

FIRST PRINT

REVENUE LAWS (RECIPROCAL POWERS) BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

Stamp Duties (Information Disclosure) Amendment Bill 1987;

Land Tax Management (Information Disclosure) Amendment Bill 1987;

Pay-roll Tax (Information Disclosure) Amendment Bill 1987;

Business Franchise Licences (Tobacco) (Information Disclosure) Amendment Bill 1987;

Business Franchise Licences (Petroleum Products) (Information Disclosure) Amendment Bill 1987;

Health Insurance Levies (Information Disclosure) Amendment Bill 1987.

The object of this Bill is to provide for the reciprocal enforcement of revenue laws by the Commonwealth and the States and the Territories of the Commonwealth.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

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Clause 3 defines certain expressions used in the proposed Act. Among the expressions defined are "authorised revenue officer", "Commonwealth revenue officer", "corresponding law", "New South Wales revenue law", "recognised revenue law", "relevant principal New South Wales revenue officer" and "State revenue officer". "State" is defined as including a Territory. The clause also makes provision for the Governor-in-Council, by order, to declare a law of the Commonwealth or another State relating to the levying and collection of a tax, fee, duty or other impost to be a recognised revenue law for the purposes of the proposed Act. Such an order will also designate an office under that law to be the designated Commonwealth or State revenue office in respect of that law and for the holder of a New South Wales revenue office to be the relevant principal New South Wales revenue officer in respect of that law. The clause further provides for a law of the Commonwealth or another State which is similar to the proposed Act to be declared to be a corresponding law for the purposes of that Act.

PART 2—INVESTIGATIONS

Clause 4 enables a designated Commonwealth or State revenue officer, with the approval of the relevant principal New South Wales revenue officer, to carry out an investigation in New South Wales in respect of a matter arising under a recognised revenue law. For example, the Comptroller of Stamps in Victoria could, with the approval of the New South Wales Chief Commissioner of Stamp Duties, carry out an investigation in New South Wales into a matter arising under the Stamps Act 1958 of Victoria if some aspect of the matter concerned a person or company whose principal place of business was located in New South Wales.

Clause 5 provides for an investigation into a matter arising under a recognised revenue law to be carried out by the relevant principal New South Wales revenue officer on behalf of the designated Commonwealth or State revenue officer in respect of that law. For example, the Chief Commissioner of Stamp Duties in New South Wales could undertake an investigation into a matter arising under the Stamps Act 1958 of Victoria if requested to do so by the Victorian Comptroller of Stamps.

Clause 6 specifies the general powers of a Commonwealth or State revenue officer and a New South Wales revenue officer for the purposes of the proposed Act. The powers include a power to enter non-residential premises at reasonable times, a power to inspect records, a power to make and take away copies of records and a power to ask questions pertinent to the matter under investigation.

Clause 7 empowers an authorised revenue officer to apply for and obtain a search warrant to search premises at which records may be found that relate to whether or not a recognised law has been or is being contravened or has not been or is not being complied with or at which goods to which that law relates may be found. Such a search warrant would authorise entry to residential premises and would authorise entry to all premises at times other than ordinary business hours.

Clause 8 makes it an offence punishable by a fine not exceeding \$1,000 or imprisonment for a term not exceeding 3 months to obstruct or hinder an authorised revenue officer in the exercise of a power conferred by proposed section 6 or 7 or to fail or refuse, without reasonable excuse, to comply with a requirement made under proposed section 6.

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Clause 9 will empower the relevant principal New South Wales revenue officer to require a person, by notice in writing, to give information to that officer or attend before that officer, or an officer authorised by that officer, to answer questions on oath or to produce records.

Clause 10 provides that a designated Commonwealth or State revenue officer will, if authorised to do so by the relevant principal New South Wales revenue officer, be able to exercise similar powers to those exercisable by that New South Wales revenue officer.

Clause 11 makes it an offence punishable by a fine not exceeding \$20,000 for a person to fail or refuse to comply with a requirement made under proposed section 9 or 10. The clause also specifies certain defences to the offence and provides for other ancillary matters.

PART 3—DISCLOSURE OF INFORMATION ETC.

Clause 12 will empower the prescribed New South Wales revenue officer to communicate to certain Commonwealth and interstate authorities information disclosed or obtained under the proposed Act or a New South Wales revenue law. It will be an offence under the section for a person to make an unauthorised disclosure of information, or to publish any record, obtained by that or another person under the proposed Act or a New South Wales revenue law except in certain specified circumstances, such as for court proceedings arising out of the proposed Act or a recognised revenue law. Such an offence will be punishable by a fine not exceeding \$10,000.

Clause 13 makes it an offence, punishable by a fine not exceeding \$10,000, for a person to make an unauthorised disclosure of information, or publication of records, obtained in accordance with a corresponding law by that person or another person for the purposes of a New South Wales revenue law.

PART 4—EVIDENTIARY MATTERS

Clause 14 is designed to facilitate the use in legal proceedings of answers and information obtained under a corresponding law in connection with a matter arising under a New South Wales revenue law. However, the clause provides that information obtained under a corresponding law for the purposes of a New South Wales revenue law is not admissible in criminal proceedings brought in New South Wales against a person if the information was given by the person in answer to a question that the person would, but for a provision of the corresponding law, have been excused from answering on the grounds of self-incrimination.

Clause 15 provides that, where the designated Commonwealth or State revenue officer concerned has certified a copy of an original record lodged with, or kept or issued by, that officer or another Commonwealth or State revenue officer under a recognised law to be a true copy, that copy is admissible in proceedings arising out of a New South Wales revenue law as if the copy were the original record. The clause also provides for the admissibility in legal proceedings relating to a New South Wales revenue matter of a copy of a primary copy of such a record.

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Clause 16 enables the relevant principal New South Wales revenue officer to certify a copy of a record lodged, kept or issued under a New South Wales revenue law as a true copy for the purpose of having it admitted in evidence in proceedings brought under a recognised revenue law or a corresponding law.

PART 5—MISCELLANEOUS

Clause 17 makes it an offence, punishable by a fine not exceeding \$5,000 or imprisonment for a term not exceeding 12 months, or both, for a person to give an answer that is false or misleading in a material particular in response to a question put by an authorised revenue officer under the proposed Act.

Clause 18 authorises members of the Police Force to provide assistance to authorised revenue officers when those officers are exercising powers conferred by the proposed Act.

Clause 19 provides for proceedings for offences under the proposed Act to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone or before the Supreme Court in the exercise of its summary jurisdiction.

Clause 20 makes it clear that nothing in the proposed Act prevents information lawfully obtained in New South Wales otherwise than under the proposed Act from being used to enforce a Commonwealth or State revenue law.

Clause 21 provides for the making of regulations for the purposes of the proposed Act.

Clause 22 amends section 10 of the Search Warrants Act 1985 by adding to the list of search warrants to which Part III of that Act applies search warrants issued under section 7 of the proposed Act.

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NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to make provision for the reciprocal enforcement of revenue laws, to provide for related matters and to amend the Search Warrants Act 1985.

See also Stamp Duties (Information Disclosure) Amendment Bill 1987; Land Tax Management (Information Disclosure) Amendment Bill 1987; Pay-roll Tax (Information Disclosure) Amendment Bill 1987; Business Franchise Licences (Tobacco) (Information Disclosure) Amendment Bill 1987; Business Franchise Licences (Petroleum Products) (Information Disclosure) Amendment Bill 1987; Health Insurance Levies (Information Disclosure) Amendment Bill 1987.

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

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PART 1—PRELIMINARY

Short title

1. This Act may be cited as the "Revenue Laws (Reciprocal Powers) Act 1987".

Commencement

10 2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

15 **Interpretation**

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Archives Authority" means the Archives Authority of New South Wales established by the Archives Act 1960;

20 "authorised revenue officer" means a person who by virtue of section 4 or 5 is empowered or authorised to exercise a power conferred by section 6 or 7;

25 "Commonwealth revenue officer" means the holder of an office established for the purpose of or in connection with the administration or execution of a law providing for the levying and collection by the Commonwealth of a tax, fee, duty or other impost, but does not include a Minister of the Crown in right of the Commonwealth;

30 "corresponding law" means a law of the Commonwealth or of a State (other than New South Wales) declared under subsection (5) to be a corresponding law for the purposes of this Act;

"New South Wales revenue law" means any of the following:

(a) the Stamp Duties Act 1920;

(b) the Gaming and Betting (Poker Machines) Taxation Act 1956;

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- (c) the Land Tax Act 1956;
- (d) the Land Tax Management Act 1956;
- (e) the Pay-roll Tax Act 1971;
- (f) the Business Franchise Licences (Tobacco) Act 1975;
- 5 (g) the Registered Clubs Act 1976;
- (h) the Business Franchise Licences (Petroleum Products) Act 1982;
- (i) the Liquor Act 1982;
- (j) the Health Insurance Levies Act 1982;
- 10 (k) any other prescribed Act, being an Act by which a tax, fee, duty or other impost is levied and collected by the State;
- “New South Wales revenue officer” means the holder of an office established for the purpose of or in connection with the administration or execution of a New South Wales revenue law, but does not include a Minister of the Crown in right of New South Wales;
- 15 “officer”, in relation to a corporation, has the meaning ascribed to that expression by the Companies (New South Wales) Code;
- “premises” includes place, vehicle, vessel and aircraft;
- “recognised revenue law” means a law of the Commonwealth or a State (other than New South Wales) declared under subsection (3) (a) to be
- 20 a recognised revenue law;
- “record” includes book, account, deed, writing, document and any other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means;
- 25 “regulations” means regulations in force under this Act;
- “relevant goods” means goods to which a recognised revenue law applies;
- “relevant principal New South Wales revenue officer”, in relation to a recognised revenue law, means the holder of the New South Wales revenue office declared under subsection (3) (c) to be the relevant New
- 30 South Wales revenue office in respect of that law;
- “State” includes the Northern Territory and the Australian Capital Territory;

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“State revenue officer” means the holder of an office established for the purpose of or in connection with the administration or execution of a law providing for the levying and collection by a State (other than New South Wales) of a tax, fee, duty or other impost, but does not include a Minister of the Crown.

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(2) In this Act, a reference to a designated Commonwealth revenue officer or a designated State revenue officer in relation to a recognised revenue law is a reference to the holder of the Commonwealth or State revenue office declared under subsection (3) (b) to be the designated revenue office in respect of that law.

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

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(a) a law of the Commonwealth or of a State (other than New South Wales) that provides for the levying and collection of a tax, fee, duty or other impost to be a recognised revenue law for the purposes of this Act;

(b) an office established for the purpose of administering or executing that law to be the designated Commonwealth revenue office or the designated State revenue office in respect of that law; and

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(c) an office established for the purpose of administering or executing a New South Wales revenue law to be the relevant principal New South Wales revenue office in respect of that law.

(4) An order under subsection (3) may not be made unless the Commonwealth or, as the case may be, the State concerned has made provision or agreed to make provision by law to confer on relevant principal New South Wales revenue officers powers and functions similar to those conferred on designated revenue officers by this Act.

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

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PART 2—INVESTIGATIONS

Investigation by a designated Commonwealth or State revenue officer

4. (1) If the relevant principal New South Wales revenue officer has given approval in writing to a proposed investigation by the designated Commonwealth or State revenue officer into a matter arising under a recognised revenue law, the designated Commonwealth or State revenue officer may—

- (a) while the approval remains in force; and
- (b) subject to and in accordance with any conditions subject to which the approval was given,

exercise, or authorise in writing another Commonwealth or State revenue officer appointed for the purpose of or in connection with the administration or execution of that law to exercise, any power conferred by section 6 or 7.

(2) A designated Commonwealth or State revenue officer, or a Commonwealth or State revenue officer authorised by that officer, is not authorised to exercise a power conferred by section 6 unless authorised to exercise a similar power under the relevant recognised revenue law.

(3) The relevant principal New South Wales revenue officer may, in writing, revoke an approval given under subsection (1) or revoke or vary any condition subject to which such an approval was given.

Investigation on behalf of a designated Commonwealth or State revenue officer

5. (1) If, in relation to a matter arising under a recognised revenue law, the designated Commonwealth or State revenue officer requests in writing the relevant principal New South Wales revenue officer to exercise on behalf of the designated Commonwealth or State revenue officer a power conferred by section 6 or 7, that New South Wales revenue officer, or another New South Wales revenue officer authorised by that officer, may exercise that power on behalf of that Commonwealth or State revenue officer.

- (2) A power referred to in subsection (1) is exercisable—
 - (a) subject to and in accordance with any conditions imposed by the relevant principal New South Wales revenue officer; and
 - (b) except in so far as they are not inconsistent with any conditions referred to in paragraph (a)—subject to and in accordance with any conditions specified by the designated Commonwealth or State revenue officer either when making the request referred to in subsection (1) or at a later time.

(3) Neither the relevant principal New South Wales revenue officer nor a New South Wales revenue officer authorised under subsection (1) is authorised to exercise a power conferred by section 6 unless the designated Commonwealth or State revenue officer who requested that the power be exercised is authorised to exercise a similar power under the relevant recognised revenue law.

(4) The relevant principal New South Wales revenue officer may, in writing addressed to the designated Commonwealth or State revenue officer concerned, revoke or vary any conditions referred to in subsection (2) (a).

10 Investigation powers

6. (1) The powers that may be exercised under sections 4 and 5 include the following:

- 15 (a) the power at all reasonable times to have full and free access to all premises for the purpose of ascertaining whether or not a recognised revenue law is being or has been contravened or is not being or has not been complied with;
- 20 (b) the power to inspect all records kept on those premises and the power to require any person whom the authorised revenue officer concerned reasonably believes to have custody or control of those records to produce them for inspection;
- 25 (c) without limiting paragraph (b), the power to inspect, and the power to require a person to produce for inspection, any records in the custody or under the control of the person, being records which relate, or which the authorised revenue officer concerned reasonably believes relate—
 - (i) to the question of whether or not a recognised revenue law is being or has been contravened or is not being or has not been complied with; or
 - 30 (ii) to financial transactions relating to a person who is or has been carrying on a business involving distributing, transporting, selling or purchasing relevant goods;
- (d) if any records inspected, produced or required to be produced in accordance with paragraph (b) or (c)—
 - (i) are not in writing;
 - 35 (ii) are not written in the English language; or

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- (iii) are not decipherable on sight,
the power to require the person who has custody or control of those records to produce a statement in the English language and decipherable on sight setting out the contents of those records;
- 5 (e) the power to make and take away copies of the whole or any part of a record inspected or produced in accordance with paragraph (b) or (c) or a statement produced in accordance with paragraph (d);
- (f) the power to require a person to answer any question relating to—
- 10 (i) any records inspected, produced or required to be produced in accordance with paragraph (b) or (c);
- (ii) any statement produced in accordance with paragraph (d);
- (iii) the carrying on by any person of a business involving distributing, transporting, selling or purchasing relevant goods; or
- 15 (iv) financial transactions relating to a person who is or has been carrying on a business of a kind referred to in subparagraph (iii);
- (g) in order to make copies of records or of parts of records which may be inspected in accordance with paragraph (b) or (c) or any statements which are produced in accordance with paragraph (d)—
- 20 the power to take away and retain, for such period as may be reasonably necessary, any such records or statements; or
- (h) if the authorised revenue officer concerned reasonably believes that any such records or statements are evidence of an offence arising
- 25 under a recognised revenue law—the power to take away and retain those records or statements until proceedings for the offence have been disposed of.
- (2) Subsection (1) (a) does not empower an authorised revenue officer to enter a part of premises that is used for residential purposes without the
- 30 consent of the occupier of that part.
- (3) When taking away any record or statement under this section, an authorised revenue officer must tender an appropriate receipt to the person from whom it is taken.
- (4) Except as provided by subsection (6), a person is not excused from
- 35 answering a question under subsection (1) (f) on the ground that the answer might tend to incriminate the person or to make the person liable to a penalty.

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(5) An answer given by a person in response to a question referred to in subsection (4) is not admissible against the person in any criminal proceedings brought against the person in a New South Wales court, except proceedings for an offence under section 8 or 17.

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

(7) If—

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

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

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

Search warrants

7. (1) In this section—

“authorised justice” means—

- (a) a Magistrate; or
30 (b) a justice of the peace employed in the Local Courts Administration of the Attorney General’s Department;

“premises” includes premises used for residential purposes.

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- (2) The powers that may be exercised under sections 4 and 5 include a power to apply to an authorised justice for a warrant to search premises, or a part of premises, on the ground that the applicant reasonably believes that—
- 5 (a) records are to be found there that relate to the question of whether or not a recognised revenue law is being or has been contravened or is not being or has not been complied with; or
- (b) relevant goods are to be found there in a quantity that exceeds the prescribed quantity.
- 10 (3) An authorised justice to whom an application is made under subsection (2) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised revenue officer specified in the application to enter and search the premises or a specified part of the premises.
- 15 (4) An authorised revenue officer who enters premises or a part of premises in accordance with a search warrant issued under subsection (3) may—
- (a) search the premises or part of the premises;
- 20 (b) exercise any of the powers conferred on an authorised revenue officer by the provisions of section 6 (1) (b)–(h); and
- (c) if the officer finds on the premises or in that part records of a kind referred to in subsection (2) (a), seize those records.
- (5) Part III of the Search Warrants Act 1985 applies to a search warrant issued under subsection (3).
- 25 (6) Subject to Part III of the Search Warrants Act 1985, the provisions of section 6 (3)–(7) apply when an authorised revenue officer has entered premises in accordance with a search warrant issued under subsection (3) in the same way as they apply when such an officer has gained access to premises in accordance with section 6 (1).
- 30 **Obstruction etc. of an authorised revenue officer**
8. (1) A person who—
- (a) hinders or obstructs an authorised revenue officer, or any person properly assisting such an officer, in the exercise of any of the powers conferred by section 6 or 7; or
- 35 (b) fails or refuses to comply with a requirement made under section 6,

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is guilty of an offence and liable to a penalty not exceeding \$1,000 or to imprisonment for a term not exceeding 3 months.

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

(a) unless—

5 (i) it is established by the prosecutor that the authorised revenue officer concerned identified himself or herself as such an officer at the relevant time;

10 (ii) where the offence arises under subsection (1) (a)—it is established by the prosecutor that the person was informed by the authorised revenue officer concerned, or otherwise knew, that that officer was empowered to exercise the particular power concerned; or

15 (iii) where the offence arises under subsection (1) (b)—it is established by the prosecutor that the authorised revenue officer concerned warned the person that a failure or refusal to comply with the requirement was an offence; or

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

Power of the relevant principal New South Wales revenue officer to obtain information and evidence

25 **9. (1)** If the designated Commonwealth or State revenue officer concerned has referred a matter arising under a recognised revenue law for investigation by the relevant principal New South Wales revenue officer, that New South Wales revenue officer may, by notice in writing, require a person—

30 (a) to give to that New South Wales revenue officer such information, in such form, as that officer requires;

(b) to attend before that New South Wales revenue officer at a time and place specified in the notice and there answer questions; or

(c) to produce to that New South Wales revenue officer any records in the custody or under the control of the person,

35 for the purpose of—

(d) inquiring into that matter;

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- (e) inquiring into or ascertaining the liability of that or any other person under that law with respect to the payment of a tax, fee, duty or other impost; or
- 5 (f) ascertaining for the purposes of that law the identity of any person who—
- (i) may have a liability under a provision of that law; or
- (ii) may, as a result of being related to or associated or connected with another person, affect the liability of that other person.
- 10 (2) The relevant principal New South Wales revenue officer may, by notice in writing, require a person in respect of whom a requirement under subsection (1) has been made to produce to that officer, at a specified place and at a specified time or within a specified period, any records of a specified kind relating to information given or required to be given under that subsection.
- 15 (3) The relevant principal New South Wales revenue officer may require information or answers required under subsection (1) to be given—
- (a) on oath and either orally or in writing; or
- (b) by statutory declaration.
- 20 (4) For the purpose of subsection (3), the relevant principal New South Wales revenue officer may administer an oath.
- (5) The relevant principal New South Wales revenue officer may cause to be made copies of the whole or any part of records produced in accordance with subsection (1) (c).
- 25 (6) Requirements made of a person under both subsection (1) and subsection (2) may be included in the same written notice.
- (7) The relevant principal New South Wales revenue officer may authorise another New South Wales revenue officer to exercise or perform, on behalf of the relevant principal New South Wales revenue officer, any power conferred or any function imposed on the relevant principal New South Wales revenue officer by this section.
- 30 (8) A New South Wales revenue officer may exercise a power conferred, or perform a function imposed, on the relevant principal New South Wales revenue officer by this section in accordance with an authorisation given under subsection (7).
- 35 (9) The regulations may prescribe scales of expenses to be allowed to persons whose attendance is required under this section.

*Revenue Laws (Reciprocal Powers) 1987***Power of a designated Commonwealth or State revenue officer to obtain information and evidence**

10. (1) If, in relation to a matter arising under a recognised revenue law, the relevant principal New South Wales revenue officer has authorised the
 5 designated Commonwealth or State revenue officer in relation to that law to investigate the matter, that Commonwealth or State revenue officer may, by notice in writing, require a person—

- (a) to give to that Commonwealth or State revenue officer such information, in such form, as that officer requires;
- 10 (b) to attend before that Commonwealth or State revenue officer at a time and place specified in the notice and there answer questions; or
- (c) to produce to that Commonwealth or State revenue officer any records in the custody or under the control of the person,
 15 for the purpose of—
 - (d) inquiring into that matter;
 - (e) inquiring into or ascertaining the liability of that or any other person under that law with respect to the payment of a tax, fee, duty or other impost; or
 - 20 (f) ascertaining for the purposes of that law the identity of any person who—
 - (i) may have a liability under a provision of that law; or
 - (ii) may, as a result of being related to or associated or connected with another person, affect the liability of that other person.

25 (2) The designated Commonwealth or State revenue officer concerned may, by notice in writing, require a person in respect of whom a requirement under subsection (1) has been made to produce to that officer at a specified place and at a specified time or within a specified period any records of a specified kind relating to information given or required to be
 30 given under that subsection.

(3) The designated Commonwealth or State revenue officer concerned may require information or answers required under subsection (1) to be given—

- (a) on oath and either orally or in writing; or
- (b) by statutory declaration.

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(4) For the purpose of subsection (3), the designated Commonwealth or State revenue officer concerned may administer an oath.

(5) The designated Commonwealth or State revenue officer concerned may cause to be made copies of the whole or any part of records produced in accordance with subsection (1) (c).

(6) Requirements made of a person under both subsection (1) and subsection (2) may be included in the same written notice.

(7) The designated Commonwealth or State revenue officer in relation to a recognised revenue law may authorise another Commonwealth or State revenue officer appointed for the purpose of or in connection with the administration or execution of that law to exercise or perform, on behalf of that designated Commonwealth or State revenue officer, any power conferred or any function imposed on that designated Commonwealth or State revenue officer by this section.

(8) A Commonwealth or State revenue officer may exercise a power conferred, or perform a function imposed, on a designated Commonwealth or State revenue officer by this section in accordance with an authorisation given under subsection (7).

(9) The regulations may prescribe scales of expenses to be allowed to persons whose attendance is required under this section.

Offence not to comply with requirement made under section 9 or 10

11. (1) A person who fails or refuses to comply with any requirement made of that person under section 9 or 10 is guilty of an offence and liable to a penalty not exceeding \$20,000.

(2) A person is not guilty of an offence under subsection (1) if the court hearing the charge is satisfied—

(a) that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates; or

(b) that the defendant complied with that requirement to the extent of the defendant's ability to do so.

(3) Except as provided by subsection (5), a person is not excused from complying with a requirement under section 9 or 10 to give information or to answer a question on the ground that the information or answer might tend to incriminate the person or make the person liable to a penalty.

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(4) The information or answer given by a person referred to in subsection (3) is not admissible against the person in any criminal proceedings brought against the person in a New South Wales court, except proceedings under subsection (1) or section 17 or proceedings for an offence in connection with the verification by oath of the information.

(5) A person who would not, but for this subsection, be excused from complying with a requirement made under section 9 or 10 to give information or to answer a question concerning a matter arising under a recognised revenue law of the Commonwealth or of a State is so excused unless that law or the corresponding law of the Commonwealth or that State provides that the information or answer is not admissible in criminal proceedings brought against the person by or on behalf of the Commonwealth or that State or an authority of the Commonwealth or that State.

15 PART 3—DISCLOSURE OF INFORMATION ETC.

Provision of information to certain Commonwealth and State revenue officers etc.

12. (1) The New South Wales revenue officer prescribed in respect of a New South Wales revenue law, and any person authorised by that officer, may communicate information disclosed or obtained under this Act or that law in relation to a matter arising under that law to any of the following:

- (a) a Commonwealth or State revenue officer, or a person designated by such an officer, for the purposes of the administration or execution of a law of the Commonwealth, or of the State concerned, providing for the levying and collection of a tax, fee, duty or other impost;
- (b) the National Companies and Securities Commission, or a person to whom functions or powers of that Commission are delegated under section 45 of the National Companies and Securities Commission Act 1979 of the Commonwealth, for the purposes of the administration or execution of any law that is—
- (i) a relevant Act for the purposes of the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980 of the Commonwealth; or
- (ii) a relevant Code for the purposes of a law of a State corresponding to the last-mentioned Act;

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- (c) the National Crime Authority, or a person authorised by that Authority, for the purposes of the administration or execution of—
- (i) the National Crime Authority Act 1984 of the Commonwealth; or
 - 5 (ii) a law of a State that makes provision for the operation of that Authority in that State;
- (d) the Commissioner of the Australian Federal Police, or a member of the Australian Federal Police designated by the Commissioner, for the purpose of enforcing a law of the Commonwealth that creates an offence;
- 10 (e) the Official Receiver in Bankruptcy for the purposes of the administration or execution of the Bankruptcy Act 1966 of the Commonwealth.
- (2) If the New South Wales revenue officer prescribed in respect of a New South Wales revenue law consents to the communication by a person or body mentioned in subsection (1) (a), (b), (c) or (d) of information disclosed to or obtained by the person or body under this Act or that law, the person or body, and any person designated by the person or body, may communicate the information—
- 20 (a) to any person to whom, or for any purpose that, the person or body is permitted by or under a law of the Commonwealth, or of the State concerned, to communicate information obtained under or in connection with the administration or execution of that law; or
- (b) to any other person or body so mentioned.
- 25 (3) Except as provided by this section or by a New South Wales revenue law, a person shall not disclose information or publish any record or part of a record obtained by that or another person under this Act unless the disclosure or publication is made—
- 30 (a) with the consent of, and in accordance with any conditions imposed by, the person from whom the information or record was so obtained;
- (b) in connection with the administration or execution of—
- (i) this Act;
 - 35 (ii) a law of the Commonwealth or of a State providing for the levying and collection of a tax, fee, duty or other impost;

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- (iii) a law that is a relevant Act for the purposes of the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980 of the Commonwealth or is a relevant Code for the purposes of a law of a State corresponding to that Act; or
- 5 (iv) the National Crime Authority Act 1984 of the Commonwealth or a law of a State that makes provision for the operation of that Authority in that State; or
- (c) for the purpose of any legal proceedings arising out of any such Act or law or of a report of any such proceedings.
- 10 Penalty: \$10,000.
- (4) If a record referred to in subsection (3) has been transferred to the Archives Authority in accordance with the Archives Act 1960, the prescribed New South Wales revenue officer may, when the record has been in existence for 30 years or more, give that Authority approval to disclose, 15 divulge or otherwise publish the contents of the record.
- (5) Nothing in subsection (3)—
- (a) prevents the disclosure of information or the publication of a record in accordance with a lawful requirement of the Commonwealth Statistician; or
- 20 (b) prevents a record from being made available to, or disposed of or otherwise dealt with by, the Archives Authority in accordance with the Archives Act 1960.

Information etc. obtained under a corresponding law

- 25 13. (1) Except as provided by subsections (2) and (3), a person shall not disclose any information, or publish any record or part of a record, obtained by that or another person under a corresponding law for the purposes of a New South Wales revenue law, unless the disclosure or publication is made—
- 30 (a) with the consent of the designated Commonwealth or State revenue officer concerned or as authorised by that corresponding law;
- (b) in connection with the administration or execution of this section or of that New South Wales revenue law; or
- 35 (c) for the purposes of any legal proceedings arising out of this section or of that New South Wales revenue law or of a report of any such proceedings.

Penalty: \$10,000.

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(2) If a record referred to in subsection (1) has been transferred to the Archives Authority in accordance with the Archives Act 1960 and has been in existence for 30 years or more, the relevant principal New South Wales revenue officer may, subject to any conditions that may have been imposed
 5 by the relevant designated Commonwealth or State revenue officer at or before the time when the record was, or its contents were, obtained as referred to in subsection (1), give that Authority approval to disclose, divulge or otherwise publish the contents of the record.

(3) Nothing in subsection (1)—

- 10 (a) prevents the disclosure of information or the publication of a record in accordance with a lawful requirement of the Commonwealth Statistician; or
- (b) prevents a record from being made available to, or disposed of or
 15 otherwise dealt with by, the Archives Authority in accordance with the Archives Act 1960.

PART 4—EVIDENTIARY MATTERS

Use in legal proceedings of answers and information obtained under a corresponding law

14. (1) If, under a provision of a corresponding law—

- 20 (a) an answer to a question put to a person in connection with a matter arising under a New South Wales revenue law is given to a Commonwealth or State revenue officer or a New South Wales revenue officer; or
- (b) any information is given to such a revenue officer by a person in
 25 connection with such a matter,

then, subject to subsection (3), that answer or information is, for the purposes of legal proceedings brought in New South Wales against that person in relation to that matter under that revenue law, binding on and admissible in evidence against that person.

30 (2) If, under a provision of a corresponding law—

- (a) an answer to a question put to an officer of a corporation in connection with a matter arising under a New South Wales revenue law is given to a Commonwealth or State revenue officer or a New South Wales revenue officer; or

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- (b) any information is given to such a revenue officer by an officer of a corporation in connection with such a matter,

that answer or information is, for the purposes of legal proceedings brought in New South Wales against the corporation in relation to that matter under that revenue law, binding on and admissible in evidence against the corporation, unless it is proved that the answer or information was given in relation to a matter in respect of which the officer of the corporation had no authority to bind the corporation.

(3) If—

(a) a person is required under a provision of a corresponding law to answer a question concerning a matter arising under a New South Wales revenue law; and

(b) the person could, but for a provision of that law, have refused to answer the question on the ground that the answer may have tended to incriminate the person or to make the person liable to a penalty,

the answer to the question is not admissible against the person in any criminal proceedings brought against the person in a New South Wales court.

Certification of copies by a designated Commonwealth or State revenue officer

15. (1) If the designated Commonwealth or State revenue officer concerned has certified a copy of an original record, or of part of an original record, lodged with, or kept or issued by, that officer or some other Commonwealth or State revenue officer under a recognised revenue law to be a true copy, a document purporting to be such a copy is, subject to subsection (2), receivable in proceedings in all courts and tribunals of New South Wales relating to a matter arising under a New South Wales revenue law as evidence as if the document were the original record.

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

(a) in the case of proceedings for an offence—evidence is adduced that the document is not a true copy; or

(b) in any other case—it is proved on a balance of probabilities that the document is not a true copy.

(3) If—

(a) in accordance with a recognised revenue law, a copy is made of an original record or of a part of such a record;

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- (b) in accordance with a power or duty under that law, the designated Commonwealth or State revenue officer concerned or another Commonwealth or State revenue officer has certified the copy to be a true copy of the original record or part of the original record; and
- 5 (c) that designated Commonwealth or State revenue officer has certified a copy of the primary copy or of a part of that copy to be a true copy,

a document purporting to be a copy certified under this subsection to be a primary copy of an original record or of part of such a record is, subject to
 10 subsection (4), receivable in proceedings in all courts and tribunals in New South Wales relating to a matter arising under a New South Wales revenue law as evidence as if the copy so certified were the original record.

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

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

Certification of copies by the relevant principal New South Wales revenue officer

16. On being requested to do so by a designated Commonwealth or State revenue officer, the relevant principal New South Wales revenue officer
 30 may—

- (a) certify a copy of a record, or part of a record, lodged with or kept or issued by that officer or some other New South Wales revenue officer under a New South Wales revenue law; and
- (b) supply that copy to that designated Commonwealth or State revenue officer for use in legal proceedings brought under or for the purposes
 35 of enforcing a recognised revenue law or a corresponding law.

PART 5—MISCELLANEOUS**False or misleading statements**

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

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

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

10 (3) It is a defence to a charge under subsection (1) or (2) if it is proved that, when the answer, statement or representation was made, the defendant believed on reasonable grounds that it was neither false nor misleading.

Authority for members of Police Force to provide assistance to authorised revenue officers

15 18. To the extent to which a member of the Police Force is not so authorised by any other law, such a member is, by this section, authorised to provide an authorised revenue officer with such assistance as that officer may in a particular case require for or in connection with the exercise by that officer of any of the powers conferred by this Act.

20 Proceedings for offences

19. (1) Proceedings for an offence against this Act may be dealt with before a Local Court constituted by a Magistrate sitting alone or before the Supreme Court in its summary jurisdiction.

25 (2) Proceedings for an offence against this Act may be commenced at any time within a period of 2 years after the time when it is alleged that the offence was committed.

30 (3) If proceedings for an offence against this Act are taken before a Local Court, the maximum penalty that the Court may impose in respect of the offence is, despite any provision of this Act to the contrary, \$10,000 or the maximum penalty provided by this Act in respect of the offence, whichever amount is the smaller.

35 (4) If proceedings for an offence against this Act are taken before the Supreme Court, that Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations in respect of the offence.

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Use of information obtained from other sources not prejudiced

20. If a Commonwealth or State revenue officer lawfully obtains in New South Wales, otherwise than in accordance with this Act, information relevant to the administration or execution of a law of the Commonwealth or, as the case may be, a law of the State concerned relating to the levying and collection of a tax, fee, duty or other impost, nothing in this Act shall be construed as preventing the use of that information for the purposes of the administration or execution of that law.

Regulations

10 21. (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.

(2) A provision of a regulation may—

- 15 (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

20 or may do any combination of those things.

Amendment of Act No. 37, 1985, sec. 10 (Interpretation)

22. The Search Warrants Act 1985 is amended by inserting in the definition of "search warrant" in section 10, in alphabetical order of Acts, the following words:

25 section 7 of the Revenue Laws (Reciprocal Powers) Act 1987;

REVENUE LAWS (RECIPROCAL POWERS) ACT 1987
No. 86

NEW SOUTH WALES



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REVENUE LAWS (RECIPROCAL POWERS) ACT 1987 No. 86

NEW SOUTH WALES



Act No. 86, 1987

An Act to make provision for the reciprocal enforcement of revenue laws, to provide for related matters and to amend the Search Warrants Act 1985. [Assented to 12 June 1987]

See also Stamp Duties (Information Disclosure) Amendment Act 1987; Land Tax Management (Information Disclosure) Amendment Act 1987; Pay-roll Tax (Information Disclosure) Amendment Act 1987; Business Franchise Licences (Tobacco) (Information Disclosure) Amendment Act 1987; Business Franchise Licences (Petroleum Products) (Information Disclosure) Amendment Act 1987; Health Insurance Levies (Information Disclosure) Amendment Act 1987.

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the "Revenue Laws (Reciprocal Powers) Act 1987".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Interpretation

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Archives Authority" means the Archives Authority of New South Wales established by the Archives Act 1960;

"authorised revenue officer" means a person who by virtue of section 4 or 5 is empowered or authorised to exercise a power conferred by section 6 or 7;

"Commonwealth revenue officer" means the holder of an office established for the purpose of or in connection with the administration or execution of a law providing for the levying and collection by the Commonwealth of a tax, fee, duty or other impost, but does not include a Minister of the Crown in right of the Commonwealth;

"corresponding law" means a law of the Commonwealth or of a State (other than New South Wales) declared under subsection (5) to be a corresponding law for the purposes of this Act;

"New South Wales revenue law" means any of the following:

(a) the Stamp Duties Act 1920;

(b) the Gaming and Betting (Poker Machines) Taxation Act 1956;

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- (c) the Land Tax Act 1956;
- (d) the Land Tax Management Act 1956;
- (e) the Pay-roll Tax Act 1971;
- (f) the Business Franchise Licences (Tobacco) Act 1975;
- (g) the Registered Clubs Act 1976;
- (h) the Business Franchise Licences (Petroleum Products) Act 1982;
- (i) the Liquor Act 1982;
- (j) the Health Insurance Levies Act 1982;
- (k) any other prescribed Act, being an Act by which a tax, fee, duty or other impost is levied and collected by the State;

“New South Wales revenue officer” means the holder of an office established for the purpose of or in connection with the administration or execution of a New South Wales revenue law, but does not include a Minister of the Crown in right of New South Wales;

“officer”, in relation to a corporation, has the meaning ascribed to that expression by the Companies (New South Wales) Code;

“premises” includes place, vehicle, vessel and aircraft;

“recognised revenue law” means a law of the Commonwealth or a State (other than New South Wales) declared under subsection (3) (a) to be a recognised revenue law;

“record” includes book, account, deed, writing, document and any other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means;

“regulations” means regulations in force under this Act;

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

“relevant principal New South Wales revenue officer”, in relation to a recognised revenue law, means the holder of the New South Wales revenue office declared under subsection (3) (c) to be the relevant New South Wales revenue office in respect of that law;

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

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“State revenue officer” means the holder of an office established for the purpose of or in connection with the administration or execution of a law providing for the levying and collection by a State (other than New South Wales) of a tax, fee, duty or other impost, but does not include a Minister of the Crown.

(2) In this Act, a reference to a designated Commonwealth revenue officer or a designated State revenue officer in relation to a recognised revenue law is a reference to the holder of the Commonwealth or State revenue office declared under subsection (3) (b) to be the designated revenue office in respect of that law.

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

- (a) a law of the Commonwealth or of a State (other than New South Wales) that provides for the levying and collection of a tax, fee, duty or other impost to be a recognised revenue law for the purposes of this Act;
- (b) an office established for the purpose of administering or executing that law to be the designated Commonwealth revenue office or the designated State revenue office in respect of that law; and
- (c) an office established for the purpose of administering or executing a New South Wales revenue law to be the relevant principal New South Wales revenue office in respect of that law.

(4) An order under subsection (3) may not be made unless the Commonwealth or, as the case may be, the State concerned has made provision or agreed to make provision by law to confer on relevant principal New South Wales revenue officers powers and functions similar to those conferred on designated revenue officers by this Act.

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

PART 2—INVESTIGATIONS

Investigation by a designated Commonwealth or State revenue officer

4. (1) If the relevant principal New South Wales revenue officer has given approval in writing to a proposed investigation by the designated Commonwealth or State revenue officer into a matter arising under a recognised revenue law, the designated Commonwealth or State revenue officer may—

- (a) while the approval remains in force; and
- (b) subject to and in accordance with any conditions subject to which the approval was given,

exercise, or authorise in writing another Commonwealth or State revenue officer appointed for the purpose of or in connection with the administration or execution of that law to exercise, any power conferred by section 6 or 7.

(2) A designated Commonwealth or State revenue officer, or a Commonwealth or State revenue officer authorised by that officer, is not authorised to exercise a power conferred by section 6 unless authorised to exercise a similar power under the relevant recognised revenue law.

(3) The relevant principal New South Wales revenue officer may, in writing, revoke an approval given under subsection (1) or revoke or vary any condition subject to which such an approval was given.

Investigation on behalf of a designated Commonwealth or State revenue officer

5. (1) If, in relation to a matter arising under a recognised revenue law, the designated Commonwealth or State revenue officer requests in writing the relevant principal New South Wales revenue officer to exercise on behalf of the designated Commonwealth or State revenue officer a power conferred by section 6 or 7, that New South Wales revenue officer, or another New South Wales revenue officer authorised by that officer, may exercise that power on behalf of that Commonwealth or State revenue officer.

- (2) A power referred to in subsection (1) is exercisable—
 - (a) subject to and in accordance with any conditions imposed by the relevant principal New South Wales revenue officer; and
 - (b) except in so far as they are not inconsistent with any conditions referred to in paragraph (a)—subject to and in accordance with any conditions specified by the designated Commonwealth or State revenue officer either when making the request referred to in subsection (1) or at a later time.

(3) Neither the relevant principal New South Wales revenue officer nor a New South Wales revenue officer authorised under subsection (1) is authorised to exercise a power conferred by section 6 unless the designated Commonwealth or State revenue officer who requested that the power be exercised is authorised to exercise a similar power under the relevant recognised revenue law.

(4) The relevant principal New South Wales revenue officer may, in writing addressed to the designated Commonwealth or State revenue officer concerned, revoke or vary any conditions referred to in subsection (2) (a).

Investigation powers

6. (1) The powers that may be exercised under sections 4 and 5 include the following:

- (a) the power at all reasonable times to have full and free access to all premises for the purpose of ascertaining whether or not a recognised revenue law is being or has been contravened or is not being or has not been complied with;
- (b) the power to inspect all records kept on those premises and the power to require any person whom the authorised revenue officer concerned reasonably believes to have custody or control of those records to produce them for inspection;
- (c) without limiting paragraph (b), the power to inspect, and the power to require a person to produce for inspection, any records in the custody or under the control of the person, being records which relate, or which the authorised revenue officer concerned reasonably believes relate—
 - (i) to the question of whether or not a recognised revenue law is being or has been contravened or is not being or has not been complied with; or
 - (ii) to financial transactions relating to a person who is or has been carrying on a business involving distributing, transporting, selling or purchasing relevant goods;
- (d) if any records inspected, produced or required to be produced in accordance with paragraph (b) or (c)—
 - (i) are not in writing;
 - (ii) are not written in the English language; or

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- (iii) are not decipherable on sight,
the power to require the person who has custody or control of those records to produce a statement in the English language and decipherable on sight setting out the contents of those records;
 - (e) the power to make and take away copies of the whole or any part of a record inspected or produced in accordance with paragraph (b) or (c) or a statement produced in accordance with paragraph (d);
 - (f) the power to require a person to answer any question relating to—
 - (i) any records inspected, produced or required to be produced in accordance with paragraph (b) or (c);
 - (ii) any statement produced in accordance with paragraph (d);
 - (iii) the carrying on by any person of a business involving distributing, transporting, selling or purchasing relevant goods; or
 - (iv) financial transactions relating to a person who is or has been carrying on a business of a kind referred to in subparagraph (iii);
 - (g) in order to make copies of records or of parts of records which may be inspected in accordance with paragraph (b) or (c) or any statements which are produced in accordance with paragraph (d)—the power to take away and retain, for such period as may be reasonably necessary, any such records or statements; or
 - (h) if the authorised revenue officer concerned reasonably believes that any such records or statements are evidence of an offence arising under a recognised revenue law—the power to take away and retain those records or statements until proceedings for the offence have been disposed of.
- (2) Subsection (1) (a) does not empower an authorised revenue officer to enter a part of premises that is used for residential purposes without the consent of the occupier of that part.
- (3) When taking away any record or statement under this section, an authorised revenue officer must tender an appropriate receipt to the person from whom it is taken.
- (4) Except as provided by subsection (6), a person is not excused from answering a question under subsection (1) (f) on the ground that the answer might tend to incriminate the person or to make the person liable to a penalty.

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(5) An answer given by a person in response to a question referred to in subsection (4) is not admissible against the person in any criminal proceedings brought against the person in a New South Wales court, except proceedings for an offence under section 8 or 17.

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

(7) If—

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

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

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

Search warrants

7. (1) In this section—

“authorised justice” means—

- (a) a Magistrate; or
- (b) a justice of the peace employed in the Local Courts Administration of the Attorney General’s Department;

“premises” includes premises used for residential purposes.

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(2) The powers that may be exercised under sections 4 and 5 include a power to apply to an authorised justice for a warrant to search premises, or a part of premises, on the ground that the applicant reasonably believes that—

- (a) records are to be found there that relate to the question of whether or not a recognised revenue law is being or has been contravened or is not being or has not been complied with; or
- (b) relevant goods are to be found there in a quantity that exceeds the prescribed quantity.

(3) An authorised justice to whom an application is made under subsection (2) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised revenue officer specified in the application to enter and search the premises or a specified part of the premises.

(4) An authorised revenue officer who enters premises or a part of premises in accordance with a search warrant issued under subsection (3) may—

- (a) search the premises or part of the premises;
- (b) exercise any of the powers conferred on an authorised revenue officer by the provisions of section 6 (1) (b)–(h); and
- (c) if the officer finds on the premises or in that part records of a kind referred to in subsection (2) (a), seize those records.

(5) Part III of the Search Warrants Act 1985 applies to a search warrant issued under subsection (3).

(6) Subject to Part III of the Search Warrants Act 1985, the provisions of section 6 (3)–(7) apply when an authorised revenue officer has entered premises in accordance with a search warrant issued under subsection (3) in the same way as they apply when such an officer has gained access to premises in accordance with section 6 (1).

Obstruction etc. of an authorised revenue officer

8. (1) A person who—

- (a) hinders or obstructs an authorised revenue officer, or any person properly assisting such an officer, in the exercise of any of the powers conferred by section 6 or 7; or
- (b) fails or refuses to comply with a requirement made under section 6,

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is guilty of an offence and liable to a penalty not exceeding \$1,000 or to imprisonment for a term not exceeding 3 months.

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

(a) unless—

- (i) it is established by the prosecutor that the authorised revenue officer concerned identified himself or herself as such an officer at the relevant time;
 - (ii) where the offence arises under subsection (1) (a)—it is established by the prosecutor that the person was informed by the authorised revenue officer concerned, or otherwise knew, that that officer was empowered to exercise the particular power concerned; or
 - (iii) where the offence arises under subsection (1) (b)—it is established by the prosecutor that the authorised revenue officer concerned warned the person that a failure or refusal to comply with the requirement was an offence; or
- (b) if, where the offence arises under subsection (1) (b) in relation to a failure or refusal to comply with a requirement to answer a question, the person satisfies the court that the person did not know, and could not with reasonable diligence have ascertained, the answer to the question.

Power of the relevant principal New South Wales revenue officer to obtain information and evidence

9. (1) If the designated Commonwealth or State revenue officer concerned has referred a matter arising under a recognised revenue law for investigation by the relevant principal New South Wales revenue officer, that New South Wales revenue officer may, by notice in writing, require a person—

- (a) to give to that New South Wales revenue officer such information, in such form, as that officer requires;
- (b) to attend before that New South Wales revenue officer at a time and place specified in the notice and there answer questions; or
- (c) to produce to that New South Wales revenue officer any records in the custody or under the control of the person,

for the purpose of—

- (d) inquiring into that matter;

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- (e) inquiring into or ascertaining the liability of that or any other person under that law with respect to the payment of a tax, fee, duty or other impost; or
- (f) ascertaining for the purposes of that law the identity of any person who—
 - (i) may have a liability under a provision of that law; or
 - (ii) may, as a result of being related to or associated or connected with another person, affect the liability of that other person.

(2) The relevant principal New South Wales revenue officer may, by notice in writing, require a person in respect of whom a requirement under subsection (1) has been made to produce to that officer, at a specified place and at a specified time or within a specified period, any records of a specified kind relating to information given or required to be given under that subsection.

(3) The relevant principal New South Wales revenue officer may require information or answers required under subsection (1) to be given—

- (a) on oath and either orally or in writing; or
- (b) by statutory declaration.

(4) For the purpose of subsection (3), the relevant principal New South Wales revenue officer may administer an oath.

(5) The relevant principal New South Wales revenue officer may cause to be made copies of the whole or any part of records produced in accordance with subsection (1) (c).

(6) Requirements made of a person under both subsection (1) and subsection (2) may be included in the same written notice.

(7) The relevant principal New South Wales revenue officer may authorise another New South Wales revenue officer to exercise or perform, on behalf of the relevant principal New South Wales revenue officer, any power conferred or any function imposed on the relevant principal New South Wales revenue officer by this section.

(8) A New South Wales revenue officer may exercise a power conferred, or perform a function imposed, on the relevant principal New South Wales revenue officer by this section in accordance with an authorisation given under subsection (7).

(9) The regulations may prescribe scales of expenses to be allowed to persons whose attendance is required under this section.

*Revenue Laws (Reciprocal Powers) 1987***Power of a designated Commonwealth or State revenue officer to obtain information and evidence**

10. (1) If, in relation to a matter arising under a recognised revenue law, the relevant principal New South Wales revenue officer has authorised the designated Commonwealth or State revenue officer in relation to that law to investigate the matter, that Commonwealth or State revenue officer may, by notice in writing, require a person—

- (a) to give to that Commonwealth or State revenue officer such information, in such form, as that officer requires;
- (b) to attend before that Commonwealth or State revenue officer at a time and place specified in the notice and there answer questions; or
- (c) to produce to that Commonwealth or State revenue officer any records in the custody or under the control of the person,

for the purpose of—

- (d) inquiring into that matter;
- (e) inquiring into or ascertaining the liability of that or any other person under that law with respect to the payment of a tax, fee, duty or other impost; or
- (f) ascertaining for the purposes of that law the identity of any person who—
 - (i) may have a liability under a provision of that law; or
 - (ii) may, as a result of being related to or associated or connected with another person, affect the liability of that other person.

(2) The designated Commonwealth or State revenue officer concerned may, by notice in writing, require a person in respect of whom a requirement under subsection (1) has been made to produce to that officer at a specified place and at a specified time or within a specified period any records of a specified kind relating to information given or required to be given under that subsection.

(3) The designated Commonwealth or State revenue officer concerned may require information or answers required under subsection (1) to be given—

- (a) on oath and either orally or in writing; or
- (b) by statutory declaration.

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(4) For the purpose of subsection (3), the designated Commonwealth or State revenue officer concerned may administer an oath.

(5) The designated Commonwealth or State revenue officer concerned may cause to be made copies of the whole or any part of records produced in accordance with subsection (1) (c).

(6) Requirements made of a person under both subsection (1) and subsection (2) may be included in the same written notice.

(7) The designated Commonwealth or State revenue officer in relation to a recognised revenue law may authorise another Commonwealth or State revenue officer appointed for the purpose of or in connection with the administration or execution of that law to exercise or perform, on behalf of that designated Commonwealth or State revenue officer, any power conferred or any function imposed on that designated Commonwealth or State revenue officer by this section.

(8) A Commonwealth or State revenue officer may exercise a power conferred, or perform a function imposed, on a designated Commonwealth or State revenue officer by this section in accordance with an authorisation given under subsection (7).

(9) The regulations may prescribe scales of expenses to be allowed to persons whose attendance is required under this section.

Offence not to comply with requirement made under section 9 or 10

11. (1) A person who fails or refuses to comply with any requirement made of that person under section 9 or 10 is guilty of an offence and liable to a penalty not exceeding \$20,000.

(2) A person is not guilty of an offence under subsection (1) if the court hearing the charge is satisfied—

- (a) that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates; or
- (b) that the defendant complied with that requirement to the extent of the defendant's ability to do so.

(3) Except as provided by subsection (5), a person is not excused from complying with a requirement under section 9 or 10 to give information or to answer a question on the ground that the information or answer might tend to incriminate the person or make the person liable to a penalty.

(4) The information or answer given by a person referred to in subsection (3) is not admissible against the person in any criminal proceedings brought against the person in a New South Wales court, except proceedings under subsection (1) or section 17 or proceedings for an offence in connection with the verification by oath of the information.

(5) A person who would not, but for this subsection, be excused from complying with a requirement made under section 9 or 10 to give information or to answer a question concerning a matter arising under a recognised revenue law of the Commonwealth or of a State is so excused unless that law or the corresponding law of the Commonwealth or that State provides that the information or answer is not admissible in criminal proceedings brought against the person by or on behalf of the Commonwealth or that State or an authority of the Commonwealth or that State.

PART 3—DISCLOSURE OF INFORMATION ETC.

Provision of information to certain Commonwealth and State revenue officers etc.

12. (1) The New South Wales revenue officer prescribed in respect of a New South Wales revenue law, and any person authorised by that officer, may communicate information disclosed or obtained under this Act or that law in relation to a matter arising under that law to any of the following:

- (a) a Commonwealth or State revenue officer, or a person designated by such an officer, for the purposes of the administration or execution of a law of the Commonwealth, or of the State concerned, providing for the levying and collection of a tax, fee, duty or other impost;
- (b) the National Companies and Securities Commission, or a person to whom functions or powers of that Commission are delegated under section 45 of the National Companies and Securities Commission Act 1979 of the Commonwealth, for the purposes of the administration or execution of any law that is—
 - (i) a relevant Act for the purposes of the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980 of the Commonwealth; or
 - (ii) a relevant Code for the purposes of a law of a State corresponding to the last-mentioned Act;

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- (c) the National Crime Authority, or a person authorised by that Authority, for the purposes of the administration or execution of—
 - (i) the National Crime Authority Act 1984 of the Commonwealth; or
 - (ii) a law of a State that makes provision for the operation of that Authority in that State;
- (d) the Commissioner of the Australian Federal Police, or a member of the Australian Federal Police designated by the Commissioner, for the purpose of enforcing a law of the Commonwealth that creates an offence;
- (e) the Official Receiver in Bankruptcy for the purposes of the administration or execution of the Bankruptcy Act 1966 of the Commonwealth.

(2) If the New South Wales revenue officer prescribed in respect of a New South Wales revenue law consents to the communication by a person or body mentioned in subsection (1) (a), (b), (c) or (d) of information disclosed to or obtained by the person or body under this Act or that law, the person or body, and any person designated by the person or body, may communicate the information—

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

(3) Except as provided by this section or by a New South Wales revenue law, a person shall not disclose information or publish any record or part of a record obtained by that or another person under this Act unless the disclosure or publication is made—

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

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- (iii) a law that is a relevant Act for the purposes of the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980 of the Commonwealth or is a relevant Code for the purposes of a law of a State corresponding to that Act; or
- (iv) the National Crime Authority Act 1984 of the Commonwealth or a law of a State that makes provision for the operation of that Authority in that State; or
- (c) for the purpose of any legal proceedings arising out of any such Act or law or of a report of any such proceedings.

Penalty: \$10,000.

(4) If a record referred to in subsection (3) has been transferred to the Archives Authority in accordance with the Archives Act 1960, the prescribed New South Wales revenue officer may, when the record has been in existence for 30 years or more, give that Authority approval to disclose, divulge or otherwise publish the contents of the record.

(5) Nothing in subsection (3)—

- (a) prevents the disclosure of information or the publication of a record in accordance with a lawful requirement of the Commonwealth Statistician; or
- (b) prevents a record from being made available to, or disposed of or otherwise dealt with by, the Archives Authority in accordance with the Archives Act 1960.

Information etc. obtained under a corresponding law

13. (1) Except as provided by subsections (2) and (3), a person shall not disclose any information, or publish any record or part of a record, obtained by that or another person under a corresponding law for the purposes of a New South Wales revenue law, unless the disclosure or publication is made—

- (a) with the consent of the designated Commonwealth or State revenue officer concerned or as authorised by that corresponding law;
- (b) in connection with the administration or execution of this section or of that New South Wales revenue law; or
- (c) for the purposes of any legal proceedings arising out of this section or of that New South Wales revenue law or of a report of any such proceedings.

Penalty: \$10,000.

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(2) If a record referred to in subsection (1) has been transferred to the Archives Authority in accordance with the Archives Act 1960 and has been in existence for 30 years or more, the relevant principal New South Wales revenue officer may, subject to any conditions that may have been imposed by the relevant designated Commonwealth or State revenue officer at or before the time when the record was, or its contents were, obtained as referred to in subsection (1), give that Authority approval to disclose, divulge or otherwise publish the contents of the record.

(3) Nothing in subsection (1)—

- (a) prevents the disclosure of information or the publication of a record in accordance with a lawful requirement of the Commonwealth Statistician; or
- (b) prevents a record from being made available to, or disposed of or otherwise dealt with by, the Archives Authority in accordance with the Archives Act 1960.

PART 4—EVIDENTIARY MATTERS

Use in legal proceedings of answers and information obtained under a corresponding law

14. (1) If, under a provision of a corresponding law—

- (a) an answer to a question put to a person in connection with a matter arising under a New South Wales revenue law is given to a Commonwealth or State revenue officer or a New South Wales revenue officer; or
- (b) any information is given to such a revenue officer by a person in connection with such a matter,

then, subject to subsection (3), that answer or information is, for the purposes of legal proceedings brought in New South Wales against that person in relation to that matter under that revenue law, binding on and admissible in evidence against that person.

(2) If, under a provision of a corresponding law—

- (a) an answer to a question put to an officer of a corporation in connection with a matter arising under a New South Wales revenue law is given to a Commonwealth or State revenue officer or a New South Wales revenue officer; or

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- (b) any information is given to such a revenue officer by an officer of a corporation in connection with such a matter,

that answer or information is, for the purposes of legal proceedings brought in New South Wales against the corporation in relation to that matter under that revenue law, binding on and admissible in evidence against the corporation, unless it is proved that the answer or information was given in relation to a matter in respect of which the officer of the corporation had no authority to bind the corporation.

(3) If—

- (a) a person is required under a provision of a corresponding law to answer a question concerning a matter arising under a New South Wales revenue law; and
- (b) the person could, but for a provision of that law, have refused to answer the question on the ground that the answer may have tended to incriminate the person or to make the person liable to a penalty,

the answer to the question is not admissible against the person in any criminal proceedings brought against the person in a New South Wales court.

Certification of copies by a designated Commonwealth or State revenue officer

15. (1) If the designated Commonwealth or State revenue officer concerned has certified a copy of an original record, or of part of an original record, lodged with, or kept or issued by, that officer or some other Commonwealth or State revenue officer under a recognised revenue law to be a true copy, a document purporting to be such a copy is, subject to subsection (2), receivable in proceedings in all courts and tribunals of New South Wales relating to a matter arising under a New South Wales revenue law as evidence as if the document were the original record.

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

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

(3) If—

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

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- (b) in accordance with a power or duty under that law, the designated Commonwealth or State revenue officer concerned or another Commonwealth or State revenue officer has certified the copy to be a true copy of the original record or part of the original record; and
- (c) that designated Commonwealth or State revenue officer has certified a copy of the primary copy or of a part of that copy to be a true copy,

a document purporting to be a copy certified under this subsection to be a primary copy of an original record or of part of such a record is, subject to subsection (4), receivable in proceedings in all courts and tribunals in New South Wales relating to a matter arising under a New South Wales revenue law as evidence as if the copy so certified were the original record.

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

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

Certification of copies by the relevant principal New South Wales revenue officer

16. On being requested to do so by a designated Commonwealth or State revenue officer, the relevant principal New South Wales revenue officer may—

- (a) certify a copy of a record, or part of a record, lodged with or kept or issued by that officer or some other New South Wales revenue officer under a New South Wales revenue law; and
- (b) supply that copy to that designated Commonwealth or State revenue officer for use in legal proceedings brought under or for the purposes of enforcing a recognised revenue law or a corresponding law.

PART 5—MISCELLANEOUS**False or misleading statements**

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

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

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

(3) It is a defence to a charge under subsection (1) or (2) if it is proved that, when the answer, statement or representation was made, the defendant believed on reasonable grounds that it was neither false nor misleading.

Authority for members of Police Force to provide assistance to authorised revenue officers

18. To the extent to which a member of the Police Force is not so authorised by any other law, such a member is, by this section, authorised to provide an authorised revenue officer with such assistance as that officer may in a particular case require for or in connection with the exercise by that officer of any of the powers conferred by this Act.

Proceedings for offences

19. (1) Proceedings for an offence against this Act may be dealt with before a Local Court constituted by a Magistrate sitting alone or before the Supreme Court in its summary jurisdiction.

(2) Proceedings for an offence against this Act may be commenced at any time within a period of 2 years after the time when it is alleged that the offence was committed.

(3) If proceedings for an offence against this Act are taken before a Local Court, the maximum penalty that the Court may impose in respect of the offence is, despite any provision of this Act to the contrary, \$10,000 or the maximum penalty provided by this Act in respect of the offence, whichever amount is the smaller.

(4) If proceedings for an offence against this Act are taken before the Supreme Court, that Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations in respect of the offence.

Use of information obtained from other sources not prejudiced

20. If a Commonwealth or State revenue officer lawfully obtains in New South Wales, otherwise than in accordance with this Act, information relevant to the administration or execution of a law of the Commonwealth or, as the case may be, a law of the State concerned relating to the levying and collection of a tax, fee, duty or other impost, nothing in this Act shall be construed as preventing the use of that information for the purposes of the administration or execution of that law.

Regulations

21. (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.

(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

Amendment of Act No. 37, 1985, sec. 10 (Interpretation)

22. The Search Warrants Act 1985 is amended by inserting in the definition of "search warrant" in section 10, in alphabetical order of Acts, the following words:

section 7 of the Revenue Laws (Reciprocal Powers) Act 1987;

