



# Taxation Administration Amendment Act 1992

No. 47 of 1992

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## An Act to amend the *Taxation Administration Act 1953*

[Assented to 17 June 1992]

The Parliament of Australia enacts:

### Short title etc.

1.(1) This Act may be cited as the *Taxation Administration Amendment Act 1992*.

- 5 (2) In this Act, “Principal Act” means the *Taxation Administration Act 1953*<sup>1</sup>.

### Commencement

2. This Act commences on the day on which it receives the Royal Assent.

10 **Interpretation**

3. Section 2 of the Principal Act is amended by inserting the following definitions:

“ ‘authorised Royal Commission officer’ means:

- 15 (a) the person, or each of the persons, constituting an eligible Royal Commission; or

- (b) an official of an eligible Royal Commission authorised in writing by the Chairperson of the eligible Royal Commission to perform the functions of an authorised Royal Commission officer under this Act;
- ‘Chairperson’**, in relation to an eligible Royal Commission, means: 5
- (a) if the eligible Royal Commission is constituted by a single person—that person; or
- (b) if:
- (i) the eligible Royal Commission is constituted by 2 or more members; and 10
- (ii) one of those members is appointed to be the Chairperson (however described) of the eligible Royal Commission; that member; or
- (c) if:
- (i) the eligible Royal Commission is constituted by 2 or more members; and 15
- (ii) paragraph (b) does not apply;
- whichever of those members is designated as the Chairperson of the eligible Royal Commission for the purposes of this Act in accordance with a written notice that is: 20
- (iii) signed by all of those members; and
- (iv) given to the Commissioner;
- ‘eligible Royal Commission’** means:
- (a) the Royal Commission of Western Australia referred to in a notice published in the *Western Australian Government Gazette* (No. 4 Special Issue) on 8 January 1991; or 25
- (b) a prescribed Royal Commission of the Commonwealth, a State or a Territory; or
- (c) a prescribed commission of inquiry of a State or a Territory; or 30
- (d) a prescribed board of inquiry of a State or a Territory;
- ‘official’**, in relation to an eligible Royal Commission, means:
- (a) a barrister or solicitor appointed to assist the person or persons constituting the eligible Royal Commission; or
- (b) a person assisting a barrister or solicitor so appointed; or 35
- (c) a member of a police force assigned to the eligible Royal Commission to carry out an investigation on behalf of, or under the control of, the person or persons constituting the eligible Royal Commission; or
- (d) a person or employee under the control of the person or persons constituting the eligible Royal Commission;”. 40

#### **Annual report**

4. Section 3B of the Principal Act is amended by adding at the end of subsection (1AA) the following word and paragraph:

“; and (c) set out, in relation to each general category of offence and in relation to each eligible Royal Commission:

- 5 (i) the number of occasions (if any) during the year on which the Commissioner was requested by, or on behalf of, the Chairperson of the eligible Royal Commission to disclose information under subsection 3E(1) to authorised Royal Commission officers representing the eligible Royal Commission; and
- 10 (ii) the number of occasions (if any) during the year on which information was disclosed under subsection 3E(1) to authorised Royal Commission officers representing the eligible Royal Commission.”.

**Provision of taxation information to law enforcement agencies and to eligible Royal Commissions**

15 5. Section 3E of the Principal Act is amended:

(a) by inserting in subsections (1), (2) and (4) “, or to an authorised Royal Commission officer,” after “an authorised law enforcement agency officer”;

(b) by inserting after subsection (6) the following subsections:

20 “(6A) If information is communicated to an authorised Royal Commission officer under subsection (1):

(a) the person or persons constituting the eligible Royal Commission concerned may, in a manner that does not identify, and is not reasonably capable of being used to identify, the person to whom the information relates:

25 (i) communicate the information to the appropriate executive authority in a report by the eligible Royal Commission; or

30 (ii) divulge the information in the course of a proceeding conducted by the eligible Royal Commission, other than a proceeding conducted in private; and

(b) the person or persons constituting the eligible Royal Commission concerned may communicate the information to the appropriate executive authority in a report by the eligible Royal Commission; and

35 (c) the person or persons constituting the eligible Royal Commission concerned may divulge the information in the course of a proceeding conducted in private by the eligible Royal Commission where each person present is covered by one of the following categories:

40 (i) the person or persons constituting the eligible Royal Commission;

- (ii) an official of the eligible Royal Commission;
  - (iii) if the person to whose affairs the information relates is a company:
    - (A) a person who is, or has been, a director or officer of the company; or 5
    - (B) a person who is, or has been, directly involved in, or responsible for, the preparation of information given to the Commissioner on behalf of the company;
  - (iv) if the person to whose affairs the information relates is not a company—that person; 10
  - (v) the person who gave the information to the Commissioner;
  - (vi) a barrister or solicitor representing either of the following in relation to the proceeding: 15
    - (A) a company covered by subparagraph (iii);
    - (B) a person covered by sub-subparagraph (iii)(A) or (B) or subparagraph (iv) or (v).
- “(6B) A person does not contravene subsection (2) because of anything done for the purposes of enabling a thing mentioned in paragraph (6A)(a), (b) or (c) to happen. 20
- “(6C) If information is communicated to the appropriate executive authority under paragraph (6A)(b), the executive authority:
  - (a) must not divulge or communicate the information to another person, or make a record of the information, except for the purposes of, or in connection with, the disclosure of the information to an authorised law enforcement agency officer; and 25
  - (b) must not voluntarily give the information in evidence in a proceeding before a court; and 30
  - (c) is not to be required to divulge or communicate the information to a court.
- “(6D) If information is communicated to an authorised law enforcement agency officer under paragraph (6C)(a), this section has effect as if the information had been communicated to the officer under subsection (1).”; 35
- (c) by inserting the following definitions in subsection (11):
  - “‘**appropriate executive authority**’, in relation to an eligible Royal Commission, means: 40
    - (a) in the case of an eligible Royal Commission of the Commonwealth—the Governor-General; or
    - (b) in the case of an eligible Royal Commission of a State—the Governor of the State; or

- (c) in the case of an eligible Royal Commission of the Northern Territory—the Administrator, or acting Administrator, of the Northern Territory; or
- 5 (d) in the case of an eligible Royal Commission of the Australian Capital Territory—the Chief Minister, or acting Chief Minister, of that Territory; or
- (e) in any other case—the person specified in the regulations; ‘company’ has the same meaning as in section 6 of the *Income Tax Assessment Act 1936*.”

10       6. After section 17B of the Principal Act the following section is inserted:

**Requests to be prescribed as an eligible Royal Commission**

“17C.(1) This section applies to:

- 15 (a) a Royal Commission of the Commonwealth, a State or a Territory; or
- (b) a commission of inquiry of a State or a Territory; or
- (c) a board of inquiry of a State or a Territory.

20       “(2) The person, or any of the persons, constituting the commission or board may give the Minister a written request that the Governor-General make a regulation prescribing the commission or board for the purposes of paragraph (b), (c) or (d) of the definition of ‘eligible Royal Commission’ in section 2.

““(3) Within 28 days after receiving the request, the Minister must give the person who made the request a written notice:

- 25 (a) stating whether or not the Governor-General will make the regulation; and
- (b) setting out the reasons why the regulation will be made, or will not be made, as the case requires.

30       “(4) The Minister must cause a copy of a notice given under subsection (3) to be laid before each House of the Parliament on the next sitting day of that House after the day on which the notice was given.”.

*Taxation Administration Amendment No. 47, 1992*

**NOTE**

1. No. 1, 1953, as amended. For previous amendments, see Nos. 28, 39, 40 and 52, 1953; No. 18, 1955; No. 39, 1957; No. 95, 1959; No. 17, 1960; No. 75, 1964; No. 155, 1965; No. 93, 1966; No. 120, 1968; No. 216, 1973; No. 133, 1974; No. 37, 1976; Nos. 19 and 59, 1979; Nos. 39 and 117, 1983; No. 123, 1984; No. 65, 1985 (as amended by No. 193, 1985); Nos. 4, 47, 104, 123 and 168, 1985; Nos. 41, 46, 48, 112, 144 and 154, 1986; No. 49, 1986 (as amended by No. 141, 1987); Nos. 120 and 145, 1987; No. 62, 1987 (as amended by No. 108, 1987); No. 108, 1987 (as amended by No. 138, 1987); No. 138, 1987 (as amended by No. 11, 1988); Nos. 95 and 97, 1988; Nos. 97, 105, 107, 124, 163 and 167, 1989; Nos. 20, 60, 61, 110, 119 and 136, 1990; and Nos. 5, 6, 48, 100, 122 and 216, 1991.

*[Minister's second reading speech made in—  
House of Representatives on 26 May 1992  
Senate on 1 June 1992]*