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AUSTRALIA CARD BILL 1986

NOTES ON CLAUSES 32 TO 51

(Circulated by authority of the Treasurer,
the Hon. P.J. Keating, M.P.)

AUSTRALIA CARD BILL 1986

PART IV - PRODUCTION OF AUSTRALIA CARD

General outline of Part IV

Part IV of the Bill specifies the circumstances in which an Australia Card of a person may be required to be produced. The effect of Part IV is to require the use of a Card in three general areas -

- . . . taxation:
- . . . social security; and
- . . . medical and hospital benefits.

The proposed taxation uses of the Card may be divided into three broad categories -

- . . . financial and other transactions - the Australia Card number would be used to underpin information reporting to the Australian Taxation Office in connection with two categories of transactions -
 - those which give rise to a direct check on income (clauses 40, 41, 42 and 43);
 - those which are an indication of an expected level of income (clauses 44, 45, 46, 47 and 48);
- . . . employment - a requirement that a person's Australia Card be produced would eliminate the use of false names for employment and like purposes (clauses 49 and 50); and
- . . . a general administrative use in establishing the identity of a taxpayer (clause 51).

Main features of Part IV

Part IV of the Bill consists of 2 Divisions. Division 1 defines a number of terms that are used in the part and contains provisions relating to -

- . . . the identification of entities;
- . . . the production of an Australia Card where a person is acting in the capacity of a prescribed representative (see clause 9) of another person (for example, because of that other person's legal incapacity);
- . . . the production of a Card by a person who is acting in the capacity of trustee of a trust estate;

- . the use of certificates of identity in circumstances where it is not practicable to personally present a Card;
- . the facilitation of transactions to be entered into by short-term visitors and non-residents; and
- . the application of Part IV in relation to Norfolk Island and the Cocos (Keeling) Islands.

Division 2 of Part IV specifies the circumstances in which a Card is to be required to be produced. Broadly, the Card will be used to assist in the identification of individuals and entities who -

- . open or operate accounts, or make or hold fixed deposits, with financial institutions;
- . make or hold other forms of investments;
- . purchase or hold units in cash management, property or unit trusts;
- . derive primary production income through marketing authorities or produce agents;
- . derive rental income through real estate agents in respect of rental properties;
- . make remittances of funds overseas;
- . enter into land transactions;
- . operate safety deposit box and similar services;
- . purchase or own shares in public companies;
- . enter into futures contracts;
- . receive income from employment;
- . receive income that is subject to the Prescribed Payments System;
- . make a claim for Medicare benefits;
- . are admitted to certain hospitals; or
- . apply for, or are in receipt of, pensions, benefits or allowances under the Social Security Act.

Notes on clauses 32 to 51

PART IV - PRODUCTION OF AUSTRALIA CARD

Division 1 - Preliminary

Clause 32 : Interpretation

Clause 32 contains a number of definitions and interpretative provisions to facilitate drafting of the operative clauses of Part IV.

Sub-clause (1) defines the following terms, each of which is to have the given meaning unless the contrary intention appears -

"Australia" is defined to include the external Territories.

"bank" means a body corporate that carries on, either as the whole or a part of its business operations, the business of banking. The term is relevant to the definition of "financial institution" which includes a bank.

"body" means a body corporate, an unincorporated association or a partnership. The term is widely used in Part IV but is of particular relevance to clause 33 which provides the basis for the entity identification system.

"building society" is defined to mean a building society, co-operative housing society or similar society registered or incorporated under a law of a State or Territory. The term is relevant to the definition of "financial institution" which includes a building society.

"credit union" means, in addition to societies registered or incorporated as such under a State or Territory law (paragraph (a)), a society or body of persons, incorporated under a State or Territory law, which has as its principal business the borrowing of money from, and lending those moneys to, members of the society or body (paragraph (b)). The term is relevant to the definition of "financial institution" which includes a credit union.

"current Card" is defined in relation to a person and in relation to a particular time to mean, broadly, a Card issued in respect of that person that, at that particular time, is still in force.

The operative provisions of Part IV require that a current Card be produced and the definition will therefore ensure that this requirement cannot be satisfied by the production of an outdated or cancelled Card.

"financial institution" is defined to mean, in addition to a bank, a building society or a credit union (all defined terms which are explained earlier in these notes), a body corporate that is - or would be if it had been incorporated in Australia - a financial corporation within the meaning of paragraph 51(xx) of the Constitution. (By that paragraph, the Parliament has power to make laws for the peace, order and good government of the Commonwealth with respect to, inter alia, financial corporations). The term is widely used in Part IV but is of most relevance to clauses 40 (deposits and accounts with financial institutions), 44 (foreign remittances) and 46 (safety deposit box services and similar services).

"first relevant day" is defined in a manner that will permit the day on which the Card is first required to be produced in respect of certain transactions to be declared by way of regulations. The first relevant day may not, however, be earlier than 1 March 1989.

"interest" is defined to include amounts that are in the nature of interest. The definition does not apply in sub-clause 42(1) where the term is used in the context of an interest in an eligible trust or in clause 45 where the term is used in the context of an interest in land. The defined term is of particular relevance to clauses 40 (deposits and accounts with financial institutions) and 41 (investments).

"legal practitioner" means a solicitor, barrister and solicitor or legal practitioner of the High Court or a State or Territory Supreme Court. The term is relevant to sub-clauses 41(6), (7) and (8) which relate to the use of the Card in connection with investments by legal practitioners on behalf of clients.

"liquidator", a term relevant to determining who may be an eligible representative of a body (clause 33), is defined to include a provisional liquidator.

"person" is to be taken to include an unincorporated association, a partnership and the trustee of a trust estate.

"relevant provision of this Part" is defined, as a drafting measure, to mean any of those provisions of Part IV that prohibit the doing of an act unless there has been produced a Card of a person which at the time of production is the person's current Card.

"second relevant day" is the day declared as such by the regulations. It may not be earlier than the first relevant day (a defined term explained in these notes) but must be later than 30 June 1990. The second relevant day effectively represents the end of a transitional period commencing on the first relevant day for the progressive production of a Card.

"statutory authority" means a body corporate that is incorporated for a public purpose by a Commonwealth, State or Northern Territory law. The term is relevant to sub-clause 32(4) (see notes on that sub-clause) and to the definition of "marketing authority" in sub-clause 43(1).

"tax file number" is defined to mean the number that is allocated to a person's income tax return. The definition reflects the fact that a person may have more than one file number for dealings with the Australian Taxation Office - for example, a group employer's file number or a sales tax file number - and is relevant to clause 33 (eligible representatives of bodies).

Sub-clause 32(2) specifies the manner in which a person must record a matter or thing when required to do so by a provision of Part IV. The matter or thing must be recorded in the prescribed manner.

By sub-clause 32(3), notice of any matter or thing which is required, by a provision of Part IV, to be given to the Commissioner of Taxation must be given in a manner and form approved by the Commissioner.

By sub-clause 32(4), a relevant provision of this Part (that is, broadly, a provision that prohibits a particular action if a Card has not been produced - see notes on the definition of the term "a relevant provision of this Part" in sub-clause 32(1)) has no effect in a case where the provision would operate to require the production of a Card in respect of the Crown in right of the Commonwealth, a State, a Territory or a statutory authority (a defined term).

Sub-clause 32(5) will ensure that a person cannot rely on his or her own default in producing a Card or requesting production of a Card to avoid meeting contractual obligations. A contravention of Part IV does

not affect the validity or enforceability of an agreement (paragraph (a)), the validity of any act or thing (paragraph (b)) nor can it give rise to an entitlement for the recovery of a payment (paragraph (c)).

Sub-clause 32(6) applies where a person makes a requirement (paragraph (b)) in accordance with a provision of Part IV that prohibits the doing of an act or thing (for example, the payment by the person of proceeds of the sale of primary produce - sub-clause 43(2)) unless that person requires production of a Card (paragraph (a)). In such circumstances, the person who is required to produce a Card cannot enforce his or her rights under any agreement unless and until a Card is produced. The sub-clause does not, however, affect the validity of any act or thing done at a time when the requirement has not been complied with (paragraph (c)) nor does it entitle a person to recover a payment made at such a time (paragraph (d)).

Clause 33 : Eligible representatives of bodies

This clause provides the basis for the companion system for entities that was the subject of Chapter 6 of the Submission to the Joint Select Committee on an Australia Card. In broad terms, the requirement that a Card be produced will be satisfied in the case of a body corporate, an unincorporated association or a partnership (that is, a body - see notes on the definition of that term in sub-clause 32(1)) if there is produced, on behalf of the body, a notice specifying the body's name and tax file number or, alternatively, the reason why it doesn't have a tax file number. The notice is to be authenticated by the production of a Card of an eligible representative of the body.

Sub-clause 33(1) specifies those persons who are eligible representatives of bodies. In the case of a body corporate, a person is, by paragraph (a), an eligible representative of the body for so long as the person is any one or more of the following -

- . the public officer of the body corporate for the purposes of the Income Tax Assessment Act 1936 (section 252 of that Act requires a company to appoint, as its public officer, a natural person who has attained the age of 18 years, is ordinarily resident in Australia and is capable of understanding the nature of his or her appointment) (sub-paragraph (i));
- . an officer of the body corporate within the meaning of section 8Y of the Taxation Administration Act 1953 - that is, a director, secretary, official manager or deputy official manager of the corporation, a receiver and manager of property of the corporation, a liquidator of the corporation appointed in a voluntary winding

up of the corporation or a trustee or other person administering a compromise or arrangement made between the corporation and another person or other persons (sub-paragraph (ii));

a receiver of property of the body corporate, whether appointed by a court or otherwise and whether or not also a manager (sub-paragraph (iii));

a liquidator of the body corporate appointed by a court (sub-paragraph (iv));

a person who is an agent of a foreign company for the purposes of section 510 of the Companies Act 1981 (sub-paragraph (v));

a person who is authorised in writing by a person included in one of the above categories to act as an eligible representative of the body corporate (sub-paragraph (vi)).

By paragraph (b), a person who falls into one or more of the following categories is an eligible representative of an unincorporated association -

the public officer of the unincorporated association for the purposes of the Income Tax Assessment Act 1936 (sub-paragraph (i)). (Certain unincorporated associations are treated as companies for income tax purposes and are thus subject to the same requirements in relation to the appointment of a public officer as bodies corporate - see notes on (sub-paragraph 33(1)(a)(1));

a director, secretary, office-holder, liquidator, receiver or trustee of the association (sub-paragraph (ii));

a person who is authorised in writing by a person included in one of the above categories to act as an eligible representative of the association (sub-paragraph (iii)).

Paragraph (c) provides that a person is an eligible representative of a partnership for so long as the person is one or more of the following -

a partner in the partnership (sub-paragraph (i));

a trustee in bankruptcy of the estate of a partner in the partnership, or of the joint and separate estates of 2 or more partners in the partnership (sub-paragraph (ii));

- . a receiver or liquidator of the partnership (sub-paragraph (iii));

By the operation of sub-clause 33(2), those provisions of Part IV that require the production of a current Card of a person at a particular time are to be read, in the case of body, as requiring the production of a current Card of an eligible representative of the body (paragraph (a)) and a notice in writing (paragraph (b)). The notice is to set out the name of the body (sub-paragraph (i)), its tax file number (a defined term) (sub-paragraph (ii)) and be signed by the eligible representative (sub-paragraph (iv)). In the case of a body that does not have a tax file number - for example, a statutory authority or other exempt body or newly incorporated company - the notice must state why the body has no tax file number (sub-paragraph (iii)).

By sub-clause 33(3), a person who is required to record an Australia Card number is required, in the case of a body, to record -

- . the Australia Card number of the eligible representative (paragraph (a));
- . the body's name (paragraph (b));
- . the body's tax file number (paragraph (c)) or, alternatively, the reasons why the body does not have a tax file number (paragraph (d)).

By sub-clause 33(4), a person who is required to give notice of an Australia Card number is required, in the case of body, to give notice of

- . the Australia Card number of the eligible representative (paragraph (a));
- . the body's name (paragraph (b));
- . the body's tax file number, if any (paragraph (c));

Sub-clause 33(5) provides that sub-clauses 33(6), (7) and (8) are to have effect where a person who, in that person's capacity as an eligible representative of a body, produced his or her Australia Card to an authority (defined in sub-clause (9) to include a person) subsequently ceases to be an eligible representative of that body.

Within 14 days after the time that the person ceased to be an eligible representative of the body, the body is required, by sub-clause 33(6), to notify the authority in writing that the person has ceased to be an eligible representative of the body (paragraph (a)) and cause a person who is still an eligible representative of the body to produce his or her current Card to the authority (paragraph (b)).

Sub-clause 33(7) authorises an authority to continue to treat as the Australia Card number of an eligible representative of the body the Australia Card number of the person who is no longer an eligible representative until such time as the requirements of sub-clause 33(6) are complied with.

Sub-clause 33(8) requires an authority to substitute in its records the Australia Card number of the new eligible representative for the Australia Card number of the person who is no longer an eligible representative of the body.

Sub-clause 33(9) defines "authority" to include, for the purposes of clause 33, a person. "Person" is also a defined term (see notes on sub-clause 32(1)) and includes, in addition to a natural person, an unincorporated association, a partnership and a trustee.

Clause 34 : Trustees

A requirement that a Card be produced is satisfied, in the case of a trustee, by the production of the trustee's Card or, in the case of a corporate trustee, by the production of the Card of an eligible representative and a notice under paragraph 33(2)(b). The person to whom a Card is required to be produced may not, however, be aware of the capacity in which the trustee is acting. Sub-clause 34(1) places certain requirements on a person who is acting in the capacity of trustee of a trust estate (other than as a bare trustee) where a person requires the production of a current Card for the purposes of a provision of Part IV that prohibits the doing of an act or thing unless the person requires production of a Card (paragraphs (a) and (b)). In such cases, the trustee is required to give to the person a notice in writing, signed by the trustee -

- . disclosing the fact that he or she is acting in the capacity of trustee of a trust estate (paragraph (c)); and
- . setting out the tax file number allocated to the trust estate (paragraph (d)) or, alternatively (paragraph (e)), stating why no tax file number has been allocated to the trust estate.

A person who receives a notice that purports to be a notice under sub-clause 34(1) and who is required to record the trustee's card number by a provision of Part IV is also required, by sub-clause 34(2), to record the matters stated and set out in the notice.

The maximum penalty that may be imposed by a court for an offence against clause 34 is \$20,000.

Clause 35 : Production of current Card

Paragraph 35(a) makes it clear that a requirement in Part IV that a Card of a person be produced is a requirement that the Card be produced by that person. Where, however, a Card has been issued to a person in the capacity of a prescribed representative of the Card-subject (for example, a parent or guardian - see clause 9), paragraph 35(b) requires the production, by the prescribed representative, of the Card of the Card-subject (sub-paragraph (i)) together with the prescribed representative's own Card (sub-paragraph (ii)).

Clause 36 : Certificates of identity

Clause 36 provides the mechanism that will facilitate compliance with a requirement that a Card be produced in circumstances where it is not reasonably practicable to personally produce a Card in accordance with clause 35. Broadly, the mechanism involves the certification of a person's identity by reference to his or her Card by a person holding a position of responsibility and the delivery of the certificate to the person to whom a Card is required to be produced.

Sub-clause 36(1) is an interpretative provision. Paragraph (a) defines a "prescribed person" - that is, a person who may certify another person's identity - to mean, for the purposes of section 36, a person who is an Australian citizen (sub-paragraph (i)) and is included in a class of persons prescribed for the purposes of the paragraph (sub-paragraph (ii)). By paragraph (b), a reference in clause 36 to a requirement that a Card be produced is to be read as a reference to a requirement of a provision of Part IV that an Act be not done unless there has been produced the current Card issued in respect of a particular person.

By sub-clause 36(2), a requirement that a Card be produced will be taken to have been satisfied if a certificate is delivered to the person to whom a current Card is required to be produced. That certificate must -

- . purport to have been signed by a prescribed person;
- . specify the Australia Card numbers of -
 - .. the person who is required to produce a current Card (the "relevant Card-subject");
 - and
 - .. the prescribed person; and

state -

- .. that there has been produced to the prescribed person the current Card issued in respect of the relevant Card-subject (paragraph (a));
- .. that, to the best of the prescribed person's knowledge, he or she is not related to the relevant Card-subject by birth or marriage (paragraph (b));
- .. that the prescribed person is satisfied that it is not reasonably practicable for the Card-subject to personally produce his or her Card (paragraph (c)); and
- .. such other matters as may be required by the regulations (paragraph (d)).

Sub-clause 36(3) prohibits a prescribed person from signing a certificate of identity unless there has been produced to the prescribed person a current Card of the relevant Card-subject as at the time of production (paragraph (a)). By the operation of clause 35, therefore, the Card must be produced to the prescribed person either personally by the Card-subject or by a prescribed representative of the Card-subject. In the latter case, paragraph (b) requires that the current Card of the prescribed representative as at the time of production also be produced to the prescribed person.

The maximum penalty that may be imposed by a court for an offence against clause 36 is a fine of \$5000 or imprisonment for 2 years or both.

Sub-clause 36(4) requires a certificate under section 36 to be in accordance with any form that may be prescribed by the regulations for the purposes of clause 36.

Clause 37 : Recently arrived visitors to Australia

Clause 37 proposes an identification system based on passports for newly-arrived visitors to Australia. The clause, in broad terms, replaces the requirement that a Card be produced with a requirement that a passport be produced where a person has been in Australia for a period of less than 6 weeks during a 12 month period.

Sub-clause 37(1) provides that a reference in Part IV to the production of a current Card of a person is to be read as including a reference to the production of a passport held by a visitor (a term defined in sub-clause 37(3)).

Where a requirement that a Card be produced is satisfied, by the operation of sub-clause 37(1), by the production of a passport, sub-clause 37(2) has the effect that any associated requirement to record, or give notice of, a person's Australia Card number will be satisfied by recording, or giving notice of -

- . the visitor's name (paragraph (a));
- . particulars of the visitor's passport (paragraph (b));
- . the visitor's usual residential address (paragraph (c)); and
- . the visitor's residential address during his or her stay in Australia (paragraph (d)).

Sub-clause 37(3) defines "visitor" to mean a person who -

- . is not an Australian citizen;
- . is not a permanent Australian resident;
- . is physically present in Australia; and
- . has been in Australia for a total of less than 6 weeks during the immediately preceding 12 months.

It will therefore be necessary for a visitor to apply for the issue of a Card if the visitor intends to be in Australia for more than 6 weeks during a 12 month period and to engage, after the expiration of 6 weeks, in transactions that require the production of a Card.

Clause 38 : Non-residents

Clause 38 provides the mechanism that will enable non-resident individuals who are not physically present in Australia to engage in transactions that would otherwise require the production of a Card. Non-resident bodies will be subject to the same requirements as resident bodies - see notes on clause 33.

By sub-clause 38(1), a requirement in Part IV that a current Card of a person as at a particular time be produced, will be satisfied, in the case of a non-resident (defined in sub-clause 38(4)), by the furnishing of a notice -

- . setting out the name and usual residential address of the non-resident (paragraph (a));
- . stating that the person falls within the definition of "non-resident" (paragraph (b)); and

signed by the person (paragraph (c)).

Sub-clause 38(2) has the effect that a requirement in Part IV that a person record, or give notice of, an Australia Card number will be satisfied, in the case of a non-resident, by recording, or giving notice of, the name and usual residential address given by the non-resident in a notice under sub-clause 38(1).

Sub-clause 38(3) provides protection for a person who, in good faith, relies on a notice purported to have been given under sub-clause 38(1). A person is entitled to accept that such a notice is bona fide unless and until the person has reasonable grounds to believe that the person furnishing the notice is not a non-resident.

Sub-clause 38(4) defines "non-resident" to mean, for the purposes of clause 38, a natural person who -

- . is not physically present in Australia;
- . is not an Australian citizen; and
- . is not a permanent Australian resident.

Sub-clause 38(5) makes it an offence, subject to a maximum penalty of \$5000 or imprisonment for 2 years or both, for a person to knowingly make a statement that is false or misleading in a material particular in a notice furnished under sub-clause 38(1).

Clause 39 : Application of Part in relation to certain external Territories

Sub-clause 39(1) authorises the making of regulations for the modification (defined in sub-clause 39(2)) of Part IV in its application in, or in relation to persons or matters connected with, Norfolk Island or the Territory of Cocos (Keeling) Islands.

The term "modification" is defined in sub-clause 39(2) to include the addition or omission of a provision or the substitution of a provision for another provision.

Division 2 - When Card to be produced

Clause 40 : Deposits and accounts with financial institutions

Clause 40 provides for the verification of identity by means of the Australia Card of persons who hold deposits or accounts (whether interest bearing or not) with financial institutions (a term that is defined in sub-clause 32(1)). As explained in the notes on sub-clause 40(6), the clause draws a technical distinction between the

expressions "depositing money with a financial institution" and "making a deposit in an account with the financial institution". The former expression relates to investments such as fixed deposits, etc., and the latter expression to deposits to cheque accounts, savings accounts, etc.

Sub-clause 40(1) prohibits a financial institution from -

- . accepting a deposit of money or permitting an account to be opened on or after the first relevant day (a defined term - see notes on clause 32) (paragraph (a));
- . in respect of money deposited, or an account opened, on or after the first relevant day, permit or give effect to an assignment of that deposit or that account (paragraph (b));
- . in respect of money deposited on or after the first relevant day, repay that money (paragraph (c));
- . in respect of an account opened on or after the first relevant day, permit a deposit to be made to, or a withdrawal to be made from, that account (paragraph (d)); or
- . in respect of money deposited, or an account opened, on or after the first relevant day, pay interest to a person (paragraph (e)) (the financial institution may, however, credit interest to that person),

unless the financial institution requires, or has previously required, in respect of the deposit or the account, the production of the depositor's or account holder's Card (paragraph (f)), that requirement is, or that previous requirement was, complied with (paragraph (g)) and the financial institution records, or previously recorded the depositor's, or account holder's, Card number (paragraph (h)). Paragraphs (b), (c), (d) and (e) will only have applications to accounts opened, or deposits made, on or after the first relevant day and in respect of which the requirements of one or all of paragraphs (f), (g) or (h) had not been complied with.

The maximum penalty that may be imposed by a court in respect of an offence against sub-clause 40(1) is a fine of \$20,000.

Sub-clause 40(2) relates to accounts or deposits in existence at the first relevant day and effectively requires the account holder or depositor to verify his or her identity before the second relevant day. Unless, by the second relevant day (a defined term - see notes on

clause 32), the requirements of paragraphs (e), (f) and (g) (the same requirements as in paragraphs 40(1)(f), (g) and (h) respectively - see earlier notes on those paragraphs) are complied with in respect of money deposited or an account opened before the first relevant day, a financial institution may not -

- . permit, or give effect to, the taking by a person of an assignment of the money or account (paragraph (a));
- . in the case of money deposited, repay the money (paragraph (b));
- . in the case of an account, permit money to be deposited to, or withdrawn from the account (paragraph (c)); or
- . pay interest to the account holder or depositor (paragraph (d)).

The maximum penalty that a court may impose in respect of an offence against sub-clause 40(2) is a fine of \$20,000.

By reason of paragraph (2)(b) of Income Tax Regulation 11, every income tax return by a company must be accompanied by a statement showing the names and addresses of all persons to whom interest in excess of \$100 was paid or credited during the year of income and the amount of interest paid or credited to each person. By sub-clause 40(3), the Australia Card number of each person to whom interest is paid or credited by a company that is a financial institution will also have to be included in such a statement.

Paragraph 40(3)(a) will ensure that a financial institution is not under an obligation to report an Australia Card number that it has no notice of. Thus, the sub-clause applies in respect of all accounts opened, or deposits made, on or after the first relevant day (sub-paragraph (a)(i)) but only in relation to interest paid or credited after the second relevant day on accounts opened, or deposits made, before the first relevant day (sub-paragraph (a)(ii)).

Sub-clause 40(4) requires a financial institution to record the Australia Card number of a person who, during the transitional period between the first and second relevant days, verifies his or her identity by the production of a Card (paragraph (b)) in respect of an account that was opened, or a deposit that was made, before the first relevant day (paragraph (a)). The maximum penalty that a court may impose for failure to comply with this requirement is a fine of \$20,000.

Sub-clause 40(5) requires the financial institution to report to the Commissioner of Taxation details of deposits made, or accounts opened, before the first relevant day in respect of which the depositor or account holder had not verified his or her identity by the second relevant day. The financial institution is required to report these details as soon as practicable but not more than 2 months after the second relevant day. The maximum pecuniary penalty for failure to comply with this requirement is \$20,000.

As explained earlier in the notes on this clause, sub-clause 40(6) distinguishes between the expressions "depositing money with a financial institution" and "making a deposit in an account with the financial institution". The former expression relates to investments such as fixed deposits, etc., and the latter to deposits that are made to cheque and savings accounts, etc.

Clause 41 : Investments

This clause outlines the use of the Card in connection with investments other than deposits and accounts with financial institutions.

Sub-clause 41(1) defines the term "prescribed borrower", for the purposes of the clause, to mean the Commonwealth (paragraph (a)), a State (paragraph (b)), the Northern Territory (paragraph (c)) or a body corporate (paragraph (d)). The responsibilities of a prescribed borrower under clause 41 in relation to moneys borrowed from a person closely parallel the responsibilities of a financial institution under clause 40 in relation to deposits and accounts.

Sub-clause 41(2) prohibits a prescribed borrower from -

- . borrowing money from a person on or after the first relevant day (paragraph (a));
- . in respect of money borrowed on or after the first relevant day, repay, or pay interest on, that money (paragraph (b)) - this paragraph will only have application in cases where paragraph (a) had not been complied with at the time the money was borrowed; or
- . in respect of money borrowed before the first relevant day, repay, or pay interest on that money on or after the second relevant day (paragraph (c)),

unless the prescribed borrower requires, or has previously required in respect of the money, the production of the lender's Card (paragraph (d)), the lender complies with

that requirement (paragraph (e)) and the prescribed borrower records, or has previously recorded, the lender's Card number (paragraph (f)).

The maximum pecuniary penalty for an offence against sub-clause 41(2) is \$20,000.

Where a prescribed borrower is required, under a taxation law, to provide to the Commissioner of Taxation details of interest paid, sub-clause 41(3) places the additional requirement on the prescribed borrower, subject to a pecuniary penalty of \$20,000, to give to the Commissioner notice of the lender's Card number (paragraph (c)). In a case where the interest is paid to a person other than the legal owner of the debt and the prescribed borrower has recorded the legal owner's Card number, the prescribed borrower is also required to give notice of the legal owner's Card number to the Commissioner (paragraph (d)). By paragraph (a), the sub-clause applies in respect of interest paid on money borrowed by the prescribed borrower on or after the first relevant day (sub-paragraph (a)(i)) but only in respect of interest paid on or after the second relevant day on money borrowed before the first relevant day (sub-paragraph (a)(ii)). Thus, a prescribed borrower will not be under an obligation to report an Australia Card number he or she has no notice of.

Sub-clause 41(4) is a drafting measure to ensure that clause 41 does not apply in respect of deposits or accounts with financial institutions. The specific provisions of clause 40 apply in respect of such investments.

Subject to the exception provided by sub-clause 41(4), nothing in clause 40 limits the generality of clause 41 (sub-clause 41(5)).

Sub-clauses 41(6), (7) and (8) will bring within the ambit of clause 41 those persons deriving interest from money invested through solicitors' trust accounts.

Sub-clause 41(6) is an interpretative provision that makes it clear that, for the purposes of sub-clause (7) or (8), a legal practitioner will only be taken to have accepted money for an eligible purpose if the legal practitioner accepts the money either for investment on behalf of the person (paragraph (a)) or for being lent under an agreement to be arranged by or on behalf of the legal practitioner (paragraph (b)). Thus, sub-clause (7) or (8) will not apply in relation to money borrowed by a legal practitioner for his or her own business or private use.

Sub-clause 41(7) prohibits a legal practitioner
from -

- . accepting money from a person for an eligible purpose on or after the first relevant day (paragraph (a));
- . in respect of money accepted by the legal practitioner on or after the first relevant day -
 - .. repaying that money (paragraph (b)); or
 - .. paying to the investor income received in respect of the investment of the money by the legal practitioner (paragraph (c)); or
- . in respect of money accepted by the legal practitioner before the first relevant day -
 - .. repaying that money on or after the second relevant day (sub-paragraph (d)(i)); or
 - .. paying to the investor, on or after the second relevant day, income received in respect of the investment by the legal practitioner (sub-paragraph (d)(ii)),

unless the legal practitioner requires, or has previously required in respect of that investor, the production of the investor's Card (paragraph (e)), the investor complies, or previously complied, with that requirement (paragraph (f)) and the legal practitioner records, or has previously recorded, the investor's Card number (paragraph (g)).

The maximum pecuniary penalty for an offence against sub-clause 41(7) is \$20,000.

Sub-clause 41(8) places the same requirements on a legal practitioner in relation to the reporting of information to the Commissioner of Taxation as are placed on a prescribed borrower by sub-clause 41(3) - see notes on that sub-clause.

Clause 42 : Income from certain trusts

Clause 42 provides for the Card's use in connection with investments in cash management trusts, property trusts and unit trusts.

Sub-clause 42(1) defines the following terms that are used in clause 42 -

"credit" means credit or cause to be credited.

"eligible trust" is defined in a manner that takes account of the legal nature of a trust and means, broadly, a cash management trust, a property trust or a unit trust.

"pay" means pay or cause to be paid.

"unit" is defined to include an interest of any kind.

Thus any investment in an eligible trust will be taken to be a unit in that trust for the purposes of clause 42.

Sub-clause 42(2) prohibits a manager of an eligible trust, subject to a penalty of \$20,000, from -

- . issuing a unit in the trust to a person on or after the first relevant day (paragraph (a));
- . in respect of a unit that was issued after the first relevant day, purchasing that unit or paying income relating to it (paragraph (b)); or
- . in respect of a unit that was issued before the first relevant day, purchasing that unit or paying income to it after the second relevant day (paragraph (c)),

unless the manager requires the production of the unitholder's, or prospective unitholder's, Card (paragraph (d)), the unitholder, or prospective unitholder, complies with that requirement (paragraph (e)) and the manager records the unitholder's, or prospective unitholder's, Card number (paragraph (f)). Paragraphs (g), (h), (j) and (k) provide an alternative set of conditions to those provided by paragraphs (d), (e) and (f). The alternative conditions are that -

- . the manager has previously required production of the unitholder's, or prospective unitholder's, Card (paragraph (g));
- . that requirement was complied with (paragraph (h));
- . the manager has previously recorded that Card number (paragraph (j)); and
- . the unitholder, or prospective unitholder, has held at least one unit in the eligible trust since the acquisition of the first unit in respect of which production of his or her Card was required (paragraph (k)).

The effect of the alternative set of conditions is that an existing unitholder who had previously verified his or her identity by the production of a Card will not be subject to the same requirement in respect of subsequent purchases or sales of, or receipt of income from, units in the eligible trust.

Where a trust manager is required, under a taxation law, to provide to the Commissioner of Taxation details of income relating to a unit in an eligible trust, sub-clause 42(3) places the additional requirement on the

trust manager, subject to a pecuniary penalty of \$20,000, to give to the Commissioner notice of the unitholder's Card number (paragraph (c)). By paragraph (a), the sub-clause applies in respect of income relating to a unit in the eligible trust that was issued on or after the first relevant day (sub-paragraph (a)(i)) but only in respect of income paid or credited on or after the second relevant day in respect of a unit that was issued before the first relevant day (sub-paragraph (a)(ii)). Thus, a trust manager will not be under an obligation to report an Australia Card number that he or she has no notice of.

Clause 43 : Primary production income and rental income

Clause 43 provides for the verification of identity by means of the Australia Card of all individuals and entities deriving -

- . primary production income through marketing authorities and produce agents; and
- . rental income through real estate agents in respect of rental properties.

Sub-clause 43(1) defines the following terms for the purposes of the clause -

"marketing authority" means a statutory authority that has functions that include marketing, or the regulation of marketing of, primary produce.

"produce agent" means a person who, as part of a business carried on by the person, acts as agent for primary producers for or in connection with the sale of primary produce.

"real estate agent" means a person who carries on business as a real estate agent.

By sub-clause 43(2), a marketing authority or produce agent is prohibited from paying to a person, on or after the first relevant day, all or a part of the proceeds of the sale of primary produce unless three conditions are satisfied. Those conditions are -

- . the marketing authority or produce agent requires, or has previously required in respect of an earlier payment, the production of the person's Australia Card (paragraph (a));
- . that requirement is, or that earlier requirement was, complied with (paragraph (b)); and
- . the marketing authority records, or had previously recorded, the person's Australia Card number (paragraph (c)).

The maximum penalty a court may impose in respect of a contravention of sub-clause 43(2) is a fine of \$20,000.

Where a marketing authority or produce agent is required, under a taxation law, to provide the Commissioner of Taxation details of payments made to a primary producer on or after the first relevant day, sub-clause 43(3) places the additional requirement on the authority or agent, subject to a pecuniary penalty of \$20,000, to give to the Commissioner notice of the primary producer's Australia Card number.

Sub-clause 43(4) places the same requirements - subject to the same penalty for non-compliance - on a real estate agent making a payment to a lessor of rent collected on behalf of the lessor as sub-clause 43(2) places on a marketing authority or produce agent making a payment to a primary producer of the proceeds of the sale of primary produce. That is, the real estate agent may not make such a payment on or after the first relevant day unless -

- . the real estate agent requires, or has previously required, the production of the lessor's Australia Card (paragraph (a));
- . that requirement is, or was previously, complied with (paragraph (b)); and
- . the real estate agent records, or previously recorded, the lessor's Card number (paragraph (c)).

Where a real estate agent is required, under a taxation law, to provide the Commissioner of Taxation with information relating to rent collected on behalf or lessors, sub-clause 43(5) places the additional requirement on the real estate agent, subject to a pecuniary penalty of \$20,000, to give to the Commissioner notice of the lessor's Australia Card number.

By the operation of sub-clause 43(6), a marketing authority, produce agent or real estate agent is not prohibited from making a payment to a person by reason of sub-clause 43(2) or (4) if a taxation law either imposes a withholding tax on the payment (paragraph (a)) or requires the payer to make a deduction from the payment and to deal with that deduction in a manner prescribed by a taxation law (paragraph (b)).

Clause 44 : Foreign remittances

Clause 44 proposes the use of the Australia Card to verify the identity of persons transferring funds overseas. This measure is aimed at those persons who seek to remit funds overseas to conceal tax evasion.

By sub-clause 44(1), a financial institution (a defined term -see notes on sub-clause 32(1)) may not effect a remittance of funds overseas except in accordance with the provisions of either sub-clause 44(2) or (3). The maximum pecuniary penalty for an offence against this sub-clause is \$20,000.

Sub-clause 44(2) permits a financial institution to effect a remittance of funds overseas for a person if, in respect of the remittance -

- . the financial institution requires production of the person's current Card (paragraph (a));
- . that requirement is complied with (paragraph (b)); and
- . the financial institution records the person's Card number (paragraph (c)).

Sub-clause 44(3) permits a financial institution to effect a remittance of funds overseas for a person if -

- . the funds are withdrawn from an account opened with the financial institution (paragraph (a));
- . the person's Australia Card had been produced in respect of that account in accordance with clause 40 (paragraph (b)); and
- . the financial institution recorded the person's Card number in respect of that account (paragraph (c)).

Thus, in broad terms, the requirements of sub-clause 44(2) are required to be met unless the funds to be remitted are withdrawn from an account in respect of which the person's identity had previously been verified pursuant to clause 40.

Where a financial institution is required, under a taxation law, to provide to the Commissioner of Taxation details of funds remitted overseas, sub-clause 44(4) places the additional requirement on the financial institution, subject to a pecuniary penalty of \$20,000, to give to the Commissioner notice of the Australia Card number of the person who remitted the funds overseas.

Sub-clause 44(5) is an interpretative provision that makes it clear that a reference in the clause to effecting a remittance of funds overseas for a person is a reference to effecting for the person a remittance of funds to a place outside Australia (defined in sub-clause 32(1) to include the external Territories). The expression is also to be taken to include the provision of a bank draft or similar instrument where it is reasonable to expect that the bank draft or similar instrument will be sent to a place outside Australia.

Clause 45 : Land transactions

Clause 45 provides for the use of the Card in connection with the identification of persons who purchase or sell real estate. This use will assist in the prevention and detection of tax evasion by persons who invest undisclosed income in real estate. It will also ensure that any rent or assessable profit from the sale of real estate is brought to account for tax purposes.

Sub-clause 45(1) defines "Registrar of Land Titles", for the purposes of the clause, to mean an official who, or a body that, under a law of a State or Territory, is responsible for the registration of, or of instruments relating to, interests in land situated in the State or Territory.

Sub-clause 45(2) requires a person, subject to a penalty of \$5000, to complete a declaration (paragraph (a)) and to deliver that declaration to the appropriate State or Territory Registrar of Land Titles (paragraph (b)) before the person may, on or after the first relevant day, become a party to a transaction under which a transfer of an interest in land is effected or is to be effected. The declaration must -

- . be in the prescribed form (sub-paragraph (a)(i));
- . set out the person's name (sub-paragraph (a)(ii));
- . record the person's Australia card number (sub-paragraph (a)(iii)); and
- . set out such other matters relating to the transaction, transfer or proposed transfer as may be prescribed (sub-paragraph (a)(iv)).

Where a Registrar of Land Titles is required, under a taxation law, to provide to the Commissioner of Taxation information about -

- . a transaction under which a transfer of an interest in land is effected or is to be effected (sub-paragraph (3)(a)(i)); or
- . a transfer or proposed transfer of an interest in land (sub-paragraph (3)(a)(ii)),

Sub-clause 45(3) places the additional requirement on the Registrar to give to the Commissioner, where declarations have been delivered to the Registrar pursuant to paragraph 45(2)(b), notice of the Australia Card numbers of the persons who completed the declarations.

Clause 46 : Safety deposit box services
and similar services

Clause 46 specifies the use of the Card in connection with holders and users of safety deposit box services and similar services.

Sub-clause 46(1) requires the verification of identity, by means of the Australia Card, of a person who seeks to have made available, on or after the first relevant day, a safety deposit box service or similar service by a financial institution (a defined term - see notes on sub-clause 32(1)). Sub-clause 46(2) requires the verification of a person's identity on each occasion that the person seeks to have access to a safety deposit box or similar service that had previously been made available to him or her.

Sub-clauses 46(1) and (2) respectively prohibit a financial institution from making a service available or providing access to the service on or after the first relevant day unless, in respect of the making available of the service (sub-clause (1)) or in respect of each access to the service (sub-clause (2)) -

- . the financial institution requires the production of the person's current Card (paragraphs (1)(a) and (2)(a));
- . that requirement is complied with (paragraphs (1)(b) and (2)(b));
- . the financial institution records the person's Australia Card number (paragraphs (1)(c) and (2)(c)).

The requirements of sub-clause 46(2) apply irrespective of whether the service was first made available to the person before, on or after the first relevant day.

Sub-clause 46(3) requires a financial institution, subject to a penalty of \$20,000, to record the Australia Card number of a person who, in respect of a safety deposit box service or similar service made available to the person by the financial institution, verifies his or her identity by the production of a Card before the first relevant day.

Sub-clause 46(4) requires a financial institution to report to the Commissioner of Taxation details of all safety deposit box and similar services made available before, and still current at, the first relevant day and in respect of which the financial institution has not recorded the holder's Card number. These details are required to be reported as soon as practicable but not later than 2 months after the first relevant day. A pecuniary penalty of \$20,000 is provided for a failure to comply with sub-clause 46(4).

Clause 47 : Shares in public companies

By this clause, the Australia Card will be used to assist in the identification of all shareholders in public companies. The use of the Card will assist in preventing and detecting tax evasion in three ways -

- . in matching dividends reported to have been paid by public companies with the income tax returns of the recipients;
- . in ensuring that profits on sales of shares in public companies are properly accounted for; and
- . as an aid in the selection of audit cases.

Sub-clause 47(1) defines the following terms that are used in the clause -

"dealer" means a person who is a dealer for the purposes of the Securities Industry Act 1980 or for the purposes of a law of a State or Territory that corresponds to that Act. That Act, and corresponding State and Territory laws, defines "dealer" to mean -

- (a) a person who carries on a business of dealing in securities; or
- (b) 2 or more persons who together carry on a business of dealing in securities,

whether or not that business is part of, or is carried on in conjunction with, any other business."

"public company" is given the same meaning as that term has for the purposes of the Companies Act 1981 and corresponding State or Territory laws.

Sub-clause 47(2) prohibits a dealer from effecting a purchase of shares on behalf of a person on or after the first relevant day unless, in respect of that person -

- . the dealer requires, or has on a previous occasion required, the production of the person's current Card (paragraph (a));
- . that requirement is, or that previous requirement was, complied with (paragraph (b)); and
- . the dealer records, or previously recorded, the person's Card number (paragraph (c)).

By sub-clause 47(3), an instrument of transfer to give effect to a purchase of shares in a public company may not be submitted to the company for registration unless the Australia Card number of the person purchasing the shares is recorded on the instrument. This requirement applies to shares purchased on or after the first relevant day.

Sub-clause 47(4) prohibits a public company from registering a transfer of shares where the instrument of transfer is submitted to the public company on or after the first relevant day for registration of the transfer and does not have recorded on it a number purporting to be the Australia Card number of the transferee. The transfer may, however, be registered in such circumstances if -

- . the company requires the production of the transferee's current Card (paragraph (c));
- . that requirement is complied with (paragraph (d)); and
- . the company records the transferee's Australia Card number on the instrument (paragraph (e)).

Sub-clause 47(5) requires a public company to report the Australia Card number of a dividend recipient, as recorded on the instrument of transfer, when reporting to the Commissioner of Taxation details of dividends paid on or after the first relevant day. This requirement applies, by reason of paragraph (a), to shares that are the subject of an instrument of transfer submitted to the public company on or after the first relevant day.

The maximum penalty that a court may impose for a failure to comply with clause 47 is a fine of \$20,000.

Clause 48 : Dealings in futures contracts

This clause proposes that the Australia Card be used in the identification of persons investing in futures contracts. This use will assist in ensuring that assessable profits from such investments are properly brought to account as income and will deter persons from using investments in futures to attempt to conceal income on which tax has been evaded.

Sub-clause 48(1) defines two terms that are used in the sub-clause -

"broker" means a person who is a futures broker for the purposes of the Futures Industry Act 1986 or for the purposes of a State or Territory law that corresponds to that Act. In broad terms, the Act defines "futures broker" to mean the holder of a futures broker's licence under the Act or a person, or association of persons, carrying on a business part of which is the business of dealing in futures contracts.

"futures contract" means a futures contract within the meaning of the Futures Industry Act 1986 or of a law of a State or Territory that corresponds to that Act.

Sub-clause 48(2) prohibits a broker from acquiring, disposing of or otherwise dealing in a futures contract on behalf of a person on or after the first relevant day unless, in respect of the person on whose behalf the broker proposes to deal -

- . the broker requires, or has previously required, production of the person's Australia Card (paragraph (a));
- . the requirement is, or was previously, complied with (paragraph (b)); and
- . the broker records, or had previously recorded, the person's Australia Card number (paragraph (c)).

The maximum pecuniary penalty for an offence against sub-clause 48(2) is \$20,000.

Sub-clause 48(3) requires, subject to a penalty of \$20,000, a broker to give notice of a person's Australia Card number when reporting information about a futures contract to the Commissioner of Taxation under a taxation law.

Clause 49 : Employment

By clause 49, the Australia Card is to be used to verify the identity of a person on the commencement of employment subsequent to the first relevant day and of persons continuing in employment beyond that day. The clause does not prohibit an employer from employing a person who does not produce an Australia Card.

Sub-clause 49(1) places two requirements on an employer who commences to employ a person on or after the first relevant day. Those requirements are -

- . that the employer require production of the Australia Card of the new employee (paragraph (a)); and
- . where the new employee produces his or her Card that the employer record the Card number (paragraph (b)).

Paragraphs 49(2)(c) and (d) place the same respective requirements as paragraphs 49(1)(a) and (b) on an employer who proposes to make a payment of salary or wages to an employee (paragraph (a)) who has not previously produced a current Card to the employer.

Where an employer has recorded, in accordance with either paragraph (1)(b) or (2)(d), the Australia Card number of an employee or former employee, the employer is required by sub-clause 49(3), to endorse that number on any group certificate, tax stamps sheet or statement of earnings that he or she issues to the employee or former employee (sub-paragraph (a)(i)) and on any tax declaration that the employer receives from the employee (sub-paragraph (a)(ii)).

Sub-clause 49(4) provides that an expression used in clause 49 and in Division 2 of Part VI of the Income Tax Assessment Act 1936 has the same meaning in clause 49 as it has in that Part. The relevant terms, which are defined in sub-section 221A(1) of the Income Tax Assessment Act 1936 are "employee", "employer", "salary or wages", "group certificate" and "tax stamps sheet". Broadly, that sub-section defines "employee" to mean a person in receipt of salary or wages and "employer" to mean a person who pays salary or wages. The term "salary or wages" is widely defined to include salary, wages, commission, bonuses or allowances paid (whether at piece-work rates or otherwise) to an employee as such and certain other payments that, although not paid to an employee as such, are nevertheless closely akin to salary or wages, for example, directors' fees and superannuation pensions. "Group certificate" is defined to mean a certificate in a form authorised by the Commissioner of Taxation issued by a group employer in respect of deductions made from the salary or wages of the employee and "tax stamps sheet" means the sheet to which an employer other than a group employer is required to affix tax stamps.

The maximum penalty that a court may impose for failure to comply with clause 49 is a fine of \$20,000.

Clause 50 : Prescribed payments system

Clause 50 of the Bill provides for the use of the Australia Card in the identification of persons in receipt of prescribed payments. Broadly, the Prescribed Payments System (PPS) provides for the collection of tax at source and the reporting of information in relation to certain payments for work or services that are not subject to the tax instalment deduction system that applies in respect of salary and wages.

Sub-clause 50(1) prohibits an eligible paying authority from making a prescribed payment to a payee on or after the first relevant day unless the eligible paying authority requires production of the payee's current Card (paragraph (a)) or the payee had, in compliance with a previous requirement by the eligible paying authority, produced his or her current Card to that eligible paying authority. (By the operation of sub-clause 50(6), the

terms "eligible paying authority", "prescribed payment" and "payee" have the same meaning as in the Prescribed Payments System provisions of the income tax law. In broad terms, an "eligible paying authority" is a person who makes, or is liable to make, a prescribed payment; a "prescribed payment" is a payment of a kind declared by the Income Tax Regulations to be a prescribed payment and a "payee" is a person who receives, or is entitled to receive, a prescribed payment).

Where a payee produces a Card to an eligible paying authority in compliance with a requirement made under paragraph 50(1)(a), sub-clause 50(2) places an obligation on the eligible paying authority to record the payee's Card number.

Under the Prescribed Payments System, the eligible paying authority and the payee are required to complete a document known as a deduction form. The payee completes Part A of the deduction form and gives the form to the eligible paying authority who completes Part B of the form by inserting his or her name, address, Prescribed Payment System reference number, the gross amount of prescribed payments made during the month, the amount of tax deducted, the payment period and the nature of work. Where a payee does not provide an eligible paying authority with a deduction form or supplies a deduction form that is incomplete, the eligible paying authority is required to deduct tax at a higher rate - currently 30% - than would apply if the deduction form had been properly furnished.

By sub-clause 50(3), an eligible paying authority completing Part B of a deduction form (paragraph (a)) is required to endorse the Australia Card number of the payee on the form where that number has been recorded in accordance with sub-clause 50(2) (paragraph (b)).

Another form that is used in the Prescribed Payments System is the reporting exemption declaration. This form is submitted by the payee to the eligible paying authority who forwards the original to the Taxation Office within 14 days after the end of the month in which the declaration was received. Sub-clause 50(4) requires the eligible paying authority to endorse the payee's Card number - where that number has been recorded in accordance with sub-clause 50(2) - on the reporting exemption declaration before submitting it to the Taxation Office.

Although an eligible paying authority is under a legal obligation to require production of a Card of a payee who has not previously produced a Card to that eligible paying authority, the payee is under no legal obligation to produce the Card and the eligible paying authority may make a prescribed payment to a payee who has not produced a Card pursuant to a requirement made under sub-clause 50(1). However, in such cases, the payee is deemed, by the operation of sub-clause 50(5), not to have properly

furnished a deduction form to the eligible paying authority in relation to the prescribed payment and the payment will therefore be subject to a higher rate of deduction.

As explained in the notes on sub-clause 50(1), sub-clause 50(6) provides that expressions used in clause 50 have the same meaning as those expressions have in the prescribed payment provisions (Division 3A of Part VI) of the Income Tax Assessment Act 1936. Three of the relevant expressions - "eligible payment authority", "prescribed payment" and "payee" - are explained in the notes on sub-clause 50(1). The other relevant expressions are "deduction form" and "reporting exemption declaration". A "deduction form" is a document that is used to record details of prescribed payments, and of the persons making and receiving those payments, and provides the basis for determining the availability of credits for deductions made from prescribed payments. A "reporting exemption declaration" is a document that may be completed and furnished by a payee to an eligible paying authority in limited circumstances. The effect of the document is to relieve both the payee and the eligible paying authority from their obligations under the prescribed payment provisions of the income tax law.

Sub-clause 50(7) provides that section 221YHA (interpretative provisions relating to Division 3A of Part VI) and 221YHZ (special provisions relating to the operation of the PPS in respect of partnerships) of the Income Tax Assessment Act 1936 also have effect for the purposes of clause 50.

The maximum pecuniary penalty for an offence against clause 50 is \$20,000.

Clause 51: Production to the Commissioner of Taxation

Clause 51 provides for the general use of the Card in relation to the administration of the taxation laws. The term "taxation law" is defined in sub-clause 4(1) to mean, broadly, an Act, or regulations under an Act, of which the Commissioner of Taxation has the general administration.

Sub-clause 51(1) authorises the Commissioner of Taxation, or an officer authorised in writing by the Commissioner for the purposes of clause 51, to require the production of a person's current Card. The requirement must -

- . be for a purpose related to the performance or exercise by the Commissioner of a function or power under a taxation law; and
- . be by notice in writing served on the person on or after the first relevant day.

By clause 173 the Commissioner of Taxation or the taxation officer so authorised to require production of the Card may make and retain a record of the information on the Card.

Sub-clause 51(2) prohibits a person, subject to a penalty of \$20,000, from refusing or failing, without reasonable excuse, to comply with a requirement made by the Commissioner or a duly authorised officer in accordance with sub-clause 51(1).