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**THE PARLIAMENT OF THE COMMONWEALTH OF
AUSTRALIA**

HOUSE OF REPRESENTATIVES

**TAXATION ADMINISTRATION
AMENDMENT BILL 1992**

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Treasurer,
the Hon John Dawkins, M.P.)



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Taxation Administration Amendment Bill 1992

General outline

The Taxation Administration Amendment Bill 1992 (the Bill) will amend the *Taxation Administration Act 1953* (the Act) to provide Royal Commissions with the same authority to seek tax information that is available to specified law enforcement agencies under section 3E of the Act.

Summary of proposed amendments

The Bill will give effect to the announcement by the Prime Minister on 15 May 1992 that section 3E of the Act would be amended to allow the WA Royal Commission into Commercial Activities of Government and future Royal Commissions access to relevant taxation information under the Act.

The amendments proposed will give Royal Commissions similar access to taxation information as the law enforcement agencies currently have under the Act.

New definitions to cover Royal Commissions are proposed and will parallel the existing interpretative framework for law enforcement agencies in section 2 of the Act.

Section 3B of the Act will be amended to provide for annual reporting of the number of requests received by the Commissioner of Taxation and the number of times that taxation information was disclosed under the secrecy provisions. Section 3B contains similar reporting arrangements for law enforcement agencies.

Further amendments are proposed to section 3E to allow information given to an eligible Royal Commission to be divulged in certain limited circumstances. These limited circumstances, which include the WA Commission giving the information to the State Governor and the Governor passing the information to a law enforcement agency as defined in section 2 of the Act, are explained below.

Background to the legislation

Section 3E of the Act provides the Commissioner of Taxation with a discretion to disclose taxation information to an authorised law enforcement agency officer. Such disclosure is conditional upon the Commissioner being satisfied that the information is relevant to the investigation of a serious offence as defined or for specified investigation purposes.

The information may be disclosed by the Commissioner on his own initiative or in response to a request by an authorised law enforcement agency officer.

For the purposes of the Act, an authorised law enforcement agency officer means the head of a law enforcement agency listed in the definition in section 2 of the Act, or an officer authorised by the head.

Where the taxation information is passed to an authorised law enforcement agency officer by the Commissioner pursuant to section 3E of the Act, subsection 3E(2) imposes secrecy obligations on that officer who receives the information. Paragraph 3E(2)(a) provides that the information obtained cannot be divulged to another person except for the investigation of a serious offence, or an investigation in connection with the making, or proposed or possible making, of a proceeds of crime order.

Explanation of the proposed amendments

What new definitions are required?

Definitions of an "eligible Royal Commission", an "authorised Royal Commission officer", "official" and "Chairperson" in relation to an eligible Royal Commission are proposed to be inserted in section 2 of the Act to provide a similar framework in the Act for Royal Commissions as currently exists for law enforcement agencies. *[Clause 3]*

The amendments proposed will place the WA Royal Commission and other Royal Commissions, when prescribed by Regulation, on the same terms as law enforcement agencies. The effect of the amendments will be that an authorised Royal Commission officer can request taxation information under section 3E of the Act on the same basis as currently exists for an authorised law enforcement agency officer.

Will the incidence of requests for information from the Commissioner be reported?

To provide comparable reporting arrangements (to those already in place in section 3B of the Act for law enforcement agencies) for Commissions, provision will be made for the Commissioner to report on the number of occasions where taxation information has been requested by an eligible Royal Commission under section 3E of the Act, and the number of times information was actually disclosed. *[Clause 4]*

How will the access for Royal Commissions operate?

Eligible Royal Commissions will be allowed access to taxation information under section 3E of the Act on the same conditions as currently govern access to law enforcement agencies. For both Commissions and agencies, access will be available only when the Commissioner of Taxation is satisfied that the information is relevant to establishing whether a serious offence has been committed or is being committed. As a result, the serious offence criteria will be enshrined in the legislation for all Royal Commission requests for information. *[Paragraph(a) of clause 5]*

Can an eligible Royal Commission communicate the information obtained?

The amendments will also allow eligible Royal Commissions to communicate information obtained from the Commissioner in the three situations described in proposed new paragraphs 3E(6A) (a), (b) and (c). *[Paragraph(b) of clause 5]*

First, the amendments will allow an eligible Royal Commission to communicate information that does not identify the person to whom the information relates -

to the Commission's appropriate executive authority (discussed below) in a Commission report; or

in Commission proceedings. *[New paragraph 3E(6A)(a)]*

Second, where taxation information obtained does identify a person, an eligible Royal Commission will be permitted to (subject to the restrictions below) communicate the information to its appropriate executive authority. *[New paragraph 3E(6A)(b)]*

However, when an authority receives the information under new paragraph 3E(6A)(b), it can only communicate that information to an authorised law enforcement agency officer as already defined in the Act.

[New paragraph 3E(6C)(a)]

An authorised law enforcement agency officer receiving information under subsections 3E(1) and (2) of the Act, is not permitted to voluntarily give that information in evidence in court proceedings and shall not be compelled to disclose the information to a court. Similar prohibitions are proposed for an appropriate executive authority in receipt of information under new paragraph 3E(6A)(b). *[New paragraphs 3E(6C)(b) and (c)]*

When a law enforcement agency officer receives taxation information from a Commission's executive authority under proposed new paragraph 3E(6C)(a), the amendments proposed will ensure the same restrictions will apply that currently govern information given by the Commissioner of Taxation to an agency officer under subsection 3E(1).

[New subsection 3E(6D)]

Third, the amendments will enable an eligible Royal Commission to communicate, during its private proceedings, a person's taxation information to either that person or to the person who gave the information to the Commissioner. The amendments also cover the situation where the information relates to a company. *[New paragraph 3E(6A)(c)]*

Are the secrecy provisions in section 3E contravened when information is communicated by an authorised Royal Commissioner officer?

No. Where information is communicated in the three situations described above, a Commission officer communicating the information does not contravene existing subsection 3E(2) which restricts how information can be disclosed. *[New subsection 3E(6B)]*

What is an eligible Royal Commission's appropriate executive authority?

The term "appropriate executive authority" for a Commission will depend on the jurisdiction in which the Commission is established. The term is defined for inclusion in subsection 3E(11), along with other terms used in section 3E of the Act. *[paragraph(c) of clause 5]*

The authority is defined as the Governor-General for Commonwealth Royal Commissions and the State Governor for a State Royal Commission. The term, which also covers authorities, both actual and acting, for eligible Royal Commissions in the Northern Territory and Australian Capital Territory, has regard to the appropriate statutes which govern the appointment of Commissions.

References to the Governor-General and the Governor of a State in the proposed definition of appropriate executive authority include a person acting in those positions. (See sections 16A and 16B of the *Acts Interpretation Act 1901*.)

Commencement date

The amendments will commence on the date when the Bill receives the Royal Assent. [*Clause 2*]

Clauses involved in the proposed amendments

Clause 3: Defines "authorised Royal Commission officer", "Chairperson", "official", and "eligible Royal Commission" for inclusion in section 2.

Clause 4: Amends section 3B to include a new subsection 3B(1AA) which provides for the content of the annual report to be prepared for the Minister.

Clause 5:

- Amends section 3E by inserting a reference to an authorised Royal Commission officer in subsections 3E(1),(2), and (4);
- Inserts a new subsections 3E(6A), 3E(6B), 3E(6C), and 3E(6D);
- Adds definitions of "appropriate executive authority" and "company" to subsection 3E(11).

