

First print



New South Wales

# Insurance Protection Tax Bill 2001

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Appropriation Bill 2001*.

## Overview of Bill

The object of this Bill is to impose a tax on the total annual amount of premiums received by insurers for general insurance. The tax is to be apportioned among insurers according to their share of the total premium income of all insurers for the relevant year. The tax for the year commencing 1 July 2001 is to be \$69 million. The tax for a subsequent year may be reduced below \$69 million by determination of the Governor made on the recommendation of the Treasurer.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on 1 July 2001.

**Clause 3** defines certain words and expressions used in the proposed Act, in particular, *insurer*, *general insurance* and *premium*.

### Part 2 Imposition of tax

#### Division 1 General

**Clause 4** imposes tax on the total annual amount of all premiums received by insurers for general insurance as determined in accordance with the proposed Act.

**Clause 5** provides that the total amount of tax that is to be imposed by the proposed Act for the year commencing on 1 July 2001, and for each subsequent year, is \$69 million, unless, for a year commencing on or after 1 July 2002, the Governor, on the recommendation of the Treasurer, determines a lesser amount.

**Clause 6** requires an insurer to lodge a return with the Chief Commissioner of State Revenue (the *Chief Commissioner*) on or before 15 August in each year that will enable the determination of the total net premiums received by the insurer for general insurance in the preceding year. The return is to be accompanied with an auditor's certificate. Failure to comply with clause 6 is an offence.

**Clause 7** makes it an offence to lodge a return under clause 6 that is false or misleading in a material particular.

**Clause 8** requires the Chief Commissioner, on or before 1 September in each year, to assess the liability of each insurer to pay the tax imposed by the proposed Act. The tax is to be apportioned among insurers according to their share of the total premium income of all insurers for the relevant year.

**Clause 9** contains a definition of *premium* for the purposes of the proposed Act.

**Clause 10** determines when a premium, or an instalment of a premium, is received for the purposes of the proposed Act and when a premium, or an instalment of a premium, is refunded for the purposes of the proposed Act.

**Clause 11** requires the Chief Commissioner, on or after 15 March and before 15 May in each year, to make a reassessment of the tax liability of each insurer. If, at the time before making the reassessment, the Chief Commissioner is satisfied that an insurer is unable to pay the full amount of the tax specified in the insurer's notice of assessment, the clause determines the basis on which the reassessment is to be made. No objection or appeal lies against a reassessment.

## **Division 2      Apportionment of premiums**

**Clause 12** provides the means for apportioning premiums between New South Wales and other places if a contract of insurance insures property that is in New South Wales as well as property in another place, or a risk that may occur in New South Wales or in another place.

**Clause 13** provides the means for apportioning premiums between different types of insurance that are relevant to determining liability for tax.

## **Part 3    Payment of tax**

**Clause 14** provides that the proposed Act is to be read together with the *Taxation Administration Act 1996* which makes provision for the administration and enforcement of the proposed Act and other taxation laws.

**Clause 15** provides for payment of the tax by quarterly instalments.

**Clause 16** provides that the tax payable under the proposed Act is to be paid into an account in the Special Deposits Account in the Treasury called the Policyholders Protection Fund.

## **Part 4    Registration of insurers**

**Clause 17** requires insurers to register with the Chief Commissioner. Failure to do so is made an offence.

**Clause 18** requires the Chief Commissioner to register an insurer that applies for registration.

**Clause 19** enables the Chief Commissioner to cancel an insurer's registration on the grounds set out in the clause.

**Clause 20** requires an insurer that ceases to write general insurance business in New South Wales to give notice to the Chief Commissioner within 1 month after it ceases to write that business. Failure to do so is made an offence. The insurer's notice cancels its registration under the proposed Part on the day on which the notice is received by the Chief Commissioner.

## **Part 5 Miscellaneous**

**Clause 21** makes it an offence for an insurer to charge a person who effects insurance with the insurer any amount that is directly attributable to the tax it is required to pay under the proposed Act.

**Clause 22** provides that a failure to comply with the proposed Act does not render a contract of insurance illegal or invalid.

**Clause 23** provides that proceedings for an offence under the proposed Act, or any regulations made under the proposed Act, may be dealt with summarily before a Local Court.

**Clause 24** enables the making of regulations for the purposes of the proposed Act.

**Clause 25** requires the Treasurer to undertake a review of the proposed Act as soon as possible after 5 years from the date of assent to the proposed Act.

**Clause 26** makes an amendment to the *Taxation Administration Act 1996* to apply the provisions of that Act to the proposed Act.



New South Wales

# Insurance Protection Tax Bill 2001

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New South Wales

# Insurance Protection Tax Bill 2001

No. , 2001

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## **A Bill for**

An Act to impose a tax on the total annual amount of premiums received by insurers for general insurance; to amend the *Taxation Administration Act 1996*; and for other purposes.

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**The Legislature of New South Wales enacts:** 1

**Part 1 Preliminary** 2

**1 Name of Act** 3

This Act is the *Insurance Protection Tax Act 2001*. 4

**2 Commencement** 5

This Act commences on 1 July 2001. 6

**3 Definitions** 7

In this Act: 8

**annuity** means a contract that satisfies the following requirements: 9

- (a) the contract provides for the periodic payment of money to the annuitant in fee for life or for a specified term of years as an annual or more frequent entitlement, 10  
11  
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- (b) the periodic payment is a sum certain expressed as a dollar amount, but may be varied according to a predetermined formula, 13  
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15
- (c) the periodic payments are not derived from the money paid for the contract but are derived solely from the contract and comprise income and not the repayment of capital. 16  
17  
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**Chief Commissioner** means the Chief Commissioner of State Revenue referred to in section 60 of the *Taxation Administration Act 1996*. 19  
20

**exempt insurance** means any of the following: 21

- (a) insurance covering only property of the Crown, 22
- (b) insurance effected by a separate policy in a distinct sum against loss by fire on the tools, implements of work or labour used by any working mechanic, artificer, handcrafter or labourer, 23  
24  
25
- (c) insurance taken out by or on behalf of a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose, 26  
27  
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- |       |   |                                  |
|-------|---|----------------------------------|
| (d)   | insurance taken out by or on behalf of a society or institution for the time being approved for the purposes of this paragraph by the Chief Commissioner whose resources are, in accordance with its rules or objects, used wholly or predominantly for:  | 1<br>2<br>3<br>4                 |
| (i)   | the relief of poverty, or   | 5                                |
| (ii)  | the promotion of education, or  | 6                                |
| (iii) | any purpose directly or indirectly connected with defence or the amelioration of the condition of past or present members of the naval, military or air forces of the Commonwealth or their dependants or any other patriotic object, or  | 7<br>8<br>9<br>10<br>11          |
| (iv)  | such other purpose as, in the opinion of the Chief Commissioner, warrants the society or institution being taken to be a charitable society or institution,   | 12<br>13<br>14                   |
| (e)   | insurance covering mortgages or pools of mortgages acquired for the purpose of issuing mortgage-backed securities within the meaning of the <i>Duties Act 1997</i> ,  | 15<br>16<br>17                   |
| (f)   | medical benefits insurance, being insurance effected by a contract of insurance that is issued by an organisation registered under Part VI of the <i>National Health Act 1953</i> of the Commonwealth and that provides hospital benefits or medical benefits (or both), whether or not other benefits are also provided, | 18<br>19<br>20<br>21<br>22<br>23 |
| (g)   | insurance effected under the <i>Workers Compensation Act 1987</i> or the <i>Workplace Injury Management and Workers Compensation Act 1998</i> ,   | 24<br>25<br>26                   |
| (h)   | insurance of:   | 27                               |
| (i)   | the hull of a floating vessel used primarily for commercial purposes, or  | 28<br>29                         |
| (ii)  | goods or merchandise, or the freight of goods or merchandise, carried by land, sea or air,  | 30<br>31                         |
|       | or both,  | 32                               |
| (i)   | redundancy insurance in respect of a housing loan where the sum insured does not exceed \$124,000,  | 33<br>34                         |
| (j)   | reinsurance (being a contract or contracts between two parties by which one party indemnifies the other against liability or payment under a contract or contracts of insurance or reinsurance),  | 35<br>36<br>37<br>38             |
-

(k) an annuity:	1
(i) issued, created or sold by a life company,	2
(ii) purchased by a person from a life company.	3
<b>general insurance</b> means:	4
(a) any kind of insurance that is applicable to:	5
(i) property in New South Wales, or	6
(ii) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within, or partly within, New South Wales,	7
or both, and	8
	9
(b) insurance that is effected by a third-party policy within the meaning of the <i>Motor Accidents Compensation Act 1999</i> ,	10
	11
but does not include life insurance, a life insurance rider or exempt insurance.	12
	13
<b>insurance intermediary</b> has the same meaning as in the <i>Insurance (Agents and Brokers ) Act 1984</i> of the Commonwealth.	14
	15
<b>insurer</b> means any body corporate, partnership, association, underwriter or person that or who:	16
	17
(a) writes general insurance, or	18
(b) receives premiums in respect of policies of general insurance on behalf of or for transmission to any body corporate, partnership, association, underwriter or person outside New South Wales.	19
	20
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	22
<b>life insurance</b> means insurance described in section 9 (1) (a)–(g) and 9A of the <i>Life Insurance Act 1995</i> of the Commonwealth in respect of:	23
	24
(a) a life or lives, or	25
(b) any event or contingency relating to or depending on a life or lives,	26
	27
of a person whose principal place of residence is, or persons whose principal places of residence are, in New South Wales at the time the policy that effects the insurance is issued.	28
	29
	30
<b>life insurance rider</b> means insurance that:	31
(a) is attached to a policy of life insurance, and	32
(b) adds specified events and contingencies to those insured under the policy, and	33
	34
(c) is subject to the terms and conditions of the policy.	35

<i>premium</i> — <i>see</i> section 9.	1
<i>registered insurer</i> means an insurer that is registered under Part 4.	2
<i>year</i> means year commencing on 1 July.	3

**Part 2 Imposition of tax** 1

**Division 1 General** 2

**4 Imposition of tax** 3

Tax is imposed by this Act on the total annual amount of all premiums received by insurers for general insurance as determined in accordance with this Act. 4  
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6

**5 Annual determination of total amount of tax to be collected** 7

(1) The total amount of tax that is imposed by this Act for the year commencing on 1 July 2001, and for each subsequent year, is \$69 million, subject to this section. 8  
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10

(2) The Governor, on the recommendation of the Treasurer, may determine that the total amount of tax imposed by this Act for a year commencing on or after 1 July 2002 is to be an amount that is specified in the determination and that is less than \$69 million. 11  
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(3) A determination of the Governor under subsection (2) is to be made and notified in the Gazette before the year to which the determination applies. 15  
16  
17

**6 Insurers to notify Chief Commissioner of premium income for preceding financial year** 18  
19

(1) An insurer must, on or before 15 August in each year, lodge with the Chief Commissioner: 20  
21

(a) a return in a form approved by the Chief Commissioner specifying: 22  
23

(i) the total amount of premiums received by it in relation to general insurance in the preceding year, and 24  
25

(ii) the total amount of any refunds of premiums made by it in relation to general insurance in the preceding year, and 26  
27  
28

(b) a certificate that relates to the return and complies with subsection (2). 29  
30

Maximum penalty: 100 penalty units. 31

(2) A certificate complies with this subsection if:	1
(a) it is in a form approved by the Chief Commissioner, and	2
(b) it is given by:	3
(i) the insurer's lawfully appointed auditor, or	4
(ii) a person not resident in New South Wales who has qualifications that, in the opinion of the Chief Commissioner, are appropriate for the giving of the certificate.	5 6 7 8
<b>7 Offence for lodging false or misleading particulars</b>	9
An insurer is guilty of an offence if it lodges a return under section 6 that is false or misleading in a material particular.	10 11
Maximum penalty: 500 penalty units.	12
<b>8 Apportionment of tax between insurance companies</b>	13
(1) On or before 1 September in each year, the Chief Commissioner must:	14
(a) make an assessment of the liability of each insurer to pay the tax imposed by this Act for that year, and	15 16
(b) issue a notice of assessment to the insurer of its liability.	17
(2) The liability of an insurer to pay the tax imposed by this Act for a year is to be assessed in accordance with the formula:	18 19
$A = \frac{B}{C} \times D$	20
where:	21
<i>A</i> is the liability of the insurer to pay the tax imposed by this Act for the year, and	22 23
<i>B</i> is the total amount of all premiums received by the insurer for general insurance in the preceding year less the total amount of any refunds of premiums made by it in relation to general insurance in the preceding year, and	24 25 26 27
<i>C</i> is the total amount of all premiums received by all insurers for general insurance in the preceding year less the total amount of any refunds of premiums made by those insurers in relation to general insurance in the preceding year, and	28 29 30 31

- D* is the total amount of tax imposed by this Act for the year as determined in accordance with section 5. 1  
2
- (3) If an insurer fails to lodge a return as required by section 6, the Chief Commissioner: 3  
4
- (a) may make an estimate of: 5
- (i) the total amount of all premiums received by the insurer for general insurance in the preceding year less the total amount of any refunds of premiums made by it in relation to general insurance in the preceding year, and 6  
7  
8  
9
- (ii) the total amount of all premiums received by all insurers for general insurance in the preceding year less the total amount of any refunds of premiums made by those insurers in relation to general insurance in the preceding year, and 10  
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14
- (b) may use those estimates for the purposes of subsection (2). 15

**9 Premiums** 16

- (1) For the purposes of this Act, *premium*, in relation to general insurance, means the total consideration given to an insurer by or on behalf of the insured person to effect insurance without deductions for any amounts paid or payable, or allowed or allowable, by way of commission or discount to an insurance intermediary. 17  
18  
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- (2) For the purposes of this Act, *premium*: 22
- (a) includes a fire service levy paid or payable in connection with insurance by an insurer or any other person, and 23  
24
- (b) does not include: 25
- (i) an amount paid to an insurance intermediary by the insured person as a fee, provided that the amount can be clearly identified as a fee, or 26  
27  
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- (ii) an amount of duty under the *Duties Act 1997* or an Act of another Australian jurisdiction that corresponds to the *Duties Act 1997*. 29  
30  
31
- (3) It is immaterial where the amount is paid or received or where the insurance is effected. 32  
33

<b>10</b>	<b>Receipt and refund of premiums</b>	1
(1)	A premium, or an instalment of a premium, is received for the purposes of this Act when the first of the following events occurs:	2
	(a) the premium or instalment is received directly by the insurer, or	3
	(b) an account of the insurer is credited with the amount of the premium or instalment.	4
(2)	A premium or instalment of a premium (apart from the case where the premium or instalment is received directly by an insurer) is taken to have been received by an insurer if it is received by another person on the insurer's behalf.	5
(3)	A premium, or an instalment of a premium, is refunded for the purposes of this Act when the first of the following events occurs:	6
	(a) the premium or instalment is received by the person who paid it, or	7
	(b) the account of the person who paid the premium or instalment is credited with the amount of the premium or instalment, or	8
	(c) an entry crediting the account of a person with the payment of the premium or instalment is reversed because:	9
	(i) the entry was made in error, or	10
	(ii) a cheque by which the payment purported to be made is dishonoured.	11
<b>11</b>	<b>Reassessment of tax liability of insurers</b>	12
(1)	The Chief Commissioner must, on or after 15 March and before 15 May in each year, make a reassessment of the liability of each insurer to pay the tax imposed by this Act for that year in accordance with section 8 (2), subject to this section.	13
(2)	If the amount of the liability of an insurer for a year differs from the amount specified in the notice of assessment issued to the insurer for the year under section 8 (1) (b), the Chief Commissioner must issue a final notice of assessment adjusting, if necessary, the instalment of tax for the year that is payable by 15 June.	14
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- (3) If, at any time before issuing the final notice of assessment for a year, the Chief Commissioner is satisfied that an insurer is unable to pay the full amount of the tax specified in the notice of assessment issued to the insurer for the year under section 8 (1) (b) (such an insurer being referred to in this section as the *defaulting insurer*), the Chief Commissioner, in making the reassessment under subsection (1), must make a reassessment of the liability of each insurer (other than the defaulting insurer) to pay the tax imposed by this Act for that year in accordance with the formula:

$$A = \frac{B}{C} \times D$$

where:

*A* is the reassessed liability of the insurer to pay the tax imposed by this Act for the year, and

*B* is the total amount of all premiums received by the insurer for general insurance in the preceding year less the total amount of any refunds of premiums made by it in relation to general insurance in the preceding year, and

*C* is the total amount of all premiums received by all insurers (other than the defaulting insurer) for general insurance in the preceding year less the total amount of any refunds of premiums made by those insurers in relation to general insurance in the preceding year, and

*D* is the total amount of tax imposed by this Act for the year as determined in accordance with section 5 less the amount (if any) of that tax paid by the defaulting insurer.

- (4) Part 10 of the *Taxation Administration Act 1996* does not apply to a reassessment made under this section.

## Division 2 Apportionment of premiums 27

### 12 Apportionment of premiums between New South Wales and other places 28 29

- (1) This section applies to a contract of insurance that insures:
- (a) property in New South Wales as well as property in another place, or



- 
- (b) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within, or partly within, New South Wales as well as within, or partly within, another place, 1  
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- or both. 5
- (2) It is the intention of this section to provide the means for apportioning premiums received in relation to a contract of insurance to which this section applies between New South Wales and another place. 6  
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- (3) The Chief Commissioner may, from time to time, adopt a Schedule of Apportionment for the purpose of apportioning premiums, or premiums received for specific classes of insurance, in accordance with this section. 9  
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- (4) The Schedule of Apportionment may be developed in consultation with any person the Chief Commissioner considers suitable. 13  
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- (5) A premium is to be apportioned in accordance with the Schedule of Apportionment adopted for the time being, except as provided by this section. 15  
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- (6) An insurer may apply in writing to the Chief Commissioner to apportion a premium on a basis other than that provided by the Schedule of Apportionment. The Chief Commissioner may apportion the premium on the other basis. 18  
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21
- (7) In particular, if the Chief Commissioner is not satisfied that a premium received in relation to a contract of insurance has been properly apportioned for each risk insured, the Chief Commissioner may determine the apportionment, reassess the liability to tax and charge tax accordingly. 22  
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- 13 Apportionment of premiums between different types of insurance** 27
- (1) This section applies to apportionment between different types of insurance that are relevant to determining liability for tax, such as general insurance, life insurance and insurance that is exempt from tax. It does not apply to the apportionment of a premium between New South Wales and another place. Section 12 deals with that kind of apportionment. 28  
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Clause 13 Insurance Protection Tax Bill 2001

Part 2 Imposition of tax

Division 2 Apportionment of premiums

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- (2) If the Chief Commissioner is not satisfied that a premium received in relation to a contract of insurance that effects different types or classes of insurance has been properly apportioned, the Chief Commissioner may determine the apportionment, reassess the liability to tax and charge tax accordingly. 1  
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3  
4  
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<b>Part 3</b>	<b>Payment of tax</b>	1
<b>14</b>	<b>Relationship with Taxation Administration Act 1996</b>	2
	This Act is to be read together with the <i>Taxation Administration Act 1996</i> which makes provision for the administration and enforcement of this Act and other taxation laws.	3 4 5
<b>15</b>	<b>Payment of tax by quarterly instalments</b>	6
	(1) The tax payable under this Act by an insurer is to be paid by quarterly instalments.	7 8
	(2) Each instalment is to be a quarter of the tax, disregarding any remainder, together, in the case of the first instalment, with the remainder.	9 10 11
	(3) The instalments are payable by 15 September, 15 December, 15 March and 15 June.	12 13
<b>16</b>	<b>Account into which tax is to be paid</b>	14
	The tax payable under this Act is to be paid into an account in the Special Deposits Account in the Treasury called the Policyholders Protection Fund.	15 16 17

<b>Part 4 Registration of insurers</b>	1
<b>17 Insurers must be registered</b>	2
An insurer must be registered under this Part:	3
(a) on or before 31 July 2001—if the insurer has commenced to write general insurance business in New South Wales before the date of commencement of this Act, or	4 5 6
(b) within 30 days after the end of the month in which the insurer commences to write general insurance business in New South Wales—in any other case.	7 8 9
Maximum penalty: 100 penalty units.	10
<b>18 Application for registration</b>	11
The Chief Commissioner must register an insurer that applies in a form approved by the Chief Commissioner for registration under this Part.	12 13
<b>19 Cancellation of registration by Chief Commissioner</b>	14
(1) The Chief Commissioner may, by written notice, cancel an insurer’s registration under this Part:	15 16
(a) if the insurer’s registration under the <i>Insurance Act 1973</i> of the Commonwealth is terminated, or	17 18
(b) if the insurer is made bankrupt or, being a company, is wound up, or	19 20
(c) if the insurer is convicted of an offence under an Act imposing a tax or duty, or	21 22
(d) if the insurer’s registration was made in error or as a consequence of a false or misleading statement made in relation to the application for registration, or	23 24 25
(e) if the Chief Commissioner is of the opinion that the insurer has ceased to write general insurance in New South Wales, or	26 27
(f) for any other reason the Chief Commissioner thinks sufficient.	28
(2) A cancellation of registration has effect from the date specified for the purpose by the Chief Commissioner in the notice of cancellation.	29 30

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- 20 Cessation of business and cancellation of registration by the insurer** 1
- (1) A registered insurer that ceases to write general insurance business in 2  
New South Wales must, within 1 month after it ceases to write that 3  
business: 4
- (a) give written notice of that fact to the Chief Commissioner, and 5
- (b) lodge the return required to be lodged under section 6 if the 6  
return has not been lodged for the year, and 7
- (c) on or before the twenty-first day of the month after which the 8  
notice is given, pay the tax for which it is liable for the year, 9  
except to the extent (if any) to which that tax has been paid. 10
- Maximum penalty: 100 penalty units. 11
- (2) The notice cancels the insurer's registration under this Part on the day 12  
on which it is received by the Chief Commissioner. 13

<b>Part 5 Miscellaneous</b>	1
<b>21 Recovery of tax prohibited</b>	2
An insurer that is required to pay tax under this Act must not charge a person who effects insurance with the insurer any amount that is directly attributable to that tax.	3 4 5
Maximum penalty: 500 penalty units.	6
<b>22 Effect on contract of insurance of failure to comply with this Act</b>	7
A failure to comply with this Act does not render a contract of insurance illegal or invalid.	8 9
<b>23 Proceedings for offences</b>	10
Proceedings for an offence under this Act or the regulations may be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.	11 12 13
<b>24 Regulations</b>	14
(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	15 16 17 18
(2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.	19 20
<b>25 Review of Act</b>	21
(1) The Treasurer is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.	22 23 24
(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.	25 26
(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.	27 28

Insurance Protection Tax Bill 2001

Clause 26

Miscellaneous

Part 5

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<b>26</b>	<b>Amendment of Taxation Administration Act 1996 No 97, section 4</b>	1
	<b>Meaning of “taxation laws”</b>	2
	The <i>Taxation Administration Act 1996</i> is amended by inserting in	3
	section 4 in alphabetical order of Acts:	4
	<i>Insurance Protection Tax Act 2001</i>	5