the Interpretation Act 1984.

Clause 12: Appointed representatives for court proceedings

This clause sets out requirements in relation to personal representation of the Commissioner.

Subclause (1) allows the Commissioner to appoint a person to represent him in court proceedings for recovery, offences under taxation Acts and any other proceedings before a court or tribunal where the Commissioner is a party.

Personal representation is not a function that can be delegated under the delegation provisions. Accordingly, it is necessary to specifically authorise a person to appear on behalf of the Commissioner in the proceedings listed.

Subclause (2) specifies that an appointed representative is able to represent the Commissioner in accordance with the authorisation.

PART 3 – ASSESSMENTS OF TAX

Division 1 – Assessments

Clause 13: Assessments

This clause identifies an assessment for the purposes of the taxation Acts. This clause, and the definition in the Glossary, provide that an assessment may be a self assessment, official assessment or reassessment.

Subclause (1) provides that an assessment is a determination of the amount of tax payable by a taxpayer under a taxation Act. The clause also clarifies that the following determinations are assessments:

- that no tax is payable;
- that a person is liable to pay tax;
- that a person is exempt from a liability to pay tax;
- that an instrument, event or transaction is liable to tax; or
- that an instrument, event or transaction is exempt from tax.

This means that a nil assessment is a determination that no tax is payable and therefore an assessment for the purposes of the Act.

Subclause (2) provides that an assessment may relate to any one or more particular components of tax. An example of an assessment of a particular component would be the assessment of a late payment penalty upon late payment of land tax, which is imposed after the initial assessment of primary tax has been made.

Subclause (3) provides that a receipt by the Commissioner of an amount in payment of tax does not constitute an assessment of tax liability. This provision is necessary primarily for stamp duty instruments where a prepayment of tax is made. It ensures that an assessment is not made until an assessment notice is issued or the instrument is immediately stamped (as contemplated by clause 23(2)(b)).

Clause 14: Self -assessments

This clause describes self-assessments, which are assessments made by a taxpayer in a return, by a responsible party in a return or under a special tax return arrangement. As a result of its inclusion in this clause and the Glossary, a self-assessment is capable of being objected to under the objection provisions in Part 4.

Clause 15: Official assessments

This clause provides specific details in respect of official assessments made by the Commissioner.

Subclause (1) provides that an official assessment is an assessment made by the Commissioner.

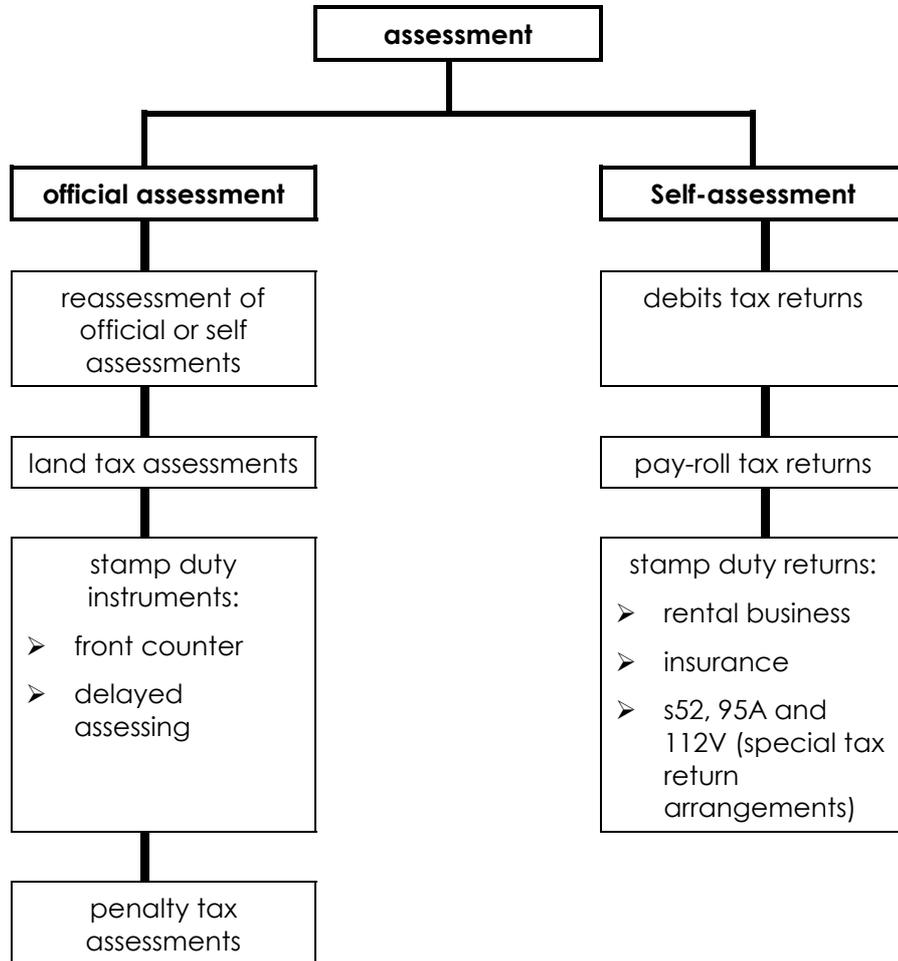
Subclause (2) provides that the Commissioner must make an official assessment of tax payable by a taxpayer in two specific circumstances. These are:

- if a taxpayer is not required to make a self assessment (ie. where no returns are required to be lodged by the taxpayer or responsible party); or
- where he is required to do so under a taxation Act (eg. to determine a corporate reconstruction exemption application under the Stamp Act).

Subclause (3) provides that the Commissioner may also make an official assessment of tax payable by a taxpayer under a particular taxation Act on his own initiative. The subclause also clarifies that the Commissioner's power to make an assessment operates regardless of any obligation that a taxpayer may have to make self-assessments (eg. where the Commissioner conducts an audit of a company and finds that returns should have been made, but were not).

Subclause (4) provides that the Commissioner may make an assessment in any other circumstances at the request of the taxpayer. An example of this could be a voluntary disclosure of a pay-roll tax liability by a taxpayer who has not included certain types of wages in their returns to date.

The following table gives an indication of how the current assessment practices and tax types administered by the Office of State Revenue fit within the proposed classifications of official assessment and self-assessment.



Clause 16: Reassessments

This clause provides the power for the Commissioner to make a reassessment of a tax liability. A reassessment is a type of official assessment that is covered under the general meaning of assessment in clause 13(1).

The power to reassess tax liabilities is currently available under all of the taxation Acts. The reassessment is merely an assessment made by the Commissioner that is governed by a sub-set of specific rules as set out in this clause.

Subclause (1) sets out three circumstances where the Commissioner must make a reassessment.

Paragraph (a) provides that the Commissioner must make a reassessment if specifically required to do so under a taxation Act. This requirement exists in the taxation Acts to give effect to concessions or refunds.

Paragraph (b) provides that the Commissioner must make a reassessment under a direction of the court or tribunal referred to in clause 41. The circumstances in paragraph (b) are most likely to arise as the result of an appeal, where the Commissioner is required to reassess the amount of tax payable in accordance with the decision.

Paragraph (c) provides that the Commissioner must also make a reassessment if a taxation Act provides for a rebate or refund, and that rebate or refund was not taken into account when the original assessment was made. Implicit in this power is the fact that the taxpayer must have met all rebate or refund conditions, including any time limits for making application as out in the rebate or refund provision.

Subclause (2) provides that the Commissioner may make a reassessment on his own initiative if an original assessment or a previous reassessment is not considered to be correct. The Commissioner is also able to make a reassessment, subject to subclause (5), upon receipt of an application from a taxpayer requesting that a reassessment be made.

Subclause (3) provides that a reassessment may be made whether or not any amount of tax has been paid on the previous assessment.

Subclause (4) provides that a reassessment may consolidate two or more separate assessments into a single assessment. This clause is particularly relevant to the reassessment of return based taxes, which often involves the reassessment of tax over more than one return period, particularly where the reassessment is the result of an audit.

Subclause (5) provides that any decision by the Commissioner to make or not make a reassessment at the request of a taxpayer under subclause (2)(b) is non-reviewable. This removes the power to object to that decision as a result of clause 34(2)(d).

Subclause (6) prevents action being brought in a court to compel the Commissioner to make a reassessment. Despite the fact that subclause (5) gives the Commissioner a non-reviewable right in relation to the making of a reassessment, this subclause is considered necessary to ensure that no action can be taken outside the assessment process.

Clause 17: Time limits on reassessments

This clause sets out the time limits that apply to reassessments.

Subclause (1) provides that a taxpayer is not entitled to apply for a reassessment more than 5 years after the original assessment was made.

Subclause (2) provides that a reassessment can be made at any time in two circumstances. These are:

- where directed to do so as a result of a decision of a court or tribunal hearing an appeal under section 41; or
- if the Commissioner is of the opinion that there has been an evasion of tax, or that the previous assessment was made on the basis of false or misleading information.

The first power is necessary in any case where the decision falls outside the normal 5 year reassessment period outlined in subclause (4). This power will ensure that no restrictions are placed on giving proper effect to court or tribunal decisions.

Subclause (3) is specific to pay-roll tax to take account of the usual assessment procedures that currently operate so that this tax is assessed as a result of audit for the current year, plus five prior years.

Subclause (4) provides that the Commissioner may only make a reassessment within five years of the date of the original assessment or to give effect to an application that was made within 5 years of the original assessment.

Clause 18: Effect of reassessment

This clause sets out the effects of a reassessment.

Subclause (1) provides that a reassessment supersedes earlier assessments.

The reassessment procedures implemented by the Commissioner will vary for different tax types, and the provisions have been drafted to ensure that all tax types are accommodated.

For example, unpaid land tax assessments and stamp duty assessments will be cancelled and re-issued with the total tax liability being shown on the reassessment notice. However, assessment notices will reflect payment balances where duty has already been paid on the original assessment.

For return based taxes such as pay-roll tax, the assessment notice will show the reassessed liability in the form of an account balance, so that the reassessed portion is reflected as a debit or credit on the return account. This procedure is consistent with current assessment practices for most return based taxes.

Subclause (2) provides that a reassessment can increase or decrease the amount assessed. It should be noted that clause 54 of the Bill provides that where the amount is decreased as the result of a reassessment, but the original assessment has already been paid, the difference is required to be refunded to the taxpayer or credited against the taxpayer's outstanding tax liabilities (or future tax liabilities in limited circumstances).

Subclause (3) provides that a reassessment cannot increase the previous assessment on the grounds that the interpretation of the law was incorrect when the previous assessment was made.

This limitation was inserted as a result of concerns raised by peak industry bodies that the Commissioner would seek to retrospectively apply an altered interpretation of the law to the taxpayer's detriment.

For example, if a particular type of document was routinely assessed by the Commissioner at nominal duty rates, and a court case or legal advice found the interpretation underlying that assessing practice to be incorrect, this provision would prevent the Commissioner from increasing the duty applied to every instrument assessed at nominal duty rates in the preceding 5 years.

This measure was seen to be an appropriate quid pro quo, as the Commissioner would not be required to refund tax in circumstances where the court decision or legal advice has the opposite effect (except in the defining case).

Subclause (4) is specific to stamp duty and the reassessment of tax payable on an instrument. It provides that the Commissioner is able to stamp either the original instrument or a duplicate or copy of the instrument with a stamp denoting the reassessment. However, it provides that the reassessment is effective regardless of whether an instrument is endorsed or not.

Subclause (5) provides that for the purposes of recovery proceedings, a reassessment does not invalidate any proceedings in relation to an amount that may have

been assessed under an original assessment. It provides that an adjustment is to be made to the amount recovered under the original assessment proceedings to take account of the adjustment made by the reassessment. This ensures recovery action that is in progress does not have to be recommenced if a reassessment is made.

Subclause (6) similarly provides that an objection to the original assessment remains valid if a reassessment is made prior to the objection being determined. However, the original objection will only remain "on foot" where the objection:

- is directly applicable to the reassessment; or
- relates to matters which are the same or similar in substance.

Clause 19: Assessments based on estimated or suspected liability

This clause allows the Commissioner to issue an assessment on the basis of his suspicion or estimate of a liability. The provision is based on powers in repealed section 31A of the Stamp Act and section 18 of the Pay-roll Tax Assessment Act.

Subclause (1) provides that if the Commissioner suspects that a tax liability exists, he is able to make an assessment or reassessment on the basis of his suspicion and his estimate of the taxation liability.

Subclause (2) provides that the Commissioner is able to make an assessment or reassessment where he is not satisfied with the adequacy or reliability of information available. This clause would be relied on where the Commissioner is in no doubt about the existence of a liability, but is not satisfied with the adequacy of supporting information supplied to enable a proper assessment to be made. Where doubt exists about the existence of the liability, an assessment would be issued under subclause (1).

Clause 20: Assessments when instrument misleading or unavailable

This clause relates to the assessment of stamp duty in the absence of an instrument. The clause substitutes the provisions of repealed section 31A of the Stamp Act in relation to the creation of a memorandum and the stamping of that memorandum in lieu of an original instrument.

Subclause (1) provides that the Commissioner may create a memorandum and treat it as if it were the

instrument where there are reasonable grounds for suspecting that an instrument lodged under a taxation Act is inaccurate or misleading.

Subclause (2) provides that where an instrument upon which tax is payable has not been lodged as required under a taxation Act, the Commissioner may treat a copy of the instrument as if it were the instrument or if a copy is not available, create a memorandum of the instrument and treat the memorandum as the instrument. This provision applies for the purposes of making an assessment. It is intended that in these circumstances, the Commissioner is able to stamp a photocopy of an instrument.

Subclause (3) provides that where tax is payable in relation to an event or transaction, but an instrument required to be prepared and lodged has not been prepared, or prepared but not lodged, the Commissioner may create a memorandum in substitution for the instrument and treat it as the instrument for the purposes of making an assessment. An event or transaction refers to all matters in the Stamp Act in respect of which a dutiable statement is required to be prepared.

Subclause (4) authorises the payment of tax on an instrument to be denoted on a copy or memorandum. This includes the payment of penalty tax.

Subclause (5) provides that the validity of the assessment is not dependent on the availability of an instrument, a copy or a memorandum for stamping.

Subclause (6) provides that this section does not limit the powers of the Commissioner under clause 19.

Clause 21: **Ascertaining value of property, consideration or benefit**

This clause sets out powers in relation to the availability of the information for valuing any property, consideration or benefit. It should be noted that where relevant, the taxation Acts contain specific valuation powers relevant to specific tax types. For example, proposed section 33 of the Stamp Act contains valuation provisions specific to the assessment of duty on property.

Subclause (1) provides that if it is necessary to ascertain the value of any property, consideration or benefit for the purposes of a taxation Act, the Commissioner can require the taxpayer to provide evidence of the value.

Subclause (2) provides that the requirement made by the Commissioner must be given to the taxpayer by a notice that specifies the period within which the evidence of value is to be supplied. It should be noted that it is the general practice of the Commissioner to have the taxpayer fill out a valuation form, which requires sufficient details of the property to allow the Valuer General's Office to make a valuation. The Commissioner does not require a taxpayer to supply a licensed valuation unless one is already in existence.

Subclause (3) provides that a person who fails to comply with a requirement of this clause commits an offence. The maximum penalty is \$20,000.

Clause 22: Commissioner's power to have valuation made

This clause contains powers to authorise the Commissioner to have a valuation made.

Subclause (1) provides that for the purposes of a taxation Act, the Commissioner can have a valuation made of any property, consideration or benefit. It also allows the Commissioner to adopt any available valuation of the property, consideration or benefit that he considers appropriate.

Subclause (2) provides that the Commissioner is able to have that valuation made or adopt a valuation, regardless of whether he has required the taxpayer to provide evidence of value under clause 21, or whether the taxpayer has complied with that requirement.

Division 2 - Assessment notices and returns

Clause 23: Assessment notices

This clause sets out a number of requirements surrounding the issue of assessment notices by the Commissioner.

The terms "assessment" and "assessment notice" have been distinguished throughout the Bill. An "assessment" denotes the process used in determining a tax liability. An "assessment notice" is the official notification method issued to taxpayers to inform them of their tax liability.

Subclause (1) requires the Commissioner to issue an assessment notice where an assessment is made.

Subclause (2) provides two exceptions where an assessment notice will not be required to be issued. These are:

- for a reassessment made on the Commissioner's initiative where the taxpayer is not required to make a payment of tax or where no tax is to be refunded to the taxpayer as a result of the reassessment; and
- when the Commissioner immediately stamps an instrument after assessing the duty payable.

The first point accommodates land tax processes where many taxation reassessments are dealt with verbally. Due to the large number of cancellations and reassessments that occur for land tax, a requirement to issue a reassessment notice in every case would place a considerable overhead on the tax collection process with little corresponding benefit to taxpayers.

During consultation, concerns were expressed that a reassessment notice should be issued for all reassessments. Under current land tax administrative practice, written confirmation is only given to taxpayers where requested.

The ability to deal with these issues over the telephone has been the subject of many compliments from taxpayers, who appreciate the level of service provided. In one instance, a particular taxpayer who was able to have his land tax assessment corrected over the telephone commented that "The whole procedure took less than 2 or 3 minutes and is without doubt the most efficient dealing I have had with the public sector in my private and professional career". It is considered that the proposed exception is justifiable on that basis.

The second point deals with front counter assessments where a receipt is issued, but no assessment notice is actually produced. This is because the payment is made on an immediate basis and documents are embossed and returned.

Subclause (3) provides that the Commissioner is required to serve an assessment notice on the taxpayer. The service provisions are set out in Part 10 of the Bill.

Subclause (4) provides that a liability to tax is not dependent on the service of a notice of an assessment. The clause emphasises that a tax liability cannot be nullified by the failure of the Commissioner to serve a notice of assessment. With the exception of the Land

Tax Assessment Act 1976, similar provisions are not in the current taxation Acts, as there is no requirement on the Commissioner to serve a notice in those Acts.

Clause 24: Form of assessment notice

This clause provides details about the form assessment notices are to take.

Subclause (1) provides that the Commissioner may structure the notice of assessment as an account requiring payment of the amount assessed and other amounts due from the taxpayer. The assessment notice can also be in any other form approved by the Commissioner.

The account format accommodates the adjustment advice notices currently issued by the Office of State Revenue in respect of pay-roll tax and stamp duty returns. These notices are a monthly account showing amounts returned by the taxpayer and subsequent adjustments made by the Commissioner.

Subclause (2) provides details of the information that must be included in an assessment notice. In respect of an original assessment, the assessment notice must state the amount of primary tax payable, the amount of penalty tax payable and indicate the due date for payment of the tax.

The assessment notice could also contain other information about the assessment considered appropriate by the Commissioner. Due to the vastly different requirements across different tax lines, it was not considered appropriate to include in the legislation an exhaustive list of the information that would be included in an original assessment notice.

Subclause (3) sets out the requirements in relation to a reassessment notice. This notice is required to state whether the amount of tax payable is more or less than the amount in the previous assessment.

If an amount of tax is overpaid, the notice should state whether the amount is to be refunded or credited to the taxpayer.

If the amount of tax is increased or remains unpaid, the notice must state the due date for payment of the amounts.

Subclause (4) sets out the requirements where the due date for the payment of the tax may have passed when

the assessment notice is issued. For example, where the due date for the payment of duty on an instrument (ie. 4 months from first execution) has passed when the instrument comes into the possession of the Commissioner, this clause provides that the assessment notice must specify the amount of primary tax, any penalty tax and the due date for its payment.

Subclause (5) provides that the due date for payment on an assessment notice must be at least 14 days after the date of the assessment notice. This provision interacts with the various payment requirements in each of the taxation Acts.

Where a payment period is specified in a taxation Act, the notice will reflect those payment arrangements. For example, under the Land Tax Assessment Bill, the due date for payment of an original assessment must be 49 days from the date of issue of the notice. In the case of reassessments, no payment period is provided in the taxation Acts, and the minimum 14 day period will apply. It should be noted that 14 days is necessary for return based taxes, to ensure assessed amounts are in a taxpayer's next return.

Subclause (6) authorises more than one assessment of primary and/or penalty tax to be included in the same assessment notice, regardless of whether the assessments are in respect of the same matter.

This clause has been inserted to accommodate current stamp duty arrangements where assessments are made in bundles. It is common for a lodging party, particularly settlement or real estate agents, to lodge unrelated instruments in the same bundle.

Clause 25: Statement of grounds of assessment

This clause provides a mechanism for the taxpayer to obtain an explanation from the Commissioner of the basis upon which an assessment has been made. This power was inserted to accommodate concerns raised during the consultation process and will assist taxpayers in preparing objections.

Subclause (1) provides that the Commissioner may inform the taxpayer of the grounds of an assessment in the assessment notice or in a separate notice.

Subclause (2) provides the ability for a person to request a statement of grounds for an assessment if none has been provided in the assessment notice. This provision

places an obligation on the Commissioner to provide that information within 30 days of the request.

Subclause (3) accommodates the current return based tax notification methods, where the notification of the grounds of certain types of assessments is made in a separate notice to the assessment notice.

Division 3 - Penalty tax

Clause 26: Penalty tax for contravention of taxation Act

This clause provides for the imposition of penalty tax in circumstances where taxation obligations are not met.

It should be noted that the penalty regime in this Bill has been substantially reduced relative to provisions currently operating under some of the taxation Acts. For example, the Pay-roll Tax Assessment Act 1971 provides, in some cases, for penalties of up to 200% of the tax liability to be imposed.

It should also be noted that the actual penalty amount imposed under the current taxation Acts is consistently lower than the 100% designated by this Bill. This is intended to continue by use of the remission power contained in clause 29.

The 100% limit is required and used in circumstances where a taxpayer is considered to have deliberately misled the Commissioner. If a lower amount for less culpable circumstances was specified in the Bill, then a separate mechanism would be required in order to impose a 100% penalty where the circumstances warranted that action.

In order to assist taxpayers in ascertaining the penalty that will be applied in common circumstances, penalty remission policies of the Office of State Revenue will be publicly released as Revenue Rulings to coincide with the commencement of this Act. The stamp duty penalty remission policy under the Stamp Act for instruments is already published as a Revenue Ruling.

Subclause (1) provides the instances where a taxpayer will be liable to penalty tax.

Paragraph (a) provides that a taxpayer will be liable to penalty tax where contravention of a taxation Act occurs and as a consequence, a taxpayer avoids or delays the payment of tax, or avoids or delays the submission of information required for the assessment of tax.

Paragraph (b) provides that a taxpayer will be liable to penalty tax where there is a material misstatement or omission in an instrument submitted to the Commissioner under a taxation Act. Instruments in these circumstances include statements and returns required under taxation Acts.

Paragraph (c) provides that a taxpayer will be liable to penalty tax where they fail to provide information required under a taxation Act. Penalty tax may also be imposed where the taxpayer provides information that is incorrect, incomplete or misleading. It should be noted that the penalty tax will apply whether such information is provided intentionally or unintentionally.

Paragraph (d) provides that a taxpayer is liable to penalty tax where he or she makes an under-estimation to avoid, delay or reduce the payment of tax.

This provision may be used where a taxpayer deliberately underestimates their wage figures in order to delay the payment of tax. Although the tax is recoverable when reconciliation assessments are made at the end of each financial year, the taxpayer incorrectly benefits from the underestimation during the course of the year. Such action will now be capable of being penalised.

Paragraph (e) provides that a taxpayer is liable to penalty tax where they fail to pay, or they underpay, tax for which they are liable.

Subclause (2) provides that the Commissioner is able to make an assessment of penalty tax if there are reasonable grounds to suspect that the taxpayer would be liable to a penalty in the circumstances set out in subclause (1).

Subclause (3) provides that the penalty tax under this provision is equal to either the amount of the primary tax liability (ie. a 100% penalty) or the amount that the taxpayer would have been liable to pay if the circumstances giving rise to the penalty tax liability had not occurred.

Clause 27: Penalty tax for late payment

This clause is a separate penalty provision that specifically relates to the late payment of tax.

Subclause (1) provides that a late payment penalty may be imposed which is 20% of the amount outstanding on the due date.

Subclause (2) provides that where tax is paid after the due date of an instalment arrangement under clause 47, no late payment penalty is to be imposed. If late payment occurs under these arrangements, the Commissioner would proceed to recovery action rather than penalise the late payment of an instalment arrangement.

It is considered that further penalty imposition on a taxpayer who has defaulted on a tax payment arrangement would not assist to recover the outstanding revenue.

Clause 28: **Limitation on amount of penalty tax**

This clause provides that the total amount of penalty tax is to be limited to a maximum of 100% of the primary liability. As specified in the Glossary definition, penalty tax is tax that is payable under clauses 26 and 27, and sections 75JE, 75JF, 76I(2)(b) and 76J(2)(b) of the Stamp Act.

This means that the maximum penalty that may be imposed on any single taxation liability is 100% of the primary liability.

Clause 29: **Remission of penalty tax**

This clause provides the remission power in relation to penalty tax.

Subclause (1) provides that the Commissioner may remit penalty tax, in whole or in part. This includes penalty tax that is payable under clauses 26 and 27, and sections 75JE, 75JF, 76I(2)(b) and 76J(2)(b) of the Stamp Act.

Subclause (2) provides that the remission may occur before or after an assessment is made by the Commissioner. The remission of penalties before an assessment occurs through the use of penalty remission policies published by the Office of State Revenue.

Subclause (3) provides that where an amount of penalty tax has been paid and is later remitted by the Commissioner, the amount of the excess is to be refunded or credited against the taxpayer's present or future tax liabilities. The crediting and refunding requirements are set out in clause 54 of the Bill.

Clause 30: **Guidelines for imposing penalty tax**

Subclause (1) provides that the Commissioner may issue guidelines that specify the policy to be followed when making a decision to remit penalties under clause 29. It

is envisaged that the guidelines will be issued in the form of Revenue Rulings.

Subclause (2) provides that a copy of the guidelines must be issued by the Commissioner when a taxpayer makes a request for them.

PART 4 – OBJECTIONS AND APPEALS

Division 1 – Procedures and restrictions

Clause 31: Procedure for challenging assessments

This clause determines the scope of review mechanisms available for assessments and decisions under the taxation Acts.

Subclause (1) provides that the ability to challenge the validity or correctness of an assessment, or any other decision that is capable of being objected to or appealed against under this Bill, must be dealt with using the objection and appeal powers in this Bill.

Subclause (2) abrogates any right, other than those mentioned in subclause (1), to challenge the validity or correctness of an assessment or other decision.

Clause 32: Objections to land valuations

This clause provides that the validity or correctness of a valuation under the Valuation of Land Act 1978 may only be challenged in proceedings under that Act, not by way of objection or appeal against an assessment based on a valuation under this Act.

This clause accommodates current land tax practice where valuations used to determine the taxable value of land for land tax purposes are made under the Valuation of Land Act. This clause is based on section 37 of the Land Tax Assessment Act 1976.

For the purposes of valuations conducted for stamp duty to ascertain the market value of property transferred, the valuation is not conducted under the Valuation of Land Act in the same manner as land tax and local government valuations. Accordingly, an objection or appeal regarding the valuation of property for stamp duty would be made to the Commissioner under the procedures set out in this Bill.

Clause 33: Continuing obligation to pay assessed tax

This clause provides that even though an objection, appeal or case stated has been lodged with the Commissioner, a court or a tribunal, the obligation of the

taxpayer to pay tax by the due date is not suspended. Accordingly, if the objection has not been determined prior to the due date for payment, the amount assessed must still be paid.

However, in these circumstances the taxpayer is able to apply for a tax payment arrangement (as provided for in clause 47). The terms of the arrangement may allow the taxpayer to defer payment until the date of the objection, appeal or case stated decision. It should be noted that a tax payment arrangement is subject to the payment of interest by the taxpayer.

Division 2 – Objections

Clause 34: Right to object

This clause sets out the rights of a taxpayer to object to an assessment or decision of the Commissioner. The term “decision” is defined in the Glossary to include a direction. It should be noted that the ability to object to an “assessment” includes a right to object to a “self assessment”.

Subclause (1) provides that a taxpayer may object to an assessment or a decision by the Commissioner under a taxation Act, where that assessment or decision affects a liability to tax.

“Taxpayer” is defined in the Glossary and would allow a right of objection to:

- persons who actually have an obligation to pay tax;
- pay-roll tax group members who may not have an obligation to pay tax at a specific point in time, but wish to object to their inclusion in a group by the Commissioner;
- a responsible party under a tax payment arrangement; and
- persons who belong to the prescribed class of persons who are subject to statutory obligations relating to the assessment or payment of tax.

The persons in the last point above would be extended rights of objection in relation to the provision of information under certain information returns in a number of taxation Acts.

Subclause (2) sets out a number of circumstances where no right of objection exists under the Bill.

Paragraph (a) provides that no right of objection exists against the Commissioner's decision on an objection. After the Commissioner makes a decision on an objection, the taxpayer is entitled to elevate the matter through the appeal powers, which will allow him to appeal to the appropriate tribunal or court in respect of the objection decision.

Paragraph (b) provides that no right of objection exists to any reassessment made to give effect to an objection decision. This provision has been inserted, as the decision on the objection and the reassessment, although complementary, are two separate matters. The provision would operate where an objection is partly allowed and the Commissioner must make a reassessment under clause 39 to give effect to the decision. The taxpayer has a right of appeal to elevate the portion of the objection not allowed, and cannot object to the reassessment to have the matter considered further.

Paragraph (c) reproduces the power in repealed section 76C(13C) to remove the right of objection to a stamp duty assessment, where the amount of duty is the subject of a traffic infringement notice issued under section 102 of the Road Traffic Act 1974. The right of objection is available when the amount outstanding has been paid.

Paragraph (d) provides that no right of objection exists in respect of a decision on any matter where the Commissioner's decision is designated as non-reviewable.

A non-reviewable decision has been used as a revenue protection measure. It provides an appropriate degree of protection to ensure that the primacy of a tax debt is maintained.

Using the non-reviewable decision in relation to tax payment arrangements as an example, the power in clause 47 allows taxpayers experiencing genuine cash flow difficulties to meet their obligations in a structured manner.

In most cases, it is not in the interests of the Commissioner to disallow a tax payment arrangement application, thereby forcing the taxpayer to make immediate payment to avoid the instigation of recovery action. However, the non-reviewable decision is considered necessary in respect of cases where a person may seek

to purposely use the tax payment arrangement to delay or frustrate the payment of tax.

The non-reviewable decisions in the Taxation Administration Bill are found in:

- clause 16(5) – reassessments
- clause 47(8) – approved tax payment arrangements
- clause 56(3) – waiver of tax
- clause 57(3) – writing off tax liability.

Further non-reviewable decisions are identified in the taxation Acts, particularly in cases where no right of objection exists now. For example, no right of objection currently exists under section 32(1a) of the Pay-roll Tax Assessment Act.

Paragraph (e) provides that no right of objection exists in respect of a decision where a taxation Act specifically provides procedures for objection or appeal.

Where a taxation Act provides that the right of objection lies to a person other than the Commissioner, for example the Minister, this paragraph would ensure that the designated review procedure is used. Current section 22(2) of the Land Tax Assessment Act (as reproduced in clause 20 of the Land Tax Assessment Bill 2001) is an example.

Subclause (3) provides that an objection to a reassessment, where the reassessment is made after the expiry of 60 days from the date of the original assessment, is limited to the increase in liability which results from the reassessment. However, it should be noted that an objection to the previous assessment can remain “on foot” (see clause 18(6)).

Clause 35: Form of objection

This clause sets out the practical requirements that must be satisfied for a taxpayer to lodge a valid objection.

The objection must:

- be in writing;
- set out in a detailed form the grounds of the objection; and
- be lodged with the Commissioner.

Clause 36: Time for lodging objection

This clause sets out the timing arrangements for the lodgement of an objection.

Subclause (1) provides a 60 day time period for the lodgement of an objection from the date the assessment notice is issued, or where no assessment notice is required to be issued under the authority of clause 23(2)(b), from the date the document was stamped. Clause 23(2)(b) relates to circumstances where instruments are immediately stamped on the front counter assessing area.

In each case, administrative arrangements ensure that the date of the assessment is clearly highlighted to enable a taxpayer to identify the commencement of the objection time period.

Subclause (2) provides a 60 day time period for the lodgement of an objection to a self-assessment. The time period commences from the due date for lodging the return.

Under most of the existing State taxation legislation, a period for objection of 42 days is allowed. A 60 day term was chosen for the purposes of uniformity with other taxation Acts across Australia. It was not considered appropriate to standardise these arrangements with any Federal tax legislation.

Subclause (3) provides that an objection to a decision of the Commissioner must be lodged within 60 days after the day on which the person affected was notified of the decision.

Subclause (4) provides a power for the Commissioner to extend the time for lodging an objection upon receipt of an application.

Subclause (5) provides a cap on the time within which an extension to lodge an objection may be made, to 12 months from the date of the assessment or decision.

Where the application is made within the 12 month period, the decision of the Commissioner and the subsequent lodgement of the objection may occur outside that period.

For clarification purposes, this subclause also provides that an application may be received before or after the expiry of the initial 60 day period within which an objection is required to be lodged.

An application for an extension of time is required to set out in detail the grounds on which the applicant is seeking to have the objection period extended.

Subclause (6) provides clarification in relation to the timing of objections for return based taxes. In the past, a taxpayer did not have a right of objection in relation to a matter included in a return. The only right of objection existed where the Commissioner had actually assessed that an amount of tax was payable. The objection right was linked to the date of the Commissioner's assessment.

However, as objections are now possible in respect of matters included in a self-assessment, it is necessary to identify the trigger point for the 60 day time limit in relation to return based taxes.

Clause 37: Consideration of objections

This clause provides a summary of the factors that will be taken into account when considering and deciding an objection.

Subclause (1) provides that an objection will be decided by the Commissioner on the basis of the grounds stated in the objection, and any other relevant written material that is provided to the Commissioner.

Information that is obtained by the Commissioner in the course of investigating the objection will also be considered in making the objection determination. This would allow submissions made during the course of a meeting with the taxpayer or the taxpayer's agent and the Commissioner to be taken into consideration, where that information can be fully substantiated by those parties.

Subclause (2) places the onus of establishing that an assessment or decision is incorrect on the taxpayer. This power is consistent with corresponding powers in the Taxation Administration Acts of other States.

Subclause (3) provides specific powers in relation to the assessment of tax that occurs under clause 19(1).

This subclause is to ensure that the taxpayer is only subject to the ordinary burden of establishing that the taxpayer is not liable to tax, not the higher burden of establishing that there were no grounds on which the Commissioner could reasonably suspect that the taxpayer was liable to tax.

Subclause (4) sets out the requirements the Commissioner must adhere to when determining an objection. The Commissioner is required to serve a notice on the taxpayer setting out the:

- decision on the objection; and
- if the objection is wholly or partially disallowed, the reasons for the decision.

Clause 38: Time limit for determining objections

This clause places an obligation on the Commissioner to decide an objection within a requisite period after it is lodged. This power is consistent with obligations placed on Commissioners in other jurisdictions, and was inserted after requests were made during consultation.

Subclause (1) places an obligation on the Commissioner to determine an objection within the decision period calculated under subclause (2).

Subclause (2) sets out the decision period, being a period of 90 days from the date the objection is lodged. Subclause (2) also provides that the relevant period may be extended where it is necessary for the Commissioner to obtain information from the taxpayer to decide the objection and consider that information, or to obtain advice and other assistance reasonably required from an external agency to decide the objection.

Examples of external agencies under this subclause are the Valuer General's Office and the Crown Solicitor's Office.

Subclause (3) provides a notification requirement on the Commissioner where he extends the period within which the objection is to be determined for the reasons outlined in subclause (2).

Notification is required to be given before the end of the initial 90 day period. If further delays occur after the initial notification, the Commissioner is required to keep the taxpayer reasonably informed about the extent and reasons for the further delay.

Subclause (4) provides that where the Commissioner is unable to determine an objection within the relevant period, the taxpayer has the right to require the Commissioner to refer the objection to the Supreme Court. The taxpayer must inform the Commissioner if this is required by written notice.

Subclause (5) provides that upon receiving such a request, the Commissioner is required to refer the objection to the Supreme Court by way of appeal as soon as practicable.

Subclause (6) provides that the Supreme Court may decide the questions raised by the objection, make any necessary or appropriate consequential orders and make any orders for costs or other incidental matters.

Subclause (7) provides that regardless of whether the Commissioner complies with the requirement to determine an objection within 90 days, the Commissioner's decision on an objection is not invalidated. This clause is necessary where the objection is not determined within the 90 day period, but the taxpayer did not take up their right to have the matter referred to the Supreme Court.

Clause 39: **Reassessment on determination of objection**

This clause sets out the obligations with which the Commissioner must comply when he decides an objection.

Subclause (1) provides that where an objection is wholly or partially allowed, the Commissioner must make a reassessment to reflect the objection determination.

Subclause (2) provides that where the objection decision results in an amount being refunded or credited to the taxpayer, interest on the amount refunded is to be added to the refund at a rate that is prescribed. The interest is to be calculated from the date of the payment of tax to the date of the decision of the objection.

The prescribed rate will be set out in the Taxation Administration Regulations. Under current administrative practice with similar provisions in the taxation Acts, the amount is calculated with reference to the judgment debt rate of the Supreme Court. At present, this is set at 6% per annum.

The crediting provisions that allow a taxpayer's refund to be credited against other taxation debts, including the amount of interest, are set out in clause 54(2).

Division 3 – Appeals and stated cases

Clause 40: Right of appeal

This clause sets out the rights of appeal taxpayers have when dissatisfied with the Commissioner's decision on an objection.

Subclause (1) provides that a taxpayer who is not satisfied with the Commissioner's decision on either an objection or an application for an extension of time to lodge an objection, has a right of appeal.

Subclause (2) provides a restriction on the matters that may be considered by the court or tribunal on an appeal. The taxpayer is not entitled to introduce new grounds that did not appear in the objection to the assessment or decision, unless the court or tribunal (as appropriate) is satisfied that the taxpayer should introduce those grounds, and in the interests of justice, gives the taxpayer leave to introduce the new grounds.

Clause 41: Court or tribunal to which an appeal lies

This clause sets out the jurisdictions under which various types of taxation appeals can be heard.

Subclause (1) provides that in the case of an assessment or decision that arises under the Land Tax Assessment Act, the right of appeal is to the Land Valuation Tribunal. The tribunal is given jurisdiction to hear and decide the appeal.

Subclause (2) provides that all other appeals against a decision of the Commissioner lie to the Supreme Court, which is given jurisdiction to hear and decide the appeal.

Clause 42: Time for appeal

This clause sets out the timing arrangements that apply for the lodgement of appeals. In a similar manner to the timing arrangements instituted for the objection provisions, the time period has been standardised to that available in other jurisdictions.

Subclause (1) provides that the appeal must be made within 60 days after the notice of the decision of the objection to which it relates is served on the taxpayer.

Subclause (2) provides the court or tribunal with the ability to extend the time for making an appeal upon application by the taxpayer.

Subclause (3) provides that an application for an extension of time must be made within 12 months of the date of the decision of the objection. The application may be made before or after the 60 day appeal period.

Clause 43: Appeal hearings

This clause sets out the powers of the court or tribunal on an appeal.

It should be noted that refunds payable as the result of an appeal are also subject to the powers set out in sections 37A to 37C of the Limitation Act 1935. This Act has a very stringent "passing on" requirement.

Effectively, it provides that any refund arising from an appeal decision cannot be paid to the person unless he or she can satisfy the court (or the Commissioner under section 37C) that the tax has not been passed on or incorporated into the price of goods and services.

Subclause (1) provides the court or tribunal with the ability, in the case of a decision on an assessment, to confirm the assessment, or direct the Commissioner to reassess the matter with any directions given by the court or tribunal. In the event that the court or tribunal finds that tax has been under assessed (as it has in the past), the court or tribunal can direct the Commissioner to increase the amount of tax payable under this power.

In the case of an appeal in respect of a decision of the Commissioner, the court can confirm, vary, or revoke the decision. In that case, the court can substitute a decision, providing that the Commissioner had the power to make such a decision.

The court can also make consequential and ancillary orders, which would include orders for costs.

Subclause (2) provides that the onus of establishing that an assessment or decision is incorrect or invalid lies on the taxpayer, as is the case with objections.

Subclause (3) applies in the case of a final reassessment where tax has been overpaid. In that case, the taxpayer is entitled to a refund or credit of the amount, and interest payable on the amount refunded or credited as the result of the appeal. The amount is calculated from the date of payment until the date of the refund and is payable at a prescribed rate.

Unlike the objection situation, it was not considered appropriate to put an end point, being the date of the

decision, on the interest calculation in respect of appeals. This is because the circumstances surrounding the appeal process (such as periods to seek leave to appeal to a higher court) make it difficult to make an immediate refund. Accordingly, interest is calculated up until the date the refund is made.

Subclause (4) provides clarification for the purposes of subclause (3).

Paragraph (a) provides that the “final reassessment” is the last assessment made at the direction of a court or tribunal at the time the case is discontinued or otherwise finally determined.

Paragraph (b) provides that the Commissioner is not required to refund or credit an amount to the taxpayer until rights of appeal against the decision have been exhausted or have expired.

This is not a mandatory power, and where the Commissioner loses an appeal and does not wish to exercise further rights to higher courts, he is able to immediately refund the amount. However, where the Commissioner considers it appropriate to appeal to a higher court, this power authorises the Commissioner to retain the overpaid amount until such time as the further appeal is decided.

In the interim, interest would continue to accumulate on any overpaid amount.

Clause 44: Cases stated by Commissioner

This clause provides the power for the Commissioner to state a case on a question of law to the Supreme Court.

Subclause (1) provides that the Commissioner is able to state a case on a question of law, which arises out of a taxation Act, and may forward that case to the Supreme Court.

Subclause (2) provides that the Supreme Court must decide on the question of law and may make ancillary and incidental orders, including orders for costs, as a result of its decision.

PART 5 – PAYMENT AND REFUND OF TAX

Division 1 – Payment

Clause 45: When tax is due for payment

This clause clarifies the payment arrangements that apply in respect to the payment of tax.

Subclause (1) operates subject to the remainder of the section, and provides that if the due date for payment of tax is specified by or worked out in a taxation Act, then that is the date that tax is due for payment.

Subclause (2) provides that in the absence of a provision for a due date for the payment of tax in a relevant taxation Act, then the due date for payment is the date specified on the assessment notice. This provision will only apply where no payment date is specified in the taxation Acts. Each of the taxation Acts includes a specific payment period for all original assessments and self-assessments.

Subclause (3) provides that in the case of payment periods for reassessments, which will not be specified in the taxation Act, the tax is due for payment on the date specified in the assessment notice.

It should be noted that clause 24(5) requires that the due date for payment be at least 14 days after the date of issue of the assessment notice. In circumstances where a statutory time period for payment is set by the taxation Act (eg. 49 days in the case of the Land Tax Assessment Bill 2001), the 14 days will not be relevant.

However, in the case of reassessments that modify a self assessment, the minimum 14 day period will be relevant. This is necessary so that any adjustments for return based taxes are included in the taxpayer's next return.

In the case of non-return based reassessments (eg. stamp duty instruments and land tax), various time periods will apply for the payment of the reassessed tax.

Clause 46: Allocation of payment

This clause sets out how payments received from taxpayers are to be allocated.

Paragraph (a) provides that where it is clear from either circumstances in which the payment is made, or from the taxpayer's written instructions that accompany the payment, the amount is to be allocated in accordance with the instructions or circumstances.

Paragraph (b) provides that in any other case, the payment may be allocated to the taxpayer's tax liabilities as decided by the Commissioner.

Clause 47: Arrangements for instalments and extensions of time

This clause sets out the arrangements by which the Commissioner may approve an extension of time to pay tax or a tax instalment arrangement.

Tax payment arrangements are currently available for land tax, debits tax and pay-roll tax. This clause implements new arrangements for the Stamp Act.

Subclause (1) provides that the Commissioner may approve a tax payment arrangement that extends the time for a taxpayer to pay tax, or provides the ability for the taxpayer to make payments of tax in specified instalments.

Subclause (2) provides that any application made by a taxpayer to the Commissioner in respect of a tax payment arrangement must set out the reasons why the taxpayer requires more time to pay the tax.

Subclause (3) provides that a tax payment arrangement may include conditions providing for the payment and the remission of interest. The interest on a tax payment arrangement will be charged at a prescribed rate, which will be set out in the Taxation Administration Regulations.

The rate would be determined in the same manner as currently implemented for similar provisions in taxation Acts. The rate is now set at 2% above the upper rate quoted on bank overdrafts of less than \$100,000 published in the Reserve Bank of Australia Bulletin.

The tax payment arrangement may also include other conditions the Commissioner considers appropriate. A common example, which is currently used for return based taxes, is that monthly taxation obligations continue to be met, while the arrears which are the subject of a tax payment arrangement are paid by instalments.

Subclause (4) sets out the circumstances where the Commissioner may amend a tax payment arrangement. This may occur with agreement by the taxpayer, or where the conditions of the arrangement provide for the Commissioner to amend the arrangement in given circumstances.

Subclause (5) provides that the Commissioner may cancel a tax payment arrangement where payment is not made in accordance with the arrangement or the

taxpayer fails to comply with other conditions of the arrangement.

Both the amendment or cancellation of a tax payment arrangement are required to be made by the Commissioner giving notice to the taxpayer.

Subclause (6) provides that where a tax payment arrangement is cancelled, the tax outstanding under the arrangement and any interest applicable, become due and payable from either the date of cancellation or the original due date (whichever is the later).

This clause is necessary so that recovery action can be commenced on a quantified debt.

Subclause (7) provides that despite cancellation of a tax payment arrangement, the interest will continue to accrue at a prescribed rate on the amount outstanding until it is paid.

Subclause (8) provides that a decision of the Commissioner in connection with the extension of time to pay tax or the approval of payments in instalments is a non-reviewable decision. This means that no objection right exists in relation to the decision.

Clause 48: No action to compel approval of tax payment arrangement

This clause provides that action cannot be brought in a court that would compel the Commissioner to approve or amend a tax payment arrangement.

Despite the non-reviewable decision that exists in relation to tax payment arrangements, this clause is considered to be necessary to prevent action being taken outside the powers of the Taxation Administration Bill or another taxation Act, which would require the Commissioner to approve a tax payment arrangement where he does not consider it appropriate to do so.

Division 2 – Special tax return arrangements

Clause 49: Approval of special tax return arrangements

This Division sets out powers that allow tax to be paid by return, where payment is ordinarily effected by another method. For example, the existing miscellaneous return powers in section 112V of the Stamp Act allow payment to be made by return in respect of particular stamp duty instruments. The powers in this Division are intended to replace sections 52, 95A and 112V of the Stamp Act.

Upon commencement, it is not expected that special tax return arrangements will be applicable to taxes other than stamp duty, however, this could change in the future.

Subclause (1) provides that the Commissioner may make a special tax return arrangement with a taxpayer or another person to allow them to meet the obligations of a taxpayer under a taxation Act.

Subclause (2) provides that a special tax return arrangement may be made with:

- particular taxpayers in respect of their obligations;
- particular taxpayers in respect of obligations they have jointly with other taxpayers; or
- an agent in relation to obligations of taxpayers for whom they are authorised to act.

It should be noted that the above provisions do not limit the application of subclause (1) in any way.

Subclause (3) provides that a special tax return arrangement is to be made in writing. Furthermore, the arrangements must be made on terms agreed by the Commissioner and the taxpayer.

Clause 50: Content of special tax return arrangement

This clause provides the powers that apply in respect of special tax return arrangements.

Subclause (1) provides that a special tax return arrangement can:

- require the lodging of returns, and the self-assessment and payment of tax in accordance with the arrangements;
- require compliance with obligations imposed under the conditions of the arrangement;
- may exempt the taxpayer or taxpayers to whom it relates from specified administrative requirements of a taxation Act (note that this power is not an exemption provision in respect to the amount of tax a taxpayer is required to pay);
- provide for the manner in which instruments are to be stamped or endorsed with tax paid under the arrangement (this includes endorsements that no tax is payable in respect of an instrument); and

- may require the responsible party to keep specified records.

It is envisaged that a formal conditional agreement will be entered into between the Commissioner and persons who are approved under the special tax return arrangement provisions. In the short term, the Taxation Administration (Consequential Provisions) Bill 2001 contains transitional arrangements to deal with the repeal of sections 52, 95A and 112V of the Stamp Act.

Subclause (2) provides that instruments which are ineffective until registered are required to be included in a return by the responsible party before the instrument is lodged for registration. An example of this would include a transfer of land or share transfer. This ensures that the stamp duty is paid in the return period during which the instrument is relied on.

Subclause (3) provides that the contravention of a condition in a special tax return arrangement is an offence. A maximum penalty of \$20,000 is applicable.

Subclause (4) provides that the taxpayer remains the liable party where a special tax return arrangement exists, despite the fact that the responsible party (who may or may not be the taxpayer) is required to meet obligations under the special tax return arrangement.

Clause 51: Instruments stamped or endorsed under a special tax return arrangement

This clause provides specific stamping and endorsement provisions for instruments that are stamped under a special tax return arrangement.

Subclause (1) provides that an instrument stamped or endorsed in accordance with a special tax return arrangement is to be considered stamped.

This power allows the instrument to be recorded or registered lawfully by bodies such as the Department of Land Administration and company registrars or relied on in court proceedings.

Subclause (2) provides an offence for a person who stamps or endorses an instrument in a manner so as to indicate that the instrument has been properly stamped or endorsed under a special tax return arrangement, without being authorised to properly stamp or endorse the instrument in accordance with conditions of a special tax return arrangement.

This clause is necessary to specifically provide an offence where a non-approved person endorses an instrument. A maximum offence penalty of \$20,000 is applicable.

Clause 52: Lodging returns under special tax return arrangement

This clause sets out the requirements dealing with returns lodged under special tax return arrangements.

Subclause (1) sets out the type of information that must be included in a return. The return must be in a form approved by the Commissioner and contain the information required by the form and the Commissioner. The information must be relevant to the tax type for which the return is being lodged.

Subclause (2) provides that unless the agreement between the Commissioner and the responsible party provides otherwise, the due date for lodging a return under a special tax return arrangement is 15 days after the end of the return period. This is consistent with the current operation of section 112V of the Stamp Act.

Subclause (3) provides that unless the arrangement between the Commissioner and the responsible party provides otherwise, the return period is one month.

Subclause (4) provides that a return lodged by a responsible party (as defined in the Glossary) must be in accordance with the requirements of clause 52 and any additional requirements specified in the special tax return arrangement. Failure to comply with this requirement is an offence, with a maximum penalty of \$5,000 applicable.

Clause 53: Amendment or cancellation of arrangement

This clause deals with the amendment or cancellation of a special tax return arrangement.

Subclause (1) provides that the Commissioner may, by agreement with the responsible party, amend the conditions of a special tax return arrangement.

Subclause (2) provides that the Commissioner may cancel a special tax return arrangement by service of a notice on the responsible party.

A “responsible party” is considered to be a taxpayer under paragraph (b) of the definition of “taxpayer” in the Glossary. As such, the responsible party has a right to object to a decision to cancel a special tax return arrangement.

Division 3 – Refunds of tax

Clause 54: Power to make refund

This clause sets out the refund powers of the Commissioner. These powers should be read in conjunction with the reassessment powers of the Commissioner, as most refunds will be the result of a downwardly reassessed tax liability.

Subclause (1) provides that the Commissioner must refund tax to a taxpayer where:

- as a result of a reassessment, it appears an overpayment has been made;
- he is satisfied on application for a refund, that an overpayment of tax has been made; or
- in circumstances of a particular case, the Commissioner is required by a taxation Act to make a refund of tax.

The refund power is conditioned by subclauses (2), (3) and (4).

Subclause (2) authorises the crediting of refunds by the Commissioner to satisfy the taxpayer's other tax obligations.

This allows the Commissioner to credit the amount of the refund to any of the taxpayer's existing or future tax liabilities, instead of repaying an amount to be refunded. In the case of future tax liabilities, the taxpayer has a right to request the Commissioner to repay any amount in excess of \$50.

This proviso has been inserted to reflect current practice in respect of return based taxes, where it is common for overpayments to be maintained on the taxpayer's "account", and set off against the taxpayer's next monthly return.

In certain circumstances, usually where the refund amount is substantial and would require several return periods to be absorbed, the taxpayer will request a refund of the overpayment. The clause minimises administrative overheads while still protecting the taxpayer's right to the refund amount.

Subclause (3) provides the circumstances where a refund application under subclause (1) may be made.

Under paragraph (a), applications may be made on grounds where refunds are authorised or required by a

taxation Act. There are few powers in the taxation Acts that are direct refund provisions. It should be noted that the direct refund power is very limited in its application.

Most exemptions and concessions in the taxation Acts require the Commissioner to make a reassessment if he is satisfied that the exemption or concession conditions are met. The overpaid amount must then be repaid under subclause (1)(a).

Paragraph (b) provides that the Commissioner may also refund tax where the amount paid exceeds the amount of an assessment.

This might occur, for example, as a result of the transposition of cheque figures that results in an overpayment, or where two different parties pay the same assessment. A refund is not permitted under this clause if it would require the tax liability to be reassessed.

Where a refund does require the alteration of an assessed amount, the taxpayer is required to lodge an objection under Part 4 or an application for a reassessment under Part 3. Alternatively, the Commissioner may undertake the reassessment of his own volition and refund the amount.

Subclause (4) provides that an application for a refund under this clause is required:

- within a period fixed by a taxation Act for making an application; or
- where no period is fixed, within five years of the date of the overpayment.

Clause 55: Refund to be passed on in certain cases

This clause provides the circumstances when a taxpayer is required to pass on a refund to a third party.

Subclause (1) limits the application of this section to debits tax, pay-roll tax and stamp duty in relation to rental business and insurance.

These taxes are commonly passed on to third parties by the taxpayer who is liable (or jointly liable) to pay the tax. In relation to pay-roll tax, the tax incidence is capable of being passed on under the employment agent provisions of the Pay-roll Tax Assessment Act.

Subclause (2) provides that where a taxpayer has:

- paid tax out of money provided by a third party; or

- obtained reimbursement from a third party for payment of tax,

any tax which is refunded or credited to the taxpayer must be reimbursed to the third party.

Subclause (3) provides that where the money was wholly paid or wholly reimbursed by the third party, the whole amount must be refunded to the person by the taxpayer. No deduction for costs incurred can be made.

Subclause (4) provides that where the amount was only partly paid or reimbursed by the third party, the taxpayer is required to pass the appropriate portion of the refund or credit to the third party. Again, no deduction for costs incurred can be made.

Subclause (5) sets the time limits for making any reimbursement required under subclauses (3) and (4).

Paragraph (a) requires the taxpayer to make the reimbursement to the third party within 90 days of the refund being paid or credited to them by the Commissioner. The Commissioner has the ability to extend the 90 day period.

Paragraph (b) provides that where the taxpayer does not make the reimbursement within the 90 days, he is required to repay the amount of the refund to the Commissioner within 7 days of the end of that period.

Where the refund was credited to the taxpayer, he must request the Commissioner to cancel the credit in his favour within 7 days of the end of that 90 day period.

If the taxpayer fails to make the reimbursement or repayment as required by this clause, an offence is committed. The maximum offence penalty is \$20,000.

Subclause (6) provides that the Commissioner is also able to recover from the taxpayer the amount that should have been, but was not, repaid under subclause (5)(b) as unpaid tax.

Subclause (7) provides that where the Commissioner does not instigate recovery action, no action can be brought in a court by any person to compel him to take or refrain from taking recovery proceedings.

Division 4 – Power to waive or write off liability**Clause 56: Waiver of tax**

This clause enables the Commissioner to waive tax or another amount payable under a taxation Act.

Subclause (1) provides that the Commissioner may waive the payment of tax or other amounts payable under a taxation Act up to a prescribed limit.

It is intended to prescribe the limit of tax that can be waived in the Taxation Administration Regulations. It is intended that the amount will only be a small amount, in the vicinity of \$20.

Subclause (2) provides that where the Commissioner waives the payment of tax or other amount, the waiver extinguishes the liability to make payment of the tax. If the liability was not extinguished, there would be no distinguishing feature between waived tax and tax written off under clause 57.

Subclause (3) provides that the Commissioner's decision to waive or not to waive tax is non-reviewable.

Clause 57: Writing off tax liability

This clause provides powers for the writing off of tax liabilities.

Subclause (1) provides that the Commissioner is able to write off a tax liability or a liability for any other payment under a taxation Act, if he is satisfied that action or further action to recover the tax is not practicable or is unwarranted.

This power is commonly used where there is little prospect of successful recovery and the cost of the recovery action is higher than the debt being recovered.

Subclause (2) provides that writing off a tax liability does not extinguish the liability or prevent later proceedings to recover the amount. These provisions afford similar treatment to tax debts that apply through accounting conventions to bad debts in a commercial environment.

Subclause (3) provides that the Commissioner's decision to write off a liability or not is non-reviewable.

Clause 58: Powers subject to Financial Administration and Audit Act 1985

The powers in relation to waiving and writing off tax liabilities are subject to the provisions of the Financial Administration and Audit Act 1985. That Act limits the Commissioner's powers in relation to the amount of tax that is capable of being written off by the Commissioner. Instructions under the Financial Administration and Audit Act provide appropriate approval levels for writing off debts to persons such as the Commissioner, Minister and Governor.

Clause 59: No action to compel waiver or writing off

This clause provides that action in a court cannot be taken to compel the Commissioner to waive the payment of tax or write off a tax liability.

PART 6 – RECOVERY OF TAX

Division 1 – Recovery generally

Clause 60: Recovery of unpaid tax

This clause specifies how unpaid tax that arises under taxation Acts is to be treated.

Subclause (1) provides that unpaid tax is to be a debt due to the State.

Subclause (2) provides that the Commissioner is able to recover unpaid tax on behalf of the State in any court of competent jurisdiction.

It should be noted that the "State" has been used in this context to mean the State as an entity. This has been distinguished in the taxation Acts by the replacement of references to the "State" with "Western Australia". In the taxation Acts, "Western Australia" is used in a geographical context.

Clause 61: Power of court to order payment of tax

This clause provides a power for the court to order outstanding tax (including interest and law costs) to be paid, where a taxpayer is convicted of an offence for a matter under a taxation Act.

For example, where an offence prosecution is instigated for the dishonour of a cheque, the court is authorised to order the person to make payment of the tax outstanding, in addition to the finding on the offence prosecution.

Clause 62: Recovery of costs and interest

This clause provides that for the purposes of Part 6, the term “tax” is to include “costs” incurred by the Commissioner in relation to the proceedings for the recovery of tax.

The term “costs” refers to legal costs directly incurred by the Commissioner in relation to recovery proceedings.

This clause also provides that interest payable under a tax payment arrangement is “tax” for the purposes of recovery under this Part, as is the costs incurred for lodging a memorial under clause 70 or 73.

The ability to prescribe other costs has been inserted in this section. This power has been inserted for flexibility. At this stage, it is not intended to prescribe any costs.

Clause 63: Recovery of tax in cases of joint liability

This clause relates to the recovery of tax in cases of joint liability.

Subclause (1) provides that where two or more persons are jointly liable for tax, the whole of the amount may be recovered from any one or more of the persons.

The taxation Acts clearly provide those circumstances where two or more persons would be jointly liable for tax.

Subclause (2) provides that this clause does not affect the right of a jointly liable taxpayer who pays the tax, to seek an appropriate contribution from other persons who are jointly liable for the tax.

Clause 64: Notice of administrator’s appointment

This clause places an obligation on a statutory administrator to notify the Commissioner of their appointment in writing.

This is required to ensure the Commissioner has an early indication of potential bad debts and it is particularly appropriate in cases where a company may have a pay-roll tax liability, but has not been registered.

Subclause (1) requires that all statutory administrators be required to notify the Commissioner of their appointment within 14 days. The Commissioner has the power to extend the 14 day notification period.

A statutory administrator who fails to give notice of appointment as required by this clause commits an offence. A penalty of \$5,000 is provided.

Subclause (2) provides the ability to prescribe circumstances when notification under subclause (1) would not be required. It is not intended at this stage to include any prescribed circumstances, however, it was considered necessary that a degree of flexibility be included in the clause.

Subclause (3) provides a list of persons who are considered to be statutory administrators of a taxpayer's assets for the purposes of this clause. These persons are:

- a liquidator of a corporate taxpayer;
- a receiver or receiver and manager of the whole or part of a taxpayer's property;
- a taxpayer's trustee in bankruptcy; or
- persons who hold a prescribed position or prescribed powers in relation to a taxpayer or taxpayer's affairs.

It is proposed to prescribe common classes of statutory administrators under the last point. The prescription will appear in the Taxation Administration Regulations and is intended to include:

- a provisional liquidator;
- an official manager or official receiver;
- an agent mortgagee in possession; and
- a controller or managing controller.

Clause 65: Power to garnishee

This clause sets out powers in relation to the garnishee of taxation debts. This section is based on existing legislation, namely section 31 of the Pay-roll Tax Assessment Act 1971. This power is also consistent with section 218 of the Income Tax Assessment Act 1936.

In this regard, it is considered that previous case law in relation to section 218 of the Income Tax Assessment Act can be relied on, particularly where it relates to the issue of notices and the assignment of debts. Two relevant cases are *Clyne and Anor v DC of T and Anor* 81 ATC 4429 and *Zuks v Jackson McDonald and Anor* 96 ATC 4588.

Subclause (1) provides that the Commissioner may serve a garnishee notice on a person, if he believes upon reasonable grounds that the garnishee:

- holds or may receive money for or on account of a taxpayer;
- is liable or may become liable to pay money to a taxpayer; or
- has authority to pay money to a taxpayer.

Subclause (2) provides that a garnishee notice is one requiring the garnishee to pay money in his possession or control to which the taxpayer becomes entitled.

The garnishee is required to pay that money to the Commissioner up to the amount of a liability of tax stated by the Commissioner in the notice.

The garnishee notice must also fix a time for payment, but that time cannot be before the taxpayer would have been entitled to the money payable by the garnishee (ie. the period dictated by the taxpayer's terms of credit).

Subclause (3) provides that the Commissioner may serve a garnishee notice on the garnishee even though the taxpayer's entitlement to the money may be subject to unfulfilled conditions. Once the taxpayer's entitlement is unconditional, the garnishee is required to pay the money to the Commissioner.

Subclause (4) requires the Commissioner to serve a copy of the garnishee notice on the taxpayer. The methods of service are provided in clause 108.

Subclause (5) provides that where a garnishee notice has been issued to a person and the taxpayer's liability is subsequently wholly or partially discharged before the due date in the garnishee notice, the Commissioner is required to inform both the garnishee and the taxpayer of the payment. A notice is required to be given to each person with this information and is also required to state:

- whether their obligations for payment have been partially or wholly discharged; and
- how the garnishee's obligation under the garnishee notice previously issued is affected by the discharge or partial discharge of the liability.

Subclause (6) provides an offence where the garnishee fails to comply with a garnishee notice. The maximum penalty amount is \$20,000.

Subclause (7) provides that a garnishee who makes payment to the Commissioner under a garnishee notice is taken to have satisfied his obligation to make payment to the taxpayer.

Clause 66: Recovery from partnerships and other associations

This clause relates to the recovery of tax from partnerships. It provides that where the members of a partnership are jointly liable for tax, the whole of the amount may be recovered from any one or more of the partners.

Clause 67: Recovery from directors of body corporate

The provisions in this clause have been modelled on similar provisions that operate in respect of PAYG tax at a Federal level. It should also be noted that New South Wales amended its Pay-roll Tax Act 1971 in 1999 to introduce similar arrangements. These arrangements are generally supported by industry in New South Wales, as they deal with situations where certain companies may otherwise gain a competitive advantage through failing to address pay-roll tax liabilities.

While the clause will operate in certain circumstances to make directors jointly liable with a body corporate for the payment of tax, the primary purpose of the provision is to prevent protracted insolvent trading by companies. It could also be used in circumstances where solvent companies obtain a competitive advantage by habitually refusing to lodge pay-roll tax returns.

It is considered that the Corporations Act remedies available to address insolvent trading are difficult to effect in a manner that prevents the accumulation of large taxation debts. Amending the Corporations Act to deal with this issue is not considered appropriate.

Accordingly, these provisions have been inserted to provide a mechanism to address the problem of corporate insolvent trading.

It is acknowledged that the application of this power to the relevant State taxation debts, arising under the Stamp Act, Pay-roll Tax Assessment Act, Land Tax Assessment Act and Debts Tax Assessment Act, are somewhat different to the circumstances that gave rise to this equivalent power being instituted at a Federal

level. However, it is considered appropriate that this power be available to ensure that company directors have due regard to the manner in which the company incurs and meets its taxation obligations.

Subclause (1) provides that where the Commissioner issues a notice of assessment to a body corporate and that notice is not paid by the due date, the Commissioner is able to give notice to the directors of a body corporate, informing them that they will become jointly and severally liable for the payment of tax.

The directors are able to avoid the imposition of joint and several liability by causing the body corporate to remedy the tax default within 28 days of the date the notice is issued.

The Commissioner is required to issue the notice to all directors of the body corporate.

It should be noted that this power cannot be implemented unless the Commissioner has made an assessment of tax and issued an assessment notice in respect of that liability. The notice under this clause cannot be issued if the taxpayer has failed to lodge returns.

In this regard, those directors who are directors of the body corporate at the time the notice is issued, will become aware of the outstanding tax liability and the possibility that they could become jointly liable upon issue of the notice, regardless of whether they were a director at the time the taxation debt was incurred.

Accordingly, the argument that the directors were unaware of the tax liability is not available, as this clause places prospective obligations on all directors, commencing from the issue of the notice under this clause.

Subclause (2) provides that a notice issued under subclause (1) may only be given by serving it personally on a director. In the event that the Commissioner cannot serve the notice personally after exercising due diligence, he is able to send a copy of the notice by prepaid post to the director at his or her last known personal or business address. The Commissioner must use a method of delivery requiring proof of delivery to ensure the notice has been received at the director's address.

Subclause (3) sets out the circumstances when the body corporate is deemed to have remedied the tax default. These are:

- by payment of the liability;
- where the Commissioner offers the body corporate an opportunity to enter into a tax payment arrangement, the entering into that arrangement by the body corporate on conditions satisfactory to the Commissioner;
- by the body corporate entering into voluntary administration under Part 5.3A of the Corporations Act; or
- if the body corporate goes into liquidation.

Subclause (4) provides that if the body corporate is unable to meet the obligations in subclause (3)(a) and (b), the directors collectively have the ability to cause the body corporate to enter into voluntary administration.

In addition, failure to remedy the default within the time specified in the notice causes the directors to become jointly and severally liable with the body corporate for the payment of the tax liability assessed. This provision actually imposes the joint liability, whereas subclause (1) provides a warning to the directors that they may become jointly and severally liable.

Subclause (5) provides that where the body corporate remedied the tax default by entering into a tax payment arrangement under subclause (3)(b), but later fails to comply with a condition of the arrangement, the default revives and the Commissioner is able to serve another notice on the directors to remedy the default.

Subclause (6) provides a defence for directors, in circumstances where they are able to establish that:

- they took all reasonable steps possible in the circumstances to get the body corporate to remedy its default; or
- they were unable to take steps to cause the body corporate to remedy its default through illness or another proper reason.

Subclause (7) provides an indemnity to the extent that a director who pays tax, or from whom tax is recovered under this clause, is entitled to be indemnified by the body corporate for the tax paid by them or recovered

from them. The Commissioner does not make the indemnification.

Subclause (8) provides that this clause does not apply to a director of a body corporate to which the Statutory Corporations (Liability of Directors) Act 1996. The removal of those directors from these provisions is appropriate, given that the inherent problem being addressed by this provision does not occur with statutory corporations.

Division 2 – Charges on land

Clause 68: Charge on land to secure land tax

This clause provides for unpaid land tax to be a first charge. The clause is based on the existing power in section 45 of the Land Tax Assessment Act 1976.

Subclause (1) provides that unpaid land tax is a first charge on the land in respect of which land tax is payable. The first charge arises whether or not the land tax is due for payment or a memorial has been registered.

Subclause (2) provides that the Commissioner may lodge a memorial over land where land tax is not paid by the due date.

Subclause (3) provides that land tax is considered not paid by the due date when a cheque is dishonoured on first presentation (even though the due date for payment may not have arrived). This allows a memorial to be lodged on a property for land tax purposes as soon as a cheque is dishonoured, despite the fact that the tax payment period may not have expired.

Subclause (4) ensures that a charge on land arising under subclause (1) has priority over all other encumbrances on the land. This applies regardless of whether a memorial has been lodged or not.

Subclause (5) provides that the taxpayer's liability (ie. the owner's liability in the case of land tax) to pay land tax continues until the tax is paid, despite any disposition of the land. This provision allows the land tax debt to stay with the land. This provision is the reason for the issue of a land tax certificate at any property settlement, to ensure that the purchaser does not inadvertently incur the land tax debt of the vendor.

Subclause (6) further clarifies this, by providing that the land tax liability passes to the purchaser of the property.

Settlement processes and the certificates issued under clause 72 provide the ability for the purchaser to ascertain whether a liability exists on property prior to finalisation of a purchase.

Subclause (7) provides that where land tax is assessed in relation to several separate lots or parcels of land, that the charge arises in respect of each separate lot or parcel.

In these circumstances, the amount secured by the charge on an individual lot or parcel is taken to be a proportion of the total amount of unpaid tax equivalent to the proportion that the particular lot or parcel bears to the total unimproved value of the land.

This provision allows the land tax payable to be apportioned between separate lots or parcels. However, it should be noted that subclause 73(2) provides that the Commissioner has no obligation to release a charge where land tax in relation to a particular lot or parcel is paid, where the charge secures a number of lots or parcels.

Subclause (8) operates to exclude from the operation of this clause land owned by or vesting in:

- the State;
- any agency or instrumentality of the State;
- a local government; or
- any other public statutory authority.

Clause 69: Charge on land to secure stamp duty

This clause provides the circumstances where a memorial may be registered against land. This clause differs from clause 69, where a first charge arises automatically upon the existence of a liability for land tax.

Subclause (1) lists a number of items of the Second Schedule to the Stamp Act under which duty on an instrument in relation to land may be charged. If duty assessed under any of those items is not paid by the due date, the Commissioner is able to lodge a memorial and create a charge on the land. It should be noted that the memorial could only be lodged on the land if the duty arose due to a dealing on that land.

Subclause (2) provides that if a taxpayer fails to pay duty under Part IIIA of the Stamp Act by the due date, a

memorial can be lodged over the land that gave rise to the liability or land owned by a person related to the taxpayer.

Subclause (3) relates specifically to duty assessed under section 76AA of the Stamp Act (as amended by the Stamp Amendment Bill 2001). Where such an assessment is made, the Commissioner is able to lodge the memorial at any time thereafter, regardless of whether the due date for payment of the duty has passed. The memorial can be lodged over the land in relation to which the duty is payable, and land owned by a person who is related to the taxpayer.

Subclause (4) clarifies that the charge on the land under subsection (1), (2) or (3) arises when the memorial is registered.

Subclause (5) provides that stamp duty is considered not paid by the due date when a cheque is dishonoured on first presentation (even though the due date for payment may not have arrived). This allows a memorial to be lodged on a property for stamp duty purposes as soon as a cheque is dishonoured, despite the fact that the payment period may not have expired.

Subclause (6) provides that for the purposes of this clause, a person is taken to be related to a taxpayer:

- if they are both bodies corporate and one is a subsidiary of the other within the meaning of section 76A1(4) of the Stamp Act; or
- if the person is a body corporate and a beneficiary under a trust or potential beneficiary under a discretionary trust, of which the taxpayer is the trustee.

This definition is necessary to accommodate the repealed memorial provisions of section 76AC of the Stamp Act.

Clause 70: Prohibition on dealing with certain charged land

This clause contains certain requirements in relation to land that has a memorial lodged on it under section 68 or 69.

Subclause (1) provides that if the memorial requires, a Registrar must obtain the express permission of the Commissioner before he can register a dealing with the land over which the Commissioner has lodged a memorial. This provision does not apply if the

Commissioner has lodged a memorial releasing the charge and the memorial of the release has been registered.

Subclause (2) provides that the registration of a memorial that prevents the Registrar from registering a dealing with the land does not:

- prevent a person from lodging an instrument relating to a dealing with the Registrar of Titles; or
- prevent the Registrar from accepting the instrument.

Subclause (3) reinstates the status of instruments dealing with land that are lodged under subclause (2,) after the registration of a memorial releasing the land from a charge.

Clause 71: Priority of charge

This clause governs the priority of a memorial registered on land.

Subclause (1) provides that the memorial is a first charge on the land to which it relates. The memorial of charge has priority over all other mortgages, charges and encumbrances on the land.

Subclause (2) provides that where another statutory charge on that particular land already ranks as a first charge under another Act, the priority of the Commissioner's charge and the other statutory charge is to be determined according to the order of registration.

Clause 72: Certificate of land tax secured by charge

This clause is equivalent to section 48 of the Land Tax Assessment Act 1976, which deals with the issue of a certificate of land tax liability upon the sale of land. It is necessary because a charge attaches to the land, regardless of who may be the owner.

An appropriate mechanism is necessary for prospective purchasers to determine their potential liability for land tax. As a charge may also arise in respect of registered memorials for stamp duty purposes, the certificate provisions have been extended to indicate whether a memorial has been lodged on a property.

Subclause (1) provides that, upon application by the owner or a purchaser of land, the Commissioner is required to issue a certificate that states whether the land is subject to a charge. This provision also applies

where the owner or purchaser's agent makes an application on behalf of the owner.

If a charge exists, the certificate must also state the amount of unpaid land tax or stamp duty or give an estimate of the unpaid amount in the case of land tax that has not been assessed.

Subclause (2) provides that if a certificate does not disclose the existence of a charge, the Commissioner is unable to assert that the charge exists. Moreover, where the amount stated in the certificate is less than the actual tax liability, the Commissioner is obligated to accept the lesser amount stated in the certificate.

Subclause (3) provides that where the amount of tax payable indicated by a certificate is an estimate of land tax, the Commissioner is not restricted from assessing land tax at an amount that differs from that stated in the certificate.

For example, a property is sold on 31 July 2002. As land tax assessment notices do not usually issue until approximately the beginning of September each year, the amount stated in the certificate of liability is an estimate of the amount of land tax payable for the 2002/03 assessment year. In this case, the Commissioner would not be bound by the estimate in the certificate should the amount ultimately payable exceed the estimate.

However, if the property was sold on 11 November 2002 at which time an assessment had already been made, a certificate that indicates a lesser amount payable than the actual would be binding on the Commissioner. This is provided by subclause (2)(b), as the amount disclosed in the certificate which is covered by the charge (arising under clause 68), is not an estimate of land tax.

Subclause (4) provides that the Commissioner may charge prescribed fees for providing a certificate. The fees currently prescribed under the Land Tax Assessment Act 1976 are to be prescribed for the purposes of this Bill.

Clause 73: Release of land from charge

This clause contains powers in relation to the release of land from a memorial.

Subclause (1) provides that where a memorial is registered, the Commissioner is required to serve on the taxpayer an instrument releasing the land from the

charge upon payment of the amount secured by the charge.

Subclause (2) provides an exception where land tax is assessed in relation to a number of separate lots or parcels. In these cases, the Commissioner is not obliged to release a particular lot or parcel from the charge unless the whole amount of land tax has been paid.

Clause 74: Form of memorial

This clause sets out the form a memorial must take.

Subclause (1) authorises the Registrar of Titles to approve the form of memorials lodged under the Taxation Administration Act.

Subclause (2) requires a memorial to be in a form approved by the Registrar of Titles.

Clause 75: Registration of memorials and releases

This clause sets out the provisions applying to the registration and release of a memorial.

Subclause (1) requires the Registrar of Titles to register a memorial lodged under the Taxation Administration Act.

Subclause (2) requires the Registrar of Titles to register the release of land from a charge on application by the owner, where such application is accompanied by an instrument of release referred to in clause 73(1).

Clause 76: Notification of mortgagees

This clause requires the Commissioner to notify all mortgagees who hold registered mortgages over the land of the registration of a memorial. This should take place when the memorial is registered, however, failure to do so does not invalidate the registration of the memorial.

Clause 77: Orders for sale of land

This clause provides the circumstances in which the Commissioner may make an application to the Supreme Court for an order for the sale of land where tax remains unpaid.

Subclause (1) provides that if tax has remained unpaid for 18 months or more after the registration of a charge, the Commissioner is able to apply for an order to the Supreme Court for the sale of the land (or part of it) to satisfy the outstanding liability. This power has standardised the time periods currently found in the

Land Tax Assessment Act and Part IIIA of the Stamp Act.

Subclause (2) provides that a single application for the order for sale of land may be made by the Commissioner in relation to a number of separate lots or parcels, providing those lots or parcels are in the same ownership. Where the lots or parcels are registered to different owners, individual orders must be sought.

Subclause (3) provides that at least 6 months prior to the Commissioner making an application to the Supreme Court for the order for sale of land, he is required to publish a notice that he intends to apply for the order.

The notice must be published in a newspaper that generally circulates throughout Western Australia and another newspaper that generally circulates throughout Australia. This requirement replaces the impractical existing land tax provisions that require a publication to be made in the Government Gazette, a publication not read by the majority of taxpayers.

This subclause also provides that if the Commissioner is aware of the whereabouts of the owner of the land, he is required to give notice of the intended application to the owner.

Furthermore, the Commissioner must also give notice to the holders of registered encumbrances over the land, if the Commissioner knows that person's whereabouts. This has been inserted to ensure that other encumbrance holders are aware of the order and can seek to have their interests protected.

Subclause (4) provides that upon an application being made for an order for the sale of the land, the Supreme Court may order the sale and make incidental orders. The orders may:

- concern how the sale is to be conducted;
- authorise an officer of the Court to execute appropriate documents and to do any thing else necessary to effect the sale and conveyance of the land;
- authorise the Registrar of Titles to do anything necessary to register a purchaser's title, despite the fact that a Certificate of Title or other ownership document may not be produced to the Registrar;

- direct that the proceeds of sale are to be dealt with in a certain manner (note that this is subject to the provisions of subclause (5)); and
- deal with costs of proceedings and other incidental matters.

Subclause (5) provides that land remains subject to any lease, easement or other encumbrance after a Supreme Court order to discharge the land from any mortgage is made. This reinstates the rights of encumbrance holders where no monetary obligation is secured.

Subclause (6) provides that the proceeds of the sale of the land are to be applied in the following manner:

- in the first instance, for the payment of the costs of the sale;
- in the second instance, in payment of costs of proceedings as far as costs are, by the order of the Court, to be paid out of the proceeds of the sale;
- in the third instance, in discharge of the outstanding tax liability which was secured by the charge;
- in the fourth instance, in discharge of any outstanding monetary liability which was secured by a mortgage or other encumbrance securing a monetary obligation; and
- any remaining balance is to be applied as directed by the Court.

Clause 78: Means of enforcement not limited to charge

This clause provides that the Commissioner is not restricted to proceeding with recovery action through the registration of a charge (ie. where a charge is registered, the Commissioner may still proceed to recover the debt by other methods, such as through an appropriate court action).

PART 7 – TAX RECORDS

Clause 79: How long records are to be kept

This clause provides a general tax record keeping time period, where records required to be kept under a taxation Act should be retained for 5 years from the later of:

- the date it was made, or where relevant, obtained by the person; or

- where it relates to a transaction, from the date the transaction to which the record relates is completed.

The term “tax record” is defined in the Glossary.

A maximum offence penalty of \$20,000 is provided.

Clause 80: Form of tax records

This clause sets out the form in which tax records are to be kept for the purposes of a taxation Act.

Subclause (1) provides that tax records must be kept:

- in the form of a document in the English language;
- in another form that can be readily converted into a document in the English language; or
- in another form from which a document in the English language can be readily reproduced.

Further acceptable record keeping forms may be prescribed by regulation.

Failure to keep records in this form is an offence, for which a maximum penalty of \$20,000 is payable.

Subclause (2) provides that the Commissioner may request a person to convert documents not kept in English into the English language within a reasonable time.

Subclause (3) provides that where a person does not comply with the request, the Commissioner may have the tax record converted and is permitted to recover reasonable costs of translation or conversion as a debt due from the person who was required to keep the tax records.

Clause 81: Where tax records are to be kept

This clause sets out where tax records are required to be kept.

Subclause (1) provides that tax records required to be kept under a taxation Act must be kept in Western Australia. Exceptions are permitted where the:

- taxation Act specifically allows tax records to be kept elsewhere;
- Taxation Administration Regulations allow tax records to be kept elsewhere; or

- Commissioner gives approval to the person required to keep the tax record to keep it elsewhere.

A maximum penalty of \$20,000 is provided.

It is intended that the Taxation Administration Regulations will authorise certain types of tax records to be kept outside of Western Australia. This will include, for example, tax records required to be kept by interstate employers in relation to pay-roll tax.

Subclause (2) provides that even where tax records are authorised to be kept out of Western Australia, they must be brought into Western Australia if required by the Commissioner. The Commissioner must allow a reasonable time for the tax records to be brought into Western Australia.

Subclause (3) provides that a person who does not comply with subsection (2) commits an offence. A maximum penalty of \$20,000 is also provided.

Subclause (4) provides that the Commissioner may recover, as a debt due, any costs reasonably incurred by him as a result of a person not complying with the requirement to keep the tax records in Western Australia or to bring the tax records into Western Australia.

Subclause (5) has been inserted with a specific Stamp Act scenario in mind. It is in relation to a superseded version of section 16 of that Act, which provided that the nexus of an instrument to Western Australia was related to the presence of the document in this State.

The subclause states that where a tax record is brought into Western Australia under a requirement of this section, it does not give rise to a tax liability that would not have existed if the tax record had not been brought into Western Australia.

As the amendment to section 16 described above did not apply retrospectively, it is considered inequitable that this record keeping obligation should operate to create a liability where none previously existed.

Clause 82: Failure to keep proper tax records

This clause provides for an offence for persons who fail to keep proper tax records.

This provides that it is an offence to:

- make a false or misleading entry in a tax record, knowing that the entry is false or misleading;
- keep a tax record knowing that it is false or misleading in a material particular; or
- wilfully damage or destroy a tax record.

A maximum penalty applies of \$20,000, plus 3 times the amount of tax avoided or potentially avoided if the tax record had been accepted as true.

Clause 83: General and specific exemptions

This clause provides a number of general and specific exemptions to the tax record keeping requirements.

Subclause (1) provides that an exemption which has general application in respect of a requirement to keep a tax record under a taxation Act may be made in the Taxation Administration Regulations. The Regulations may also provide an exemption in relation to incidental requirements that relate to the keeping of a tax record.

Subclause (2) provides a more specific exemption from tax record keeping requirements by allowing the Commissioner to, by a notice issued to a person, exempt the person from a requirement to keep a tax record under a taxation Act. The Commissioner may also exempt the person from incidental requirements that arise from the keeping of the tax record.

Subclause (3) provides that any exemption given under this clause may be conditional on certain factors, which are specified in the appropriate regulation or notice.

Subclause (4) gives the Commissioner the power to amend or cancel an exemption, by giving notice to the person to whom he has approved the exemption under subclause (2).

PART 8 – INVESTIGATIONS

This Part contains investigation provisions that will apply in respect of the specified taxes. The Part has also incorporated powers that currently appear in the Taxation (Reciprocal Powers) Act 1989. It is intended that these provisions will eventually replace that Act, however it still operates in the short term in relation to the Fuel Suppliers Licensing Act

1997 and the Financial Institutions Duty Act 1983. These two Acts are still operational to allow all investigations and assessments to be finalised. Once that is completed, the Taxation (Reciprocal Powers) Act will be repealed.

The investigation powers in the current taxation Acts vary widely. With the exception of the powers relating to the legal professional privilege offence contained in clause 94, the majority of powers set out in this Part already appear in Acts administered by the Commissioner. It should be noted that the inclusion of clause 94 is not intended to alter the common law relating to legal professional privilege. However, the clause does provide an offence for the deliberate abuse of the privilege.

The provisions of this Bill have, with few exceptions, been standardised to the strongest power existing in the taxation Acts. Such standardisation is considered necessary, in light of practices used by persons who wish to illegally minimise their tax obligations.

It is unfortunate that many of the powers in this Part of the Bill have been found to be necessary. From an administrative perspective, these powers are exercised in respect of a minor proportion of taxpayers. However, without these powers, the minority is able to frustrate the revenue collection process. This often gives the minority a taxation benefit relative to the general taxpaying public. Such a benefit can often be used as a competitive advantage in a commercial environment.

Division 1 – Investigations

Clause 84: Investigations

This clause sets out the circumstances in which an investigation may be conducted.

The clause allows the Commissioner to carry out an investigation for any one or more of the purposes listed. In earlier drafts of this Bill, this provision contained only the “catch-all” clause in paragraph (f).

However, paragraphs (a) to (e) have been inserted to give a fuller description of the circumstances where an investigation may be carried out.

Clause 85: Investigations for the purposes of recognised revenue laws

This clause authorises investigations across State and Territory borders. It provides the mechanism for Western Australian investigators to conduct investigations on behalf of other jurisdictions.

It should be noted that the corresponding reciprocal investigation Acts of other jurisdictions authorise:

- the Western Australian Commissioner of State Revenue and his investigators to conduct investigations in other jurisdictions; or
- the Commissioners and investigators in other jurisdictions to conduct investigations on behalf of the Western Australian Commissioner.

Subclause (1) provides that the Commissioner may, by agreement with a corresponding Commissioner, authorise the corresponding Commissioner to carry out investigations under this Part for the purposes of a recognised revenue law.

A “recognised revenue law” is defined in the Glossary as a law of another State corresponding to a taxation Act, or a law of the Commonwealth or another State declared by regulation to be a corresponding revenue law.

For the purposes of this clause, the Commissioner may authorise the corresponding Commissioner to carry out an investigation under this Part in Western Australia for the purposes of, for example, the Victorian Duties Act 2000.

This is permitted, as there is a Victorian Duties Act equivalent in Western Australia.

This subclause also authorises the Commissioner, by agreement with the corresponding Commissioner, to carry out an investigation under this Part for the purposes of a recognised revenue law. Under this scenario, the Western Australian Commissioner would conduct the investigation in Western Australia on a matter pertaining, for example, to the Victorian Duties Act on behalf of the corresponding Commissioner.

Subclause (2) provides that the Commissioner may only exercise reciprocal investigation powers if the law of the appropriate jurisdiction authorises, either in a Taxation Administration Act or a reciprocal powers Act, reciprocal investigations by other jurisdictions.

Subclause (3) provides that for the purposes of reciprocal taxation investigations, references in this Bill to “tax” are to be read as if it were a reference to the tax payable under the recognised revenue law. References

to “tax liabilities”, “taxation Acts” or “contraventions” are also similarly applied.

Subclause (4) provides that where the Commissioner authorises a corresponding Commissioner to carry out a reciprocal taxation investigation, references in this Part to:

- the “Commissioner” extend to the “corresponding Commissioner”;
- an “investigator” extends to persons who are authorised by the corresponding Commissioner to take part in the investigation; and
- an investigator’s identity card extends to include an identification card or other certificate provided under the law of the relevant jurisdiction.

Division 2 – Obtaining tax records and other information

Clause 86: Requirements to provide information and tax records

This clause provides the Commissioner with the ability to require answers to oral or written questions and for relevant material to be provided.

Subclause (1) allows the Commissioner to require a person to provide oral or written answers to specified questions or to produce relevant material in the person’s possession or control.

This power extends the current equivalent provisions under the taxation Acts (with the exception of the Land Tax Assessment Act), to the extent that it allows the Commissioner to require a person to produce specified relevant material.

The current provisions only apply in respect of information. The extension has been included, as its current form has been used to frustrate requests by arguing about the nature of “information”.

Subclause (2) provides that a requirement by the Commissioner under this section may be made orally, if an oral response is required or in any other case, in writing.

Subclause (3) provides that a person must provide answers to questions that are verified by a statutory declaration if requested to do so. This power currently appears in the taxation Acts and is exercised only where there is an indication that such action is warranted.

Subclause (4) provides that it is an offence for a person to fail to comply with a requirement of a notice within the time specified in the notice. A maximum penalty of \$20,000 is provided. It should also be noted that the offence provision in clause 98 is capable of being applied where the relevant material provided under this section is known to be false or misleading.

Clause 87: Power to require person to attend for examination

This clause provides a power to enable the Commissioner to require a person to attend for examination. Equivalent powers are currently found in all taxation Acts.

Subclause (1) provides that the Commissioner may require a person to attend at a given time and place before an investigator for examination.

Subclause (2) provides that notice of the requirement under subclause (1) is to be made in writing and served on the taxpayer or other person required to attend.

Subclause (3) provides that a notice issued under subclause (2):

- must indicate the time and place for examination. That place must be reasonably convenient (where practicable) for the person required to attend for examination under this clause;
- must indicate the subject of the examination;
- may include a requirement that the person bring and produce to the investigator relevant material which is in the person's possession or control and relates to the subject of the examination. For example, the person may be required to produce wage records.

Subclause (4) provides that an investigator who is conducting an examination may exercise certain powers. These:

- require the person attending for examination to make an oath to answer all questions truthfully (Note that an oath includes an affirmation under the Interpretation Act 1984). The investigator may administer the oath for that purpose;
- may require the person to answer questions which are relevant to the subject of the examination. Where the investigator has consented, the person is required to answer questions relevant to the subject

put to the person by another person who is present at the examination. This could include, for example, another employee of the Office of State Revenue or a Special Constable with delegated powers; and

- may require the person to produce for examination by the investigator relevant material that is in the person's possession at the examination.

Subclause (5) provides that a person who fails to comply with the requirements of this clause commits an offence. A maximum penalty of \$20,000 is provided.

Subclause (6) provides that the Taxation Administration Regulations can provide for the payment of fees and expenses to persons, other than a taxpayer or a taxpayer's representative, who attend for examination under these provisions.

Clause 88: Power to retain documents

This clause gives the Commissioner power to retain instruments or other documents in his possession, where the instrument or document is relevant to performing the Commissioner's functions under a taxation Act. The Commissioner is authorised to retain the material:

- for as long as necessary to examine it, copy it or examine and copy it;
- for as long as necessary for the purposes of any proceedings that have or may be instituted;
- until tax is paid on it, where it is an instrument; and
- until an assessment is made and tax is paid where the document is relevant to the making of the assessment.

Clause 89: Recording examination proceedings

This clause specifies the circumstances in which an examination proceeding may be recorded and the rights of the person attending for examination in relation to that recording. It should be noted that such recordings would be possible under the investigation powers of the taxation Acts. A recording would include an audio or video recording.

Subclause (1) authorises an investigator to make a recording of the questions asked by an investigator and the answers given by the person attending for examination under clause 87.

Subclause (2) requires that the investigator inform the person, before the recording begins, that a record of the examination is being made.

Division 3 – Access to premises

Clause 90: Entry of premises

This clause provides powers in relation to the entry of premises by investigators. The terms “premises” and “investigator” are defined in the Glossary.

Subclause (1) provides that an investigator may enter and remain on the premises to exercise powers of investigation. This power must be used for investigation purposes (as set out in clause 84) and is subject to limitations of subclause (2).

Subclause (2) provides that the power of an investigator to enter residential premises may be exercised at any reasonable time with the consent of the occupier of the premises.

An investigator may also enter residential premises in accordance with an authorisation that is conferred by a warrant.

Where an investigator believes that it is urgently necessary to enter residential premises to prevent destruction or interference with relevant material, he may enter the premises without the consent of the occupier or without a warrant. However, the investigator must have reasonable grounds for believing it is urgently necessary to enter premises in these circumstances.

Subclause (3) provides suitable controls upon entering residential premises without consent or a warrant, as it is recognised that this power has the potential to infringe on civil liberties. For this reason, this clause requires that the investigator have the specific authorisation of the Commissioner before entering premises in this circumstance. Clause 10(1) prevents the Commissioner from delegating this power.

A similar provision, which met with the approval of the Parliament, was passed in respect of the Fuel Suppliers Licensing Act 1997.

It should also be noted that existing taxation Acts make no distinction between access to residential or non-residential premises and do not explicitly require entry of residential premises to be authorised by a warrant. In this respect, the ability to enter residential premises for

investigation purposes in this clause is more restrictive than the powers currently in operation under taxation Acts.

Subclause (4) requires the investigator to display his identity card (or a warrant where appropriate), on first encountering a person apparently in a position of authority on the premises. The investigator would also be required to show the identity card or warrant at the reasonable request of any other person on the premises.

This requirement must be exercised where the investigator is reasonably requested by those persons to show the certificate or warrant.

Clause 91: Powers of investigator while on premises

This clause deals with powers relating to investigations conducted on premises.

Subclause (1) sets out the powers that may be exercised by an investigator who has entered premises under the powers of entry.

Paragraph (a) authorises an investigator to search premises and examine anything on the premises. The investigator is able to open or break open anything on the premises. However, to break anything open he or she must have the specific authorisation of the Commissioner in the particular instance. Again, subclause 10(1) prevents the Commissioner from delegating the power to make this authorisation.

Paragraph (b) authorises the investigator to take possession of and remove from premises documents or other things relevant to an investigation that are found during an investigation.

Paragraph (c) allows the investigator to take extracts from, make copies of, download or print any documents that are found in the course of carrying out an investigation.

Paragraph (d) authorises the investigator to photograph or film anything on the premises. This power has been explicitly stated for clarification purposes, but is considered to be implicit in the investigation powers under current taxation Acts.

Paragraph (e) authorises the investigator to secure relevant material on the premises against interference where it cannot be conveniently removed.

Paragraph (f) authorises an investigator to require a person on the premises to:

- state his or her full name and address;
- answer questions which are relevant to the investigation, by providing verbal or written answers as directed;
- give the investigator any information within the person's possession or control that is relevant to the investigation;
- to operate or permit the investigator to operate, equipment or facilities on the premises, where the action is necessary for the purposes of an investigation. This would include, for example, computer equipment and other data storage facilities;
- to give the investigator any translation, code, password or other information to allow the investigator to have access to, interpret or understand any document or information located or obtained. This could include, for example, granting access to a relevant password protected data base and appropriate instructions to allow the investigator to search the data base for specific data entries; and
- to give other assistance to an investigator which he reasonably requires to carry out his functions. This may include, for example, sufficient lighting and reasonable access to photocopying facilities.

These powers enable the investigator to efficiently and properly conduct the investigation while on premises.

Subclause (2) provides that it is an offence for a person to fail to comply with an investigator's request under subclause (1)(f) or for a person to give an investigator information he or she knows to be false or misleading. A maximum penalty of \$20,000 is provided.

Subclause (3) provides that when requested to do so, an investigator who takes anything from premises must make out a receipt and give it to the occupier of the premises for the thing taken.

If the investigator takes anything from premises and the occupier or person responsible to the occupier is not present at that time, the investigator is required to make out a receipt (in a form approved by the Commissioner)

and leave it in an envelope addressed to the occupier in a prominent position on the premises.

In practical terms, this is unlikely to occur, however, after gaining access to premises it is possible that small operations may leave investigators to conduct audits and leave the premises. It is necessary in these circumstances for the investigator to indicate what relevant material has been taken.

Subclause (4) provides that the receipt must be in a form approved by the Commissioner.

Subclause (5) provides that the Commissioner must ensure the person entitled to possession of the relevant material is given a copy of it or reasonable access to it as appropriate. If the Commissioner considers there is a chance that a particular original document could be destroyed if access to it was granted, a copy would be provided.

Subclause (6) provides that if an investigator takes possession of anything under this provision, the Commissioner is required to ensure that it is returned to the person entitled to possession of it:

- after the prosecution is completed or discontinued if the material was taken for a prosecution or potential prosecution;
- after assessment and payment of duty, if a dutiable instrument was taken; and
- in all other cases, within 28 days after it was taken.

Clause 92: Warrants to enter premises

This clause provides for a warrant to be issued for the purposes of a taxation investigation. It should be noted that this provision would apply in respect of access to residential premises. However, it could also be used in the course of an investigation where an investigator exercises his right of entry under clause 90(1).

Subclause (1) provides that a justice may issue a warrant permitting an investigator to enter premises at a specified time or within a period stated in the warrant. The warrant may also permit the investigator to exercise powers of search and investigation set out under Part 8 of the Bill.

In order to issue the warrant, the justice must be satisfied by a complaint on oath that it is reasonably necessary

for the investigator to enter the premises for an investigation purpose.

A “justice” is defined by the Interpretation Act 1984 to be a Justice of the Peace.

Subclause (2) provides that an investigator must produce his identity card issued under clause 11 (which shows his authorisation) to obtain a warrant.

Subclause (3) provides that the authority given under a warrant may be exercised by an investigator upon whose application the warrant was made or by any other investigator.

Clause 93: Use of force

This clause provides that in certain circumstances, an investigator may use force to enter premises or to exercise certain powers.

Subclause (1) provides that an investigator can use reasonable force to enter premises under this Part or to exercise the powers set out in section 91(1)(a) to (e).

Subclause (2) provides that in circumstances where the use of force is likely to cause damage to property, the investigator must obtain the specific authorisation of the Commissioner before exercising the use of force. This has been limited to circumstances where the use of reasonable force is likely to cause property damage because it could otherwise be construed to mean that an investigator would require the Commissioner’s authorisation to turn a key in a lock or to open an unlocked door.

Division 4 – General provisions

Clause 94: Complying with information requirements

This clause deals with the privilege against self-incrimination and legal professional privilege.

Subclause (1) provides that a person who is required to provide information or relevant material is unable to rely on the grounds that providing the information or relevant material would tend to incriminate the person or make them liable to a penalty.

The person cannot use the above grounds to refuse to answer a question, provide information or produce relevant material under the investigation provisions.

Subclause (2) provides a limitation on how information obtained under subclause (1) can be used by the Commissioner.

In this instance, such information is not admissible in proceedings for most offences under a taxation Act against the person who provided the information or produced the relevant material. However, the material can be used for offences under clauses 86(4), 87(5) or 91(2).

Subclause (3) is intended to restate the current common law position, in that a claim of legal professional privilege does not apply to an "official document" (as defined in the Glossary). The definition of official document refers to an instrument, record or other document that has specific status under a taxation Act as outlined in paragraphs (a) to (c). This is intended to specifically cover:

- instruments that are required to be stamped or lodged under the Stamp Act (note that this covers dutiable statements that have been prepared and are therefore deemed to be instruments under the Stamp Act);
- tax records that are required to be kept under or for a taxation Act in order for a liability to be determined;
- tax records that are specifically required to be kept for evidentiary purposes under a taxation Act; and
- other documents that are required to be lodged under a taxation Act (eg. valuations under the Taxation Administration Bill or Stamp Act).

Subclause (4) provides that an offence is committed where a person on their own behalf, or on behalf of another person, refuses to comply with a requirement to provide relevant material or information under this Part, on the grounds that the information or relevant material is subject to legal professional privilege, in circumstances where the person knew, or could reasonably be expected to have known, that he or she does not have reasonable grounds for making the claim. A maximum penalty of \$20,000 applies to this offence.

This subclause has been substantially altered from earlier drafts of the Bill, which sought to abrogate the doctrine of legal professional privilege. Subclause (4) makes it an offence to make an improper claim of legal professional

privilege. An important element of the offence is that the offence is only committed where the claim of privilege is made in circumstances where the person knew, or could be expected to know, that no reasonable basis for the claim exists.

It is not intended that the offence apply where a claim of legal professional privilege is made in circumstances where the application of the law is somewhat grey because the courts have not considered those specific circumstances previously. In this regard, it is recognised that there will be grey areas, where it would be reasonable to claim that legal professional privilege does apply. This offence is not aimed at these cases, as indicated by clause 94(4), which provides that an offence is only committed where the person knew or could reasonably be expected to have known that they did not have "reasonable grounds for making the claim".

The offence is targeted at those circumstances where there is no reasonable basis for the claim of legal professional privilege. It is considered that the following examples would fall into this category:

- where the document is a publicly available document (eg. a request for tenders);
- where the document does not involve legal advice (eg. a valuation provided by a valuer to a company); and
- where the document is an official document.

From a policy perspective, it is considered that this offence is like many other taxation Act offence provisions, in that it provides a direct legal consequence for unreasonable behaviour that obstructs an investigation.

In considering how an offence under subclause (4) could be investigated and prosecuted, the question arises as to how the Commissioner could be in a position to make a judgement on whether it was reasonable or not to make a claim of privilege. Investigating and prosecuting this type of offence will necessarily involve testing the status of the claim of privilege.

In order to do this, current procedures for getting to the stage of testing the claim need to be reviewed and refined to ensure they are appropriate in the proposed environment.

The Office of State Revenue has existing procedures in place to isolate the documents in question so access to them is appropriately controlled. At present when a claim of legal professional privilege is made, the documents are sealed in boxes and removed to the office of the Law Society for safekeeping.

The documents will then be put before an independent arbiter (usually a court) to determine whether legal professional privilege applies. Where that is the case, the documents will be returned to the party. Where the privilege is found not to apply, the Commissioner will be able to have access to the documents.

At this stage, the Commissioner will be able to view the documents and make a judgement on whether there were reasonable grounds for making the claim. If not, prosecution action would be instigated.

Several important matters arise when considering these procedures. The Commissioner recognises that taxpayers and their legal advisers must have an opportunity to consider whether a claim of legal professional privilege should be made.

It has been acknowledged during consultation that during the period the taxpayer is considering whether to make a claim, the Commissioner must be able to ensure that the documents in question are adequately secured to prevent documents being removed or relocated.

In recognising the opportunity to make a claim of privilege, two scenarios would typically arise:

- instances where a person or taxpayer, who is not experienced in determining whether the privilege may apply, wishes to obtain advice about making a claim; and
- instances where a person or taxpayer who is experienced in determining whether privilege applies, wishes to have an opportunity to evaluate whether to make a claim.

In both cases, appropriate procedures need to be established to ensure that the person has the opportunity to seek expert advice on the documents in question or to evaluate the claim. The Commissioner recognises that they are entitled to such an opportunity.

However, in order to ensure an investigation is not jeopardised, it is considered that these rights should be

accommodated after the documents have been isolated and secured. It is not accepted that the common law requires the Commissioner to give advance warnings of intended investigations, notwithstanding that in most cases advance warning of an audit is given. It must be recognised that in some cases, advance warning may jeopardise the investigation.

Existing procedures used by the Commissioner are to be reviewed in light of the consequences that can follow if an inappropriate claim of privilege is made. Industry bodies have indicated a willingness to be involved in the review process, so that the procedures are workable and effective to achieve a balanced outcome.

Clause 95: Interaction with other Acts

This clause provides that the investigation provisions set out in the Bill prevail over the secrecy provisions in other State statutes.

These powers apply to those laws that would protect disclosure about:

- the transfer or ownership of statutory licences;
- payments made for the benefit of employees;
- information regarding the ownership, registration or transfer of registration of motor vehicles;
- the transfer or ownership of mining tenements or petroleum licences; and
- the whereabouts of taxpayers.

The ability to prescribe further laws has also been inserted. While there is no intention to make any prescriptions at this stage, the flexibility was considered necessary should a particular law be required to be included at a future date.

PART 9 – OFFENCES

Clause 96: General penalty provision

This clause sets out general penalty provisions that apply to offences committed under the Taxation Administration Act or another taxation Act.

Subclause (1) provides that where a penalty for an offence is not specifically provided within the Taxation Administration Bill or a taxation Act, the person is liable to a penalty not exceeding \$20,000 upon conviction of the offence.

Subclause (2) provides that where a requirement is made under a taxation Act, the person commits an offence if the requirement is not met, to which a maximum penalty of \$20,000 is applicable.

The words “no penalty is specifically provided” have been used to distinguish the operation of this clause from particular clauses which have a penalty specifically inserted.

Clause 97: Evasion of tax

This clause provides an offence for the evasion of tax.

It will be necessary under this clause for the Commissioner to prove that an intentional act or omission has resulted in the evasion or attempted evasion of tax. It should be noted the word “evasion” has been deliberately used, to ensure that it can be differentiated from tax minimisation schemes, which are usually accepted as legally reducing the tax payable under a taxation Act.

Subclause (1) provides that a person commits an offence where they, by an intentional act or omission, evade or attempt to evade tax.

Subclause (2) provides that a court is required, upon convicting a person of an offence against the provision, to impose a penalty within a range.

That range is a minimum of three times the amount of primary tax, evaded or attempted to be evaded. In addition, a maximum penalty is provided which is an amount of three times the primary tax evaded or attempted to be evaded plus \$20,000. This provision has been drafted so that the court is required to impose, upon conviction of the offence, a penalty equal to three times the amount of primary tax evaded or attempted to be evaded. The imposition of the additional \$20,000 is at the court's discretion.

Clause 98: False or misleading information

This clause provides an offence where a person provides false or misleading information or tax records.

Subclause (1) states that a person who knowingly provides false or misleading information to the Commissioner or an investigator commits an offence.

It also provides that a person who knowingly gives a tax record to the Commissioner or an investigator that is

false or misleading in a material particular commits an offence.

In the above case, the penalty is \$20,000 plus three times the amount of tax that was avoided or might have been avoided had the information or tax record been relied on. Under this clause, no minimum penalty has been set to direct the court.

Subclause (2) provides a rebuttable presumption, such that the person who provided the information or tax record is presumed to have known the information was false or misleading, unless the contrary is established.

Clause 99: Obstructing or misleading an investigator

This clause provides an offence in relation to obstructing or misleading an investigator.

Subclause (1) provides that a person who hinders or obstructs the Commissioner or an investigator in carrying out functions under a taxation Act commits an offence. A maximum penalty of \$20,000 is provided.

Subclause (2) provides that a person who misleads the Commissioner or an investigator in a way that may affect the carrying out of the Commissioner or investigator's functions under a taxation Act commits an offence. A maximum penalty of \$20,000 is also provided.

Clause 100: Offence by body corporate

This clause provides that offences committed by a body corporate are deemed to be offences committed by the directors of the body corporate.

Subclause (1) provides that where the body corporate commits an offence under a taxation Act, each director is also guilty of that offence and is liable to the same penalty provided for it.

Subclause (2) provides a defence, to the extent that the defendant could not reasonably be expected to have prevented the commission of the offence by the body corporate.

Clause 101: Criminal penalties not to affect civil liabilities

This clause provides that where a person is convicted of an offence under a taxation Act, the liability to pay the offence penalty does not relieve the person from a tax liability that arises out of the same wrongful act.

Clause 102: Time for commencing prosecutions

This clause specifies the period within which a prosecution may commence. Under existing taxation Acts, the time varies between three and five years for different offences.

Subclause (1) provides that a prosecution for an offence under a taxation Act can be commenced within five years of the date the offence is alleged to have been committed.

Subclause (2) provides that where the alleged offence involves tax evasion, an intention to mislead or some other form of dishonesty, the prosecution for the offence may be commenced at any time.

There have been a number of occasions where offence proceedings could not be commenced by the Commissioner because of limitations in existing Acts, although there was clearly a case for the prosecution. It is considered appropriate that offences in relation to taxation be extended to five years or, where they are of a serious nature, may be commenced at any time.

Clause 103: Authority required for prosecution

This clause provides the authority required for prosecutions to be instituted.

Subclause (1) requires proceedings for an offence under a taxation Act to be taken by the Commissioner or under his authority, and must be taken in the Commissioner's name.

Subclause (2) provides that any statement in a complaint for an offence under a taxation Act, which is laid by the Commissioner or is laid under the Commissioner's authority, is taken to be proven in the absence of evidence to the contrary.

Clause 104: General defence

This clause provides a general defence to any charge for an offence under this Act that consists of the failure to comply with a requirement imposed by this Act.

The defence may be used that the defendant could not, by exercising reasonable diligence, have complied with the requirement to which the charge relates.

PART 10 – MISCELLANEOUS

Division 1 – Confidentiality

Clause 105: Confidentiality

This clause inserts provisions in relation to the obligation on the Commissioner to maintain secrecy in relation to information provided to him or obtained by him.

Subclause (1) provides a list of people that are subject to a duty of confidentiality under this section. Moreover, any other person to whom the information or material is disclosed or who gain access to the information, either properly or improperly, in another manner must maintain the confidentiality.

For example, the duty of confidentiality would apply to clerical staff of the Office of State Revenue who are not directly involved with the assessment of tax liabilities, but may nevertheless have access to confidential information.

Subclause (2) provides that a person who is subject to a duty of confidentiality under this section is not able to record, disclose or make use of information or material obtained.

A number of exceptions to this requirement are:

- where the information is for a purpose related to the administration or enforcement of the taxation Act under which the information or material was obtained. It is also capable of being used in relation to another Act that is administered by the Commissioner, or under which the Commissioner is authorised to exercise statutory functions. This would include Acts not covered by the Taxation Administration Bill, such as the First Home Owner Grant Act 2000;
- where information may be used as required or allowed by this Act or another law, which specifically or by implication overrides the duty of confidentiality imposed;
- where the person to whose affairs the information relates authorises the disclosure; and
- for the purposes of legal proceedings or reports of legal proceedings which arise out of matters taken under the taxation Acts.

Failure to comply with these obligations is an offence, for which a maximum penalty of \$20,000 is applicable.

Subclause (3) provides a number of more specific exceptions. These are:

- the disclosure of information or material in connection with the investigation or prosecution of a criminal offence. This includes the ability to provide information to the State or Commonwealth Director of Public Prosecutions, an officer of the police force of the State or the Commonwealth, an officer of the Australian Securities and Investment Commission or an officer of another law enforcement agency established under State or Commonwealth law where the regulations permit them to receive confidential information. It is intended to prescribe the National Crime Authority under this provision;
- the disclosure of information or material to officials administering taxation laws of the Commonwealth or other States for the purposes related to the administration of such laws. This allows the reciprocal exchange of information already authorised by the reciprocal powers legislation in various jurisdictions;
- the disclosure of information to the Western Australian Department of Treasury and Finance. This ensures proper communication between the Department, of which the Office of State Revenue is a business unit;
- the disclosure of information about the ownership, sale and value of properties to the Valuer-General's Office. This is often in relation to the land tax data base, and the determination of property values for land tax and stamp duty assessment purposes;
- the disclosure of statistical or other information which is not reasonably expected to lead to the identification of a person to whom it relates;
- the disclosure of information to an insurance company about pay-roll tax liability, to allow that company to make a determination of the amount of stamp duty payable on a workers' compensation insurance policy; and

- the disclosure of information or material in other circumstances permitted by the Taxation Administration Regulations.

It is proposed that a number of very specific exceptions be drafted in the regulations, primarily to cover those exceptions that are currently found in the existing taxation Acts. For example, the Stamp Act allows the provision of certain information to a licensing authority under Part III C of that Act.

Subclause (4) provides that information disclosed lawfully under subclause (3) may only be used by the recipients for the purposes for which it was disclosed.

This places an obligation on these parties to maintain the general confidentiality of the information. For example, if the information was provided to allow the Director of Public Prosecutions to prosecute a criminal offence, the information may only be used for that purpose and cannot be made freely available to other parties.

Subclause (5) provides that where information is lawfully disclosed, that information may be further disclosed by the recipients, providing the disclosure is for the purpose for which the disclosure was made. For example, if information is provided to a police officer for the prosecution of an offence, that information may be disclosed in proceedings for that offence.

Subclause (6) provides that a court cannot require a person who is subject to a duty of confidentiality to give evidence or, to produce a record that is contrary to this section, except in proceedings arising out of the lawful disclosure of information. It should be noted that this power currently exists in all taxation Acts.

Subclause (7) provides that this section does not create a right in any person to be given confidential information. For example, where the Commissioner receives a request for statistical information, he cannot be forced to provide that information if he does not consider it appropriate.

Division 2 – Service of documents

Clause 106: Service on the Commissioner

This clause sets out the mechanisms by which a document may be served on the Commissioner.

It includes lodging documents at the Commissioner's office or by other methods that are authorised by the regulations.

These permitted methods may include facsimile transmissions to a number provided by the Taxation Administration Regulations or by electronic transmissions to a prescribed electronic mail address.

Clause 107: Service on agent or representative of taxpayer

This clause sets out a number of scenarios that deem the Commissioner to have served documents.

Subclause (1) provides a deemed method of service where notices or other documents are served on jointly liable taxpayers.

Subclause (2) provides that a notice or document is deemed to be served if it is served on an agent with apparent authority to act and accept service of the notice for a person who lodged an application or instrument to which the notice or document relates.

This allows valid service to be made in regard to lodging parties who are not the "taxpayer" in regard to stamp duty instruments.

Subclause (3) provides that a notice or document served by the Commissioner on a partnership is taken to be served on all members of the partnership where it is served on any one member.

Subclause (4) provides that a notice or other document is taken to be served on all members of an unincorporated association if it is served on any one member of the committee of management of that association.

Clause 108: Method of service by Commissioner

This clause sets out the appropriate mechanisms by which a notice or other document may be served by the Commissioner.

These powers legislatively provide that a notice is validly served using the methods currently available to deliver assessment notices to taxpayers and lodging parties.

Subclause (1) lists the methods of service available to the Commissioner, which include where a document or notice is:

- given personally to the person;

- left for the person at the person's place of residence or business;
- addressed to the person and sent by prepaid post (including document exchange), providing the address is one which has appeared on recent correspondence addressed to the Commissioner or is otherwise notified to the Commissioner;
- left for collection by the person or their agent in the Commissioner's collection box;
- faxed or sent by computer transmission to a facsimile or electronic mail address, providing the address is one which has appeared on correspondence addressed to the Commissioner or is otherwise notified to the Commissioner; and
- been agreed by the person to be served, in any manner communicated.

It should be noted that electronic service methods will usually only be used by the Commissioner under agreed arrangements with a taxpayer or taxpayer's agent.

Subclause (2) provides that the use of a particular method of service in one instance does not prevent the Commissioner from using another method of service in another circumstance.

Subclause (3) provides that where a notice or document is not served personally, it is deemed to have been served on the business day following the day on which it was sent to, or left for, the person to whom it was addressed.

However, where the document is sent by post outside Western Australia but within Australia, a further 4 business days is allowed. If the document is sent by post outside Australia, a further 10 business days is allowed.

Clause 109: Non-exclusivity of this Division

This clause provides that the service powers in this Division are additional to any other statutory provision that provides for the service of documents. Examples of such provisions occur in the Interpretation Act 1984, the Justices Act 1902 and the Justices (Service of Summonses By Post) Regulations 1982.

Division 3 – Evidentiary provisions

Clause 110: Evidentiary value of assessment notice

This clause provides that for the purposes of evidentiary value, a notice of assessment or a copy of a notice of assessment may be admissible in legal proceedings as evidence.

In absence of proof to the contrary, such a notice or copy is evidence of the assessment having been made, the amount of tax assessed, the identity of the person liable for the tax, the due date for paying the tax, and any other fact stated in the notice.

Clause 111: Copies etc. of documents

This clause provides particulars in relation to copies of documents.

Subclause (1) allows legal proceedings to take account of a copy of a notice or other document issued by the Commissioner, if it is produced by the Commissioner or on behalf of the Commissioner, to be treated as the original. In this circumstance, the copy has the same evidentiary value as the original.

Subclause (2) provides that for the purposes of evidentiary law, where two or more documents are produced from the same computer data, or from computer data recording the same information, both documents are to be regarded as originals.

Clause 112: Evidentiary certificates

This clause allows the Commissioner to attest evidentiary certificates that provide evidence of the facts listed.

Subclause (1) provides that a certificate may be issued in respect of:

- the making of an assessment, including details of the assessment;
- when and how a notice of assessment was served on a taxpayer;
- whether a person identified in a certificate was authorised by delegation to exercise specific functions on a particular date or over a specified period;
- whether a return has been received by a particular date;

- whether a person failed to comply with a requirement to provide information or evidence to the Commissioner by a particular time; or
- whether a person was not registered on a particular date.

Subclause (2) provides that the certificate is considered to be evidence of the facts stated therein and in absence of evidence to the contrary, becomes proof of those facts.

Clause 113: Extracts from register of delegates

This clause allows copies or printouts from the delegation register kept under clause 10 to be proof of the facts stated therein, in the absence of proof to the contrary.

Clause 114: Averments in complaints

In offence proceedings under a taxation Act, an averment in a complaint is taken to be evidence, in the absence of any evidence to the contrary, in the circumstances listed.

Clause 115: Presumption of regularity

This clause allows certain presumptions to be made regarding the Commissioner's authority in respect of legal proceedings.

Subclause (1) provides that proceedings that are taken in the name of the Commissioner are presumed to have been authorised by him, in absence of evidence to the contrary.

Subclause (2) provides that in legal proceedings, compliance by investigators with the requirements of a taxation Act is presumed, in the absence of evidence to the contrary.

Division 4 – Exemption from personal liability

Clause 116: Exemption from personal liability

This clause clarifies that extent of personal liability of the Commissioner or an investigator.

Subclause (1) provides that personal liability does not attach to the Commissioner or an investigator for an act or omission which is performed in good faith in the exercise, performance or purported exercise of powers or functions under taxation Acts.

Subclause (2) provides that any liability that would, in the absence of this provision, lie against the Commissioner or investigator, instead lies with the State.

Division 5 – Regulations

Clause 117: Regulations

This clause provides that the Governor is able to make regulations prescribing all matters that are required or permitted by this Act to be prescribed. It also allows regulations to be made which are necessary or convenient to carry out or give effect to this Act.

Subclause (2) provides that a regulation is able to provide that a contravention of a regulation is an offence and also provides that penalties for such contraventions are amounts not exceeding \$5,000.

Glossary

The majority of terms in the Glossary are self explanatory and no further information has been added to them for the purposes of this explanatory memorandum. Additional information has been provided for the terms noted below to further assist with interpretation.

“group” - This term ensures that the commonly accepted meaning of group is narrowed when the term is used in the Bill. Persons who are grouped together under taxation Acts, such as the Pay-roll Tax Assessment Act, are considered to be groups for the purposes of this Bill.

“instrument” - This definition provides a description of documents or other matters which are considered to be instruments for the purposes of the Taxation Administration Bill. It should be noted that the Stamp Act definition of instrument does not apply to a return, as that Act specifically distinguishes returns from instruments. This Bill uses the term “instrument” to apply to both instruments and returns.

“person” - This term is broadly defined in the Interpretation Act 1984 as:

“ “person” or any word or expression descriptive of a person includes a public body, company, or association or body of persons, corporate or unincorporate”.

The definition in this Bill extends the Interpretation Act meaning to include a group.

**EXISTING TAXATION ACT SECTIONS WHICH CORRESPOND TO TAXATION
ADMINISTRATION BILL CLAUSES**

| Taxation Administration Bill clause | Land Tax Assessment Act | Debits Tax Assessment Act | Pay-roll Tax Assessment Act | Stamp Act |
|---|--------------------------------|----------------------------------|------------------------------------|-------------------|
| 1. Short title | 1 | 1 | 1 | 1 |
| 2. Commencement | 2 | 2 | N/A | 1 |
| 3. The taxation Acts | N/A | N/A | N/A | N/A |
| 4. Meaning of terms used in this Act | N/A | N/A | N/A | N/A |
| 5. Crown bound | 5 "Crown" | N/A | 3(1) "wages" | 2A, 4 "the Crown" |
| 6. The Commissioner of State Revenue | 5 | 3 | 3 | 4 |
| 7. Administration of taxation Acts | 6 | 6 | 4(1) | 5 |
| 8. Commissioner's functions | N/A | N/A | N/A | N/A |
| 9. Judicial notice of appointment and signature | N/A | N/A | N/A | N/A |
| 10. Delegation | 7 | 7 | 4(2) – 4(8) | 6 |
| 11. Tax investigators | 7(1) | 7, 40(2) | 4(2) | 6(1) |
| 12. Appointed representatives for court proceedings | 44 | 36(3) | 49(2) | 39A(4), 118(2) |
| 13. Assessments | 27 | 3 "assessment" | 18 | 21, 31, 76C |
| 14. Self assessments | N/A | 13 | 13 | N/A |
| 15. Official assessments | N/A | 16, 17 | 18 | N/A |
| 16. Reassessments | 31 | 19 | 18 | 31AA |
| 17. Time limits on reassessments | 31 | 19 | N/A | 31AA(5), (6) |
| 18. Effect of reassessment | 31 | 19 | N/A | 31AB |

| Taxation Administration Bill clause | Land Tax Assessment Act | Debits Tax Assessment Act | Pay-roll Tax Assessment Act | Stamp Act |
|--|--------------------------------|----------------------------------|------------------------------------|------------------|
| 19. Assessments based on estimated or suspected liability | 30 | 17 | 18, 36 | 31A |
| 20. Assessment when instrument misleading or unavailable | N/A | N/A | N/A | 31A |
| 21. Ascertaining value of property, consideration or benefit | 26 | N/A | 3(2aa), 3C | 75A, 76AA, 79(4) |
| 22. Commissioner's power to have valuation made | 5 "unimproved value" | N/A | N/A | 75A, 76AA, 79(4) |
| 23. Assessment notices | 28 | 16(4), 17(3) | 18 | 20(3) |
| 24. Form of assessment notice | N/A | N/A | 18(6) | N/A |
| 25. Statement of grounds of assessment | N/A | N/A | 18(6) | N/A |
| 26. Penalty tax for contravention of taxation Act | 25 | 18, 28 | 22, 36 | 31A |
| 27. Penalty for late payment | 39 | 18, 28 | 22 | 20 |
| 28. Limitation on amount of penalty tax | N/A | N/A | N/A | N/A |
| 29. Remission of penalty tax | 39 | 18,28 | 22, 36 | 20(6) |
| 30. Guidelines for imposing penalty tax | N/A | N/A | N/A | N/A |
| 31. Procedure for challenging assessments | common law | common law | common law | common law |
| 32. Objections to land valuations | 37 | N/A | N/A | N/A |
| 33. Continuing obligation to pay assessed tax | 37A | 25 | 34 | 34C |
| 34. Right to object | 35, 37 | 22 | 32 | 32 |
| 35. Form of objection | 35 | 22 | 32(1) | 32 |
| 36. Time for lodging objection | 35 | 22 | 32(1) | 32 |

| Taxation Administration Bill clause | Land Tax Assessment Act | Debits Tax Assessment Act | Pay-roll Tax Assessment Act | Stamp Act |
|--|--------------------------------|----------------------------------|------------------------------------|------------------|
| 37. Consideration of objections | 35 | 22 | 32(3) | 32 |
| 38. Time limit for deciding objections | N/A | N/A | N/A | N/A |
| 39. Reassessment on determination of objection | 35(3), 37B | 22 | 32(4) | 32 |
| 40. Right of appeal | 36, 37 | 23 | 33 | 33, 34A |
| 41. Court or tribunal to which an appeal lies | 36 | 23 | 33 | 33(1) |
| 42. Time for appeal | 36 | 23 | 33 | 33 |
| 43. Appeal hearings | 36 | 23 | 33 | 33 |
| 44. Cases stated by Commissioner | N/A | 24 | 33A | 34 |
| 45. When tax is due for payment | 38 | 9 | 17 | 20(3) |
| 46. Allocation of payment | N/A | N/A | N/A | N/A |
| 47. Arrangements for instalments and extensions of time | 38(3) | 27 | 21 | N/A |
| 48. No action to compel approval of tax payment arrangement | N/A | N/A | N/A | N/A |
| 49. Approval of special tax return arrangements | N/A | N/A | N/A | 52, 95A, 112V |
| 50. Content of special tax return arrangement | N/A | N/A | N/A | 52, 95A, 112V |
| 51. Instruments stamped or endorsed under a special tax return arrangement | N/A | N/A | N/A | 52, 95A, 112V |
| 52. Lodging returns under special tax return arrangement | N/A | N/A | N/A | 52, 95A, 112V |

| Taxation Administration Bill clause | Land Tax Assessment Act | Debits Tax Assessment Act | Pay-roll Tax Assessment Act | Stamp Act |
|---|--------------------------------|----------------------------------|------------------------------------|--|
| 53. Amendment or cancellation of arrangement | N/A | N/A | N/A | 52, 95A, 112V |
| 54. Power to make refund | 23(3), 31(5), 39(3) | 14, 15, 19 | 19 | 15(2), 15A, 73A, 73B, 73C, 75AA, 75AB, 75AG, 76D, 75JD(3), 80A, 90A, 112KA |
| 55. Refund to be passed on in certain cases | N/A | 14, 15 | N/A | 112V |
| 56. Waiver of tax | N/A | N/A | N/A | 31(7) |
| 57. Writing off tax liability | FAAA | FAAA | FAAA | FAAA |
| 58. Powers subject to Financial Administration and Audit Act 1985 | 6A | N/A | N/A | N/A |
| 59. No action to compel waiver or writing off | N/A | N/A | N/A | N/A |
| 60. Recovery of unpaid tax | 40 | 26 | 23 | 39A(1) |
| 61. Power of court to order payment of tax | N/A | N/A | N/A | 39(1)(d) |
| 62. Recovery of costs and interest | 40 | N/A | N/A | N/A |
| 63. Recovery of tax in cases of joint liability | 41 | 8 | 30 | 39(5) |
| 64. Notice of administrator's appointment | N/A | N/A | 25 | N/A |
| 65. Power to garnishee | N/A | 43 | 31 | N/A |
| 66. Recovery from partnerships and other associations | N/A | N/A | N/A | N/A |
| 67. Recovery from directors of body corporate | N/A | N/A | N/A | N/A |

| Taxation Administration Bill clause | Land Tax Assessment Act | Debits Tax Assessment Act | Pay-roll Tax Assessment Act | Stamp Act |
|--|--------------------------------|----------------------------------|------------------------------------|------------------|
| 68. Charge on land to secure land tax | 45 | N/A | N/A | N/A |
| 69. Charge on land to secure stamp duty | N/A | N/A | N/A | 76AC |
| 70. Prohibition on dealing with certain charged land | 46 | N/A | N/A | 76AC |
| 71. Priority of charge | 45 | N/A | N/A | 76AD |
| 72. Certificate of land tax secured by charge | 48 | N/A | N/A | N/A |
| 73. Release of land from charge | 48 | N/A | N/A | 76AC |
| 74. Form of memorial | 46 | N/A | N/A | 76AC |
| 75. Registration of memorials and releases | 46 | N/A | N/A | 76AC |
| 76. Notification of mortgagees | N/A | N/A | N/A | N/A |
| 77. Orders for sale of land | 50 | N/A | N/A | 76AE |
| 78. Means of enforcement not limited to charge | 49 | N/A | N/A | N/A |
| 79. How long tax records are to be kept | N/A | 44 | 44 | 112C, 112O |
| 80. Form of tax records | N/A | N/A | 44 | N/A |
| 81. Where tax records are to be kept | N/A | N/A | N/A | 112O |
| 82. Failure to keep proper tax records | N/A | 44 | 44 | 95A, 112C, 112O |
| 83. General and specific exemptions | N/A | 44 | 44 | N/A |
| 84. Investigations | 9 | 40 | 45 | 7 |

| Taxation Administration Bill clause | Land Tax Assessment Act | Debits Tax Assessment Act | Pay-roll Tax Assessment Act | Stamp Act |
|--|----------------------------------|----------------------------------|------------------------------------|----------------------------------|
| 85. Investigations for the purposes of recognised revenue laws | Taxation (Reciprocal Powers) Act | Taxation (Reciprocal Powers) Act | Taxation (Reciprocal Powers) Act | Taxation (Reciprocal Powers) Act |
| 86. Power to require information and production of tax records | 10 | 41 | 16 | 7A, 15A, 31(5), 75AG |
| 87. Power to require person to attend for examination | 10 | 41 | 16 | 7A |
| 88. Power to retain documents | N/A | N/A | N/A | 7(3) |
| 89. Recording examination proceedings | N/A | N/A | N/A | N/A |
| 90. Entry of premises | 9 | 40 | 45 | 7 |
| 91. Powers of investigator while on premises | 9 | 40 | 45 | 7 |
| 92. Warrants to enter premises | N/A | N/A | N/A | N/A |
| 93. Use of force | N/A | N/A | N/A | N/A |
| 94. Complying with information requirements | N/A | N/A | N/A | N/A |
| 95. Interaction with other Acts | N/A | N/A | N/A | N/A |
| 96. General penalty provision | 58 | 30 | 35(1)(d) | 116 |
| 97. Evasion of tax | 54 | 31 | 37 | N/A |
| 98. False or misleading information | 54, 55 | 30(1)(c) | 35(1)(c) | 114 |
| 99. Obstructing or misleading an investigator | 55 | 34 | 40 | 114 |
| 100. Offence by body corporate | N/A | 3(6) | N/A | N/A |
| 101. Criminal penalties not to affect civil liabilities | N/A | 33 | 39 | N/A |

| Taxation Administration Bill clause | Land Tax Assessment Act | Debits Tax Assessment Act | Pay-roll Tax Assessment Act | Stamp Act |
|--|--------------------------------|----------------------------------|------------------------------------|------------------|
| 102. Time for commencing prosecutions | 59 | 32 | 38 | 112, 117 |
| 103. Authority required for prosecution | 44 | 36 | 49 | 118 |
| 104. General defence | N/A | N/A | N/A | N/A |
| 105. Confidentiality | 11, 12 | 35 | 5 | 9 |
| 106. Service on the Commissioner | N/A | N/A | 48 | N/A |
| 107. Service on agent or representative of taxpayer | 52 | 39, 42 | 47 | N/A |
| 108. Method of service by Commissioner | N/A | 39(8) | 47 | N/A |
| 109. Non-exclusivity of this Division | N/A | N/A | N/A | N/A |
| 110. Evidentiary value of assessment notice | 33 | 29 | 46 | 92B(5) |
| 111. Evidentiary status of copies and reproductions of documents | N/A | 29 | N/A | N/A |
| 112. Evidentiary certificates | N/A | 29 | 46 | N/A |
| 113. Extracts from register of delegates | N/A | N/A | N/A | N/A |
| 114. Averments in complaints | N/A | N/A | N/A | 39(3) |
| 115. Presumption of regularity | N/A | 36(2) | 49 | 118, 39A(3) |
| 116. Exemption from personal liability | 60 | N/A | N/A | N/A |
| 117. Regulations | 62 | 45 | 50 | 120 |
| Glossary | 5 | 3 | 3 | 4 |