



Pay-roll Tax Assessment Act 1941

Act No. 2 of 1941 as amended

[Note: This Act was repealed by Act No. 101 of 2006 on 14 September 2006

**For transitional and application provisions *see* Act No. 101, 2006,
Schedule 6 (items 5–11)]**

This compilation was prepared on 16 October 2000
taking into account amendments up to Act No. 43 of 1996

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act relating to the Imposition, Assessment and Collection of a Tax upon the Payment of Wages

Part I—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Pay-roll Tax Assessment Act 1941*.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

agent includes every person who in Australia, for or on behalf of any person out of Australia (in this section called **the principal**), holds or has the management or control of the business of his principal, and every person declared by the Commissioner to be an agent or the sole agent for any person for the purposes of this Act.

company includes all bodies or associations (corporate or unincorporate) and partnerships.

Deputy Commissioner means a Deputy Commissioner of Taxation.

employer means any person who pays or is liable to pay any wages and includes:

- (a) the Crown in the right of a State;
- (b) a municipal corporation or other local governing body or a public authority constituted under any State Act;
- (c) any public authority constituted under any Act or under any law in force in a Territory of the Commonwealth the wages paid by which are not paid out of the Consolidated Revenue Fund.

liquidator means the person who, whether or not appointed as liquidator, is the person required by law to carry out the winding up of a company.

person includes a company.

Second Commissioner means a Second Commissioner of Taxation.

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tax means the tax imposed by the *Pay-roll Tax Act 1941*.

the Commissioner means the Commissioner of Taxation.

Tribunal means the Administrative Appeals Tribunal.

trustee, in addition to every person appointed or constituted trustee by act of parties, by order or declaration of a court, or by operation of law, includes:

- (a) an executor or administrator, guardian, committee, receiver or liquidator; and
- (b) every person having or taking upon himself the administration or control of any real or personal property affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of any real or personal property of a person under any legal or other disability.

wages means any wages, salary, commission, bonuses or allowances paid or payable (whether at piece work rates or otherwise and whether paid or payable in cash or in kind) to any employee as such and, without limiting the generality of the foregoing, includes:

- (a) any payment made under any prescribed classes of contracts to the extent to which that payment is attributable to labour;
 - (b) any payment made by a company by way of remuneration to a director of that company;
 - (c) any payment made by way of commission to an insurance or time-payment canvasser or collector; and
 - (d) the provision by the employer of meals or sustenance or the use of premises or quarters as consideration or part consideration for the employee's services.
- (2) For the purposes of this Act meals or sustenance provided by an employer shall be deemed to have a value of One dollar fifty cents per week or, in any particular case or class of cases, such other value as is prescribed, and the use of premises or quarters provided by an employer shall be deemed to have a value of Fifty cents per week or, in any particular case or class of cases, such other value as is prescribed.
- (3) Where any wages are paid or payable in respect of any service performed or rendered, those wages shall, for the purposes of this

Act, be deemed to have been paid, or to be payable, as the case may be, in respect of the period of time in which that service was performed or rendered.

Part II—Administration

4 Commissioner

The Commissioner shall have the general administration of this Act.

6 Powers of Second Commissioner

- (1) Subject to this section, a Second Commissioner shall have and may exercise all the powers and functions of the Commissioner under this Act.
- (2) Where in this Act the exercise of any power or function by the Commissioner or the operation of any provision of this Act is dependent upon the opinion, belief or state of mind of the Commissioner in relation to any matter, that power or function may be exercised by a Second Commissioner or that provision may operate (as the case may be) upon the opinion, belief or state of mind of a Second Commissioner in relation to that matter.
- (3) Nothing in this section shall be deemed to confer upon a Second Commissioner any power or function of the Commissioner under section four or ten of this Act, or to prevent the exercise of any power or function by the Commissioner under this Act, and the Commissioner shall have, in relation to any act of a Second Commissioner, the same power as if that act were done by himself.

9 References to Commissioner

Any reference in this Act to the Commissioner shall be deemed to include:

- (a) in respect of matters as to which a Second Commissioner has exercised any power or function conferred upon him by this Act—a reference to that Second Commissioner; and
- (b) in respect of matters as to which a Deputy Commissioner has exercised any power or function conferred upon him by delegation—a reference to that Deputy Commissioner.

10 Report by the Commissioner

- (1) The Commissioner shall furnish to the Treasurer annually, for presentation to the Parliament, a report on the working of this Act.
- (2) In the report the Commissioner shall draw attention to any breaches or evasions of this Act which have come under his notice.

11 Officers to observe secrecy

- (1) Every person executing any power or duty conferred or imposed on an officer under this Act or the Regulations thereunder shall, before entering upon his duties or exercising any power under this Act, make before a Justice of the Peace or a Commissioner for taking Affidavits or a Commissioner for Declarations, a declaration in the form prescribed.
- (2) Any person who acts in the execution of any duty under this Act, or the Regulations thereunder, before he has made the prescribed declaration, or who after making the declaration makes a record of or divulges any information relating to the affairs of a person except in the performance of any duty under this Act shall be guilty of an offence.

Penalty: Five hundred dollars.

- (3) Any person who has been an officer or has performed any duty under this Act, and who communicates any information acquired by him in the performance of any duty under this Act or the Regulations thereunder to any person, other than a person to whom he is authorized by the Commissioner, a Second Commissioner or a Deputy Commissioner to communicate it, shall be guilty of an offence.

Penalty: Five hundred dollars.

- (4) Notwithstanding anything contained in this section, the Commissioner, a Second Commissioner or a Deputy Commissioner may communicate any matter, which comes to his knowledge in the performance of his official duties, to the Tribunal in connection with proceedings under an Act of which the Commissioner has the general administration, to the Commissioner of Income Tax for any State, or the officer or authority administering any Act of a State relating to Stamp Duties or

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Succession Duties (who is authorized by law to afford similar information to the Commissioner, a Second Commissioner or a Deputy Commissioner) or to the Comptroller-General of Customs.

- (5) Where any matter is communicated to the Tribunal in pursuance of this section and that matter consists of returns or declarations, or information derived from the returns or declarations, of a person other than the employer directly concerned in the review in the course of which the communication is made, the members of the Tribunal shall be subject to the same obligation as is imposed by subsection (3) of this section upon a person who has been an officer under this Act.
- (6) An officer shall not be required to produce in any court any return, assessment or notice of assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Act except as may be necessary for the purpose of carrying into effect the provisions of this Act.
- (7) Where the Treasurer is satisfied that it is desirable to do so for the purpose of enabling the Government of the Commonwealth to review the operation of the provisions of this Act, relating to rebates of tax by reference to exports, he may, by writing under his hand, request the Commissioner to communicate to him, or to a person specified in the request, being a Minister of State, the Secretary to the Department of the Treasury or the Secretary to the Department of Trade and Resources, information relating to such matters as are specified in the request, and, notwithstanding anything contained in this section, the Commissioner, or an officer authorized by him, shall communicate information relating to those matters to the person specified in the request.
- (8) The Secretary to the Department of the Treasury, the Secretary to the Department of Trade and Resources or any other officer or employee of the Commonwealth shall not, either while he is, or after he ceases to be, such an officer or employee:
 - (a) except in the performance of a duty as an officer or employee of the Commonwealth, make a record of, or divulge or communicate to a Minister of State or any other officer or employee of the Commonwealth, any information relating to the affairs of a person acquired by him by reason, directly or

indirectly, of a communication in accordance with the last preceding subsection; or

- (b) divulge or communicate any such information to any person who is not a Minister of State or officer or employee of the Commonwealth.

Penalty: Five hundred dollars.

- (9) A person to whom the last preceding subsection applies shall not be required to produce in any court a document containing information referred to in that subsection or to divulge or communicate to a court any such information.

Part III—Liability to Taxation

Division 1—General

12 Pay-roll tax

Subject to, and in accordance with, the provisions of this Act, the tax imposed by the *Pay-roll Tax Act 1941* shall be levied and paid on all wages paid or payable by any employer in respect of any period of time occurring after the thirtieth day of June, One thousand nine hundred and forty-one.

13 Liability to pay tax

Pay-roll tax shall be paid by the employer who pays or is liable to pay the wages.

14 General exemption

- (1) For the purpose of ascertaining the tax payable by an employer, there shall, subject to the next succeeding subsection, be deducted from the amount of the wages included in a return furnished in accordance with section eighteen or section nineteen of this Act, or from the amount of any wages assessed by the Commissioner in pursuance of section twenty-three of this Act:
 - (a) where the return or assessment relates to a month—the amount prescribed in subsection (1B) of this section in respect of that month; or
 - (b) where the return or assessment relates to a period of more than one month—for each month included in that period the amount prescribed in subsection (1B) of this section in respect of that month.
- (1A) For the purpose of ascertaining the tax payable by an employer who was an employer during part only of a month, the amount to be deducted for that month from the amount of the wages included in a return or assessment relating to that month shall be the amount which bears to the amount prescribed in the next succeeding subsection in respect of that month the same proportion as the

number of days in that month during which the employer was an employer bears to the total number of days in that month.

- (1B) For the purpose of the last two preceding subsections:
- (a) the amount prescribed in respect of the month of September, One thousand nine hundred and fifty-three, or in respect of a previous month, is Eighty-six pounds thirteen shillings and fourpence;
 - (b) the amount prescribed in respect of each month from and including the month of October, One thousand nine hundred and fifty-three, to and including the month of August, One thousand nine hundred and fifty-four, is Three hundred and forty-six pounds thirteen shillings and fourpence;
 - (c) the amount prescribed in respect of each month from and including the month of September, One thousand nine hundred and fifty-four, to and including the month of August, One thousand nine hundred and fifty-seven, is Five hundred and twenty pounds;
 - (d) the amount prescribed in respect of each month from and including the month of September, One thousand nine hundred and fifty-seven, to and including the month of January, One thousand nine hundred and sixty-six, is Eight hundred and sixty-six pounds thirteen shillings and fourpence; and
 - (e) the amount prescribed in respect of the month of February, One thousand nine hundred and sixty-six, and in respect of each subsequent month, is One thousand seven hundred and thirty-three dollars and thirty-three cents.
- (2) Where the amount to be deducted in pursuance of this section from the amount of any wages included in any return or assessment relating to a period included in any financial year exceeds the amount of the wages included in that return or assessment, the amount of the excess shall be deducted from the wages included in the return or assessment next made by or on the employer in respect of a period included in that financial year.

15 Exemption from tax

The provisions of this Part shall not apply to wages paid:

- (a) by the Governor-General or the Governor of a State;

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- (b) by a religious or public benevolent institution, or a public hospital;
- (ba) by a hospital which is carried on by a society or association otherwise than for the purpose of profit or gain to the individual members of the society or association;
- (bb) by a school or college (other than a technical school or a technical college) which:
 - (i) is carried on by a body corporate, society or association otherwise than for the purpose of profit or gain to the individual members of the body corporate, society or association and is not carried on by or on behalf of a State; and
 - (ii) provides education at or below, but not above, the secondary level of education;
- (c) to members of his official staff by:
 - (i) a consular or other representative (other than a diplomatic representative) in Australia of the Government of any other part of His Majesty's dominions or of any other country; or
 - (ii) a Trade Commissioner representing in Australia any other part of His Majesty's dominions;
- (d) to a person who is a member of:
 - (i) the Defence Force of the Commonwealth or of the armed forces of any other part of His Majesty's dominions;
 - (ii) the Australian Army Nursing Service;
 - (iii) the Women's Royal Australian Army Corps;
 - (iv) the Women's Royal Australian Air Force;
 - (v) a Voluntary Aid Detachment, and who has been called up for full-time service with the Defence Force of the Commonwealth;
 - (vi) the Women's Royal Australian Naval Service; or
 - (vii) any other organization similar to any of those specified in subparagraphs (ii) to (vi) of this paragraph which is prescribed;and who, by reason of his or her service as such a member, or of capture in the course of that service, does not, during the period in respect of which the wages are paid, render services in consideration of the payment of those wages;

- (e) by the Commonwealth War Graves Commission;
- (f) by a specialized agency as defined by section one of the Convention on the Privileges and Immunities of the Specialized Agencies which was adopted by the General Assembly of the United Nations on the twenty-first day of November, One thousand nine hundred and forty-seven;
- (g) by the South Pacific Commission;
- (h) by the Australian-American Educational Foundation;
- (i) by the International Atomic Energy Agency;
- (j) by the South-East Asia Treaty Organization; or
- (k) by the Customs Co-operation Council.

16 Annual adjustment of tax

- (1) Where the wages paid or payable by an employer in respect of a financial year:
 - (a) in the case of an employer who was an employer during the whole of that financial year—do not exceed the amount prescribed in subsection (2A) of this section in respect of that financial year; or
 - (b) in the case of an employer who was an employer during part only of that financial year—do not exceed an amount which bears to the amount prescribed in subsection (2A) of this section in respect of that financial year the same proportion as that part of the year bears to a year;the Commissioner shall refund or rebate to that employer the amount of tax paid or payable, as the case may be, by him in respect of that year or part.
- (2) Where the total amount deducted, in accordance with section fourteen of this Act, from the wages paid or payable by an employer in respect of a financial year:
 - (a) in the case of an employer who was an employer during the whole of that financial year—is less than the amount prescribed in the next succeeding subsection in respect of that financial year; or

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- (b) in the case of an employer who was an employer during part only of that financial year—is less than an amount which bears to the amount prescribed in the next succeeding subsection in respect of that financial year the same proportion as that part of the year bears to a year;

the Commissioner shall, upon application by the employer, refund or rebate to the employer an amount equal to the tax paid or payable upon the amount of the deficiency.

(2A) For the purpose of the last two preceding subsections:

- (a) the amount prescribed in respect of the financial year which ended on the thirtieth day of June, One thousand nine hundred and fifty-three, or in respect of a previous financial year, is the amount of One thousand and forty pounds;
- (b) the amount prescribed in respect of the financial year ending on the thirtieth day of June, One thousand nine hundred and fifty-four, is Three thousand three hundred and eighty pounds;
- (c) the amount prescribed in respect of the financial year ending on the thirtieth day of June, One thousand nine hundred and fifty-five, is Five thousand eight hundred and ninety-three pounds;
- (d) the amount prescribed in respect of the financial year ending on the thirtieth day of June, One thousand nine hundred and fifty-six, and the financial year ending on the thirtieth day of June, One thousand nine hundred and fifty-seven, is Six thousand two hundred and forty pounds;
- (e) the amount prescribed in respect of the financial year ending on the thirtieth day of June, One thousand nine hundred and fifty-eight, is Nine thousand seven hundred and six pounds;
- (f) the amount prescribed in respect of the financial year ending on the thirtieth day of June in each year from and including the year One thousand nine hundred and fifty-nine to and including the year One thousand nine hundred and sixty-five, is Ten thousand four hundred pounds; and
- (g) the amount prescribed in respect of the financial year ending on the thirtieth day of June, One thousand nine hundred and sixty-six, and in respect of each subsequent financial year, is Twenty thousand eight hundred dollars.

- (3) Where a person who, during any part of a year, did not pay, and was not liable to pay, wages satisfies the Commissioner that, by reason of the nature of his trade or business, the wages paid or payable by him fluctuate with different periods of the year, the Commissioner may treat him:
 - (a) if he has conducted that trade or business during the whole of the year—as an employer throughout the year; or
 - (b) if he has conducted that trade or business during part only of the year—as an employer during that part of the year.
- (4) Notwithstanding anything contained in this section, the total amount refunded or rebated to any employer in pursuance of this section in respect of any financial year shall not exceed the amount of the tax paid or payable by him in respect of that financial year.

Division 2—Rebate of tax by reference to exports

16A Interpretation

- (1) In this Division, unless the contrary intention appears:

claim means a claim under section sixteen J of this Act.

commercial container means a container other than:

- (a) a tank or other compartment that forms part of a ship or aircraft; or
- (b) a container system unit or other container in which goods have been placed primarily and principally for the purpose of their carriage in a ship or aircraft.

complete motor vehicle includes a motor vehicle of a kind ordinarily used on roads for the transport of goods that has been assembled to a stage at which it is capable of being driven under its own power.

complete unit, in relation to prescribed goods of a particular kind, means a unit of prescribed goods of that kind that has been manufactured or assembled to a stage where it is capable of being used for the purpose for which prescribed goods of that kind are manufactured or produced.

components for prescribed goods, in relation to prescribed goods of a particular kind, means goods that:

- (a) are components (including accessories and handbooks) for prescribed goods of that particular kind; and
- (b) are exported from Australia for use, without the substantial addition of other goods, in the original manufacture or assembly, in the country to which the goods are exported, of complete units of prescribed goods of the particular kind or for sale or disposal with such units;

and includes the containers (not being container system units) in which such components are so exported.

consideration receivable means:

- (a) in relation to a disposal of prescribed goods, industrial property rights or know-how:

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- (i) in the case of a disposal other than one to which the next succeeding paragraph applies—the amount or value of the consideration received or receivable for the disposal; or
 - (ii) where the disposal is part of, or is connected with, a transaction in which any other assets, or any services, are disposed of or supplied—such part of the amount or value of the consideration or considerations received or receivable in respect of the transaction as is reasonably attributable to the disposal of the prescribed goods, industrial property rights or know-how;
- less, in the case of a disposal of prescribed goods, any amounts paid or payable (otherwise than as agent) by the person disposing of the prescribed goods by way of freight for carriage of the prescribed goods outside Australia or by way of insurance (other than export payments insurance) or other outgoings, in relation to the prescribed goods, attributable to events or contingencies occurring or arising, or services performed, after the placing of the prescribed goods on a ship or aircraft for export from Australia; and
- (b) in relation to the supply of prescribed professional services—the amount or value of the consideration received or receivable for the supply of the services.

container includes any inner or outer covering in which goods are packed, secured or otherwise placed, but does not include a container, other than a container system unit, that is exported while not containing goods.

container system unit means a container (including a lift-van or a tank, but not including a vehicle):

- (a) designed for repeated use a unit of cargo-handling equipment in the transport of goods by ships or aircraft specially constructed, adapted or equipped for the handling and carrying of containers of the kind to which the container belongs in the course of a transportation system in which goods are transported to, in and from the ship or aircraft in containers of that kind; and
- (b) fitted with devices to permit its ready handling in the course of that system;

and includes normal accessories and equipment of such a container when exported from Australia with the container.

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disposal includes sale, grant, assignment or supply, and **disposed of** has a corresponding meaning.

export certificate means an export certificate duly issued under section sixteen S of this Act.

exported does not include exported by way of gift.

export merchant means a person who, in the course of carrying on business in Australia:

- (a) exports from Australia prescribed goods in relation to which a previous owner is the producer for export; or
- (b) sells to another person prescribed goods that are later exported from Australia and of which a previous owner is the producer for export.

industrial property rights means rights in relation to inventions or trade marks, or copyright in relation to works, designs and other things, being:

- (a) inventions, works, designs or things that have, to a substantial extent, resulted from research or work performed in Australia; or
- (b) trade marks that have been used commercially in Australia and were not, before that use, used commercially in any other country.

know-how means scientific or technological knowledge or information in relation to industrial operations, being knowledge or information that has, to a substantial extent, resulted from research or other work performed in Australia, and includes drawings, models or other material things, or services, supplied for the purpose of enabling or facilitating the use or enjoyment of such knowledge or information or of industrial property rights.

marketing authority means an authority constituted under a law of the Commonwealth, of a State or of a Territory of the Commonwealth, or under two or more such laws, and having the function of marketing goods produced in Australia.

minerals means:

- (a) minerals, other than petroleum, of a kind obtainable by mining operations, and products of such minerals obtained by:

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- (i) concentration;
 - (ii) any other treatment applied to the minerals before concentration or, in the case of minerals not requiring concentration, that would, if the minerals had required concentration, have been applied before the concentration; or
 - (iii) sintering or calcining;
 - (b) the following products, namely:
 - (i) alumina;
 - (ii) pellets and other agglomerated forms of iron;
 - (iii) coke; and
 - (iv) briquettes of coal or of coke;and other products obtained by the processes by which those products are produced, or processes carried on in connexion with those processes;
 - (c) petroleum, including petroleum gas and shale oil, and products of petroleum obtained by refining, treating or blending processes;
 - (d) materials of a kind obtainable by quarrying operations, and products of such materials obtained by splitting or roughly squaring; or
 - (e) precious and semi-precious stones and natural or cultured pearls, including stones and pearls that have been polished, cut or otherwise treated but not including stones or pearls that are mounted, set or permanently strung;
- but does not include:
- (f) gold;
 - (g) goods of a kind used as fertilisers; or
 - (h) salt, or products obtained by the treatment of salt.

motor vehicle means a motor vehicle of a kind ordinarily used on roads for the transport of persons or of goods.

motor vehicle components means goods that:

- (a) are components (including accessories and handbooks) for a motor vehicle; and

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- (b) are exported from Australia for use in the original manufacture or assembly, in the country to which the goods are exported, of a complete motor vehicle or for sale or disposal with such a vehicle;

and includes the containers (not being container system units) in which such components are exported.

original commercial container means a commercial container in which no other container is contained.

prescribed goods means goods other than minerals.

prescribed professional services means services supplied by a person for the purposes of the construction of a building or other work outside Australia, being services of one or more of the following kinds, namely, architectural, design, engineering or surveying services, where:

- (a) the work involved in the supply of the services is performed by the person supplying the services or his employees; and
- (b) a predominant part of the cost of supplying the whole of the services is attributable to work performed in Australia;

but does not include services supplied:

- (c) under a contract for the construction of a building or other work by the person supplying the services unless the contract specifies an amount of consideration as being attributable to the services; or
- (d) to a person for the purposes of the construction of a building or other work by that person in the course of a business carried on by him in Australia.

producer for export means a person of one of the following descriptions:

- (a) in relation to prescribed goods that have been exported from Australia in an original commercial container in which they were placed in Australia (whether or not that original commercial container was, before the export, placed in another container)—the person who was the owner of the prescribed goods at the time when they were placed, or were last placed, in that original commercial container;
- (b) in relation to other prescribed goods, being prescribed goods (other than containers) that have been exported from Australia after having been, by manufacture, production,

assembling or processing, or by grading and sorting, carried out in Australia, brought into the form or condition in which they were so exported—the person who was the owner of those prescribed goods when they were brought into that form or condition;

- (c) in relation to containers (other than container system units) in which prescribed goods have been exported from Australia and in which those prescribed goods were placed by the person who is the producer for export of those prescribed goods—that person; and
- (d) in relation to a container system unit that has been exported from Australia after having been, by manufacture or assembling carried out in Australia, brought into the condition in which it was ready for use as a container system unit—the person who was the owner of the container system unit at the time when it was brought into that condition.

rebate means a rebate under this Division.

rebate year means the financial year beginning on the first day of July, One thousand nine hundred and sixty-eight, or one of the four next succeeding financial years.

rebate value means:

- (a) in relation to an increase in export sales of a person for a rebate year—an amount ascertained in accordance with the formula:

$$\frac{21a}{200}$$

where **a** is the increase in export sales of that person for that rebate year; and

- (b) in relation to an export certificate—the amount specified in the certificate as the rebate value of the certificate.

supplier of components means a person who supplies goods in relation to which the expression is used to another person and is not a producer for export in relation to those goods.

tax, in respect of a financial year, means tax (not including additional tax) imposed on wages paid or payable by the employer concerned in respect of that financial year.

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the base period, in relation to a person means, in relation to a rebate year:

- (a) except where that person is a new exporter and the rebate year is one of the first eight export years—the period comprising the first three of the eight financial years immediately preceding that rebate year; or
- (b) where that person is a new exporter and the rebate year is one of the first eight export years other than the first export year—the period comprising the years the values of export sales for which are referred to in the formula applicable in relation to that rebate year under subsection (4) of section sixteen C of this Act.

the Secretary means the Secretary to the Department of Trade and Resources.

value of export sales, in respect of a year or other period, means, in relation to a person, the sum of:

- (a) the amounts of consideration receivable by that person in respect of the disposal of prescribed goods that have been exported from Australia during that period, being prescribed goods that were disposed of by him before or at the time at which they were exported and in relation to which he was a producer for export;
- (b) the amounts of consideration receivable by that person in respect of the disposal of prescribed goods that have been exported from Australia, being goods that were, after they were exported, disposed of by him during that period and in relation to which he was a producer for export;
- (c) the amounts of consideration receivable by that person, otherwise than as royalties or payments in the nature of royalties, in respect of the disposal by him in that period, in the course of carrying on a business in Australia, to a person resident outside Australia of industrial property rights or know-how to be used or enjoyed outside Australia;
- (d) the amounts of consideration receivable by that person as royalties, or payments in the nature of royalties, in respect of the use or enjoyment outside Australia in that period of industrial property rights or know-how disposed of by him, in the course of carrying on a business in Australia, to a person resident outside Australia; and

- (e) the amounts of consideration receivable by that person in that period in respect of the supply by him of prescribed professional services.
- (2) For the purposes of this Division:
- (a) a person is a new exporter if the first year after the year that ended on the thirtieth day of June, One thousand nine hundred and fifty-eight, in respect of which there was or is, in relation to that person, a value of export sales was or is the year that ended on the thirtieth day of June, One thousand nine hundred and sixty-two, or a later year;
 - (b) the first export year of a new exporter is the first year after the year that ended on the thirtieth day of June, One thousand nine hundred and sixty-one, in respect of which there was or is, in relation to him, a value of export sales; and
 - (c) the second, third, fourth, fifth, sixth, seventh and eighth export years of a new exporter are the first, second, third, fourth, fifth, sixth and seventh years, respectively, after his first export year.
- (3) For the purposes of this Division, where a person has received or is entitled to receive an amount under a policy of insurance or otherwise in respect of loss, destruction or damage that has occurred in respect of goods owned by him after their export from Australia:
- (a) in the case of loss or destruction—that person shall be deemed to have sold those goods, at the time of the loss or destruction, for a consideration equal to that amount; and
 - (b) in the case of damage:
 - (i) if that person has sold the goods for a consideration—the consideration shall be deemed to be increased by that amount; and
 - (ii) if that person ceased to be the owner of the goods in any other manner—he shall be deemed to have sold the goods, at the time when he so ceased, for a consideration equal to that amount.
- (4) For the purposes of this Division, goods shall be taken to have been physically included in goods exported from Australia if they have been used, directly or indirectly, in the manufacture, production, assembling or processing of the goods that have been exported so that the whole or a substantial part of the goods so
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used has been incorporated in the goods exported, or so that the goods exported have been derived solely from the goods so used (whether or not the goods so used have retained their identity or physical or chemical form or condition).

- (5) For the purposes of this Division, goods, other than container system units, shall not be taken to be exported from Australia where they are taken or sent out of Australia with the intention that they will, at a later time, be brought or sent back to Australia.
- (6) For the purposes of this Division, where a person who carried on the production of motor vehicles in Australia during the whole or any part of the base period has, during the base period, exported from Australia motor vehicle components in relation to which he would not, but for this subsection, have been a producer for export:
 - (a) that person shall be deemed to have been a producer for export in relation to those components; and
 - (b) any other person who would, but for this subsection, have been a producer for export in relation to those components, shall be deemed not to have been a producer for export in relation to those components.
- (7) For the purposes of this Division, where, in relation to a rebate year, a person is deemed, by virtue of subsection (2) of section sixteen B of this Act, to be a producer for export of components for prescribed goods, being prescribed goods of a particular kind, and, in any year (in this subsection referred to as *the base year*) that is included in the base period in relation to that rebate year, that person carried on in Australia the production of prescribed goods of that particular kind and exported from Australia components for prescribed goods, being prescribed goods of that kind, in relation to which he would not, but for this subsection, have been a producer for export:
 - (a) that person shall, for the purposes of his increase in export sales in respect of that rebate year or of any later rebate year in respect of which the base year is included in the base period, be deemed to have been a producer for export in relation to those components so exported in the base year; and
 - (b) any other person who would, but for this subsection, have been a producer for export in relation to those components

shall be deemed not to have been a producer for export in relation to those components so exported in the base year.

- (8) For the purposes of this Division:
- (a) the performance by a person, or by employees of a person, of work of a particular kind for the purposes of the carrying out by that person of a contract for the construction by that person of a building or other work shall be deemed to be the supply by that person of services of a corresponding kind; and
 - (b) except as otherwise expressly provided in the contract, moneys payable at any time under such a contract to the person supplying the services, to the extent to which those moneys do not exceed the amount of consideration specified in the contract as being attributable to the supply of those services, less any amount payable at any earlier time that is, or under this subsection is to be deemed to be, payable for the supply of those services, shall be deemed to be payable for the supply of those services.

16B Exports of certain components

- (1) Where the Secretary or a person authorized by him certifies to the Treasurer that he is of opinion that, and the Treasurer is satisfied that, a person who, during a specified period, carried on the production in Australia of, and the export from Australia of motor vehicle components for, motor vehicles of a specified kind has significantly assisted in the development of manufacturing in Australia, and of the export from Australia of goods manufactured in Australia, by following a policy of using for the purposes of that production and export, to such extent as is reasonably practicable, components manufactured in Australia, the Treasurer shall, by notice in writing to the Commissioner signed by or on behalf of the Treasurer, direct that that person shall, for the purposes of this Division, be deemed to have been a producer for export in relation to motor vehicle components (being components in relation to which he would not otherwise have been a producer for export) that:
- (a) were exported from Australia by that person during the period specified in the certificate; and

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(b) were components for motor vehicles of the kind specified in the certificate;

and, where such a direction is given, any other person who would, but for this subsection, have been a producer for export in relation to those components shall, for the purposes of this Division, be deemed not to have been a producer for export in relation to those components.

(2) Where the Secretary or a person authorized by him certifies to the Treasurer that he is of opinion that, and the Treasurer is satisfied that:

(a) a person who, during a rebate year, carried on the production in Australia of prescribed goods of a particular kind and the export from Australia of components for prescribed goods of that kind, has followed a policy of using for the purposes of that production and export, to such extent as is reasonably practicable, components that are Australian products; and

(b) the amount by which the total of the considerations receivable by that person for the sale of components for prescribed goods of that kind exported by him from Australia during the rebate year exceeds the total cost to that person of components that are not Australian products and are included in the components for which those considerations are receivable is not less than one-half of the total of those considerations;

the Treasurer shall, by notice in writing to the Commissioner signed by or on behalf of the Treasurer, direct that that person shall, for the purposes of this Division, be deemed to have been a producer for export in relation to components for prescribed goods of that kind exported by the employer from Australia during the rebate year, and, where such a direction is given, any other person who would, but for this subsection, have been a producer for export in relation to those components shall, for the purposes of this Division, be deemed not to have been a producer for export in relation to those components.

(3) Where, in relation to any goods, being motor vehicle components or components for prescribed goods, that were exported from Australia by a person during a specified period, the Secretary or the Treasurer is satisfied that that person should not be deemed, in accordance with subsection (1) or (2) of this section, to be a

producer for export of those goods, he shall cause that person to be notified accordingly.

- (4) A certificate under subsection (2) of this section in relation to a rebate year shall not be issued unless an application for the certificate is lodged with the Secretary within six months after the end of that rebate year.
- (5) In subsection (2) of this section:

Australian products means goods that have, by manufacture, production, assembling or processing, or by grading and sorting, carried out in Australia, been brought into the form or condition in which they were used in the production of prescribed goods of the kind concerned or were exported from Australia.

cost, in relation to components, not being Australian products, that are exported by a person, means:

- (a) where that person imported the components into Australia—the cost to that person of the components, excluding any customs duty paid or payable in respect of the importation; or
- (b) in any other case—the cost to that person of the components, less any customs duty that became payable by any other person upon the importation of the components into Australia.

prescribed goods of a particular kind does not include:

- (a) motor vehicles; or
- (b) parts, fittings or accessories for motor vehicles, not being goods of a kind marketed as additions to complete motor vehicles.

16C Ascertainment of increase in export sales

- (1) For the purposes of this Division, the amount of the increase in export sales of a person for a rebate year shall be ascertained in accordance with this section.
- (2) Subject to the next succeeding subsection, the amount is the excess, if any, of the value of export sales of the person for the rebate year over one-third of the value of export sales of the person for the base period.

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- (3) In the case of a person who is a new exporter, the amount in relation to a rebate year that is the first, second, third, fourth, fifth, sixth, seventh or eighth export year is the excess, if any, of the value of export sales of the person for the rebate year over the amount, if any, ascertained in respect of that year in accordance with the next succeeding subsection.
- (4) The amount to be ascertained for the purposes of the last preceding subsection is:
- (a) in respect of the first export year—nil; and
 - (b) in respect of any other year—the amount ascertained in accordance with the formula set out opposite the reference to that year in the following table:

Second export year	—	$\frac{a}{8}$
Third export year	—	$\frac{a + b}{8}$
Fourth export year	—	$\frac{a + b + c}{8}$
Fifth export year	—	$\frac{a + b + c}{6}$
Sixth export year	—	$\frac{5(a + b + c)}{24}$
Seventh export year	—	$\frac{a + b + c}{4}$
Eighth export year	—	$\frac{7(a + b + c)}{24}$

- (5) For purposes of the formulae in the last preceding subsection, *a*, *b* and *c* are the value of export sales of the person for the first, second and third export years respectively.

16D Changes in ownership of business etc.

- (1) Where, during or after the period that is the base period in relation to a person in relation to a rebate year but before the
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commencement of that rebate year, that person (in this subsection referred to as *the purchaser*) acquired from another person (in this subsection referred to as *the vendor*), whether by purchase or otherwise, a business or any industrial property rights, the amount that would otherwise be the value of export sales of the purchaser for that base period shall be deemed to be increased:

- (a) except where the next succeeding paragraph applies—by an amount equal to so much of the value of export sales (apart from this section) of the vendor, and an amount equal to so much of the value of export sales (apart from this section) of any previous owner of the business or rights, for a year that is included in the base period in relation to the vendor in relation to the rebate year as is attributable to the business or rights, as the case may be; or
 - (b) where the acquisition took place during the base period first referred to in this subsection and the base period of the vendor and the purchaser respectively in relation to the rebate year are not the same period—such part of the amount, or for each of the amounts, specified in the last preceding paragraph as bears to that amount, or to that sum, the same proportion as the number of days from and including the first day of the base period of the purchaser in relation to the rebate year to and including the day next preceding the day of the acquisition bears to the number of days in the whole of that base period.
- (2) Where, during a rebate year, a person acquired from another person, whether by purchase or otherwise, a business or any industrial property rights, the amount that would otherwise be the value of export sales of the first-mentioned person for a year of the base period in relation to that person in relation to that rebate year shall be deemed to be increased by an amount or amounts equal to so much of any amount by which that value would be required, under the last preceding subsection, to be deemed to be increased if the acquisition had taken place immediately before the rebate year as bears to that amount, or as bears to each of those amounts, as the case may be, the same proportion as the number of days from the date of the acquisition to the end of the rebate year bears to the number of days in the whole of the rebate year.
- (3) Where, during or after the base period in relation to a person in relation to a rebate year, that person has disposed of a business or

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any industrial property rights, the amount that would otherwise be the value of export sales of that person for that base period shall be reduced:

- (a) where the disposal took place before the commencement of the rebate year—by an amount equal to so much of that value of export sales as is attributable to that business or those rights (including any amount that is, under the preceding provisions of this section, to be deemed to be added to that value of export sales by reason of a previous acquisition by that person of that business or of those rights); or
 - (b) where the disposal took place during the rebate year—by an amount that bears to the amount first-mentioned in the last preceding paragraph the same proportion as the number of days from the date of disposal to the end of the rebate year bears to the number of days in the whole of the rebate year.
- (4) In this section:
- (a) a reference to the value of export sales of a person shall be read as a reference to the value of export sales of that person apart from any reduction under section sixteen Q of this Act; and
 - (b) a reference to a business shall be read as including a reference to a part of a business.

16E Rebate entitlements

- (1) Subject to this Division, the rebate entitlement of an employer in respect of a rebate year is the amount, if any, by which the sum of:
- (a) the rebate value of any increase in export sales of the employer for that rebate year; and
 - (b) the total of the rebate values of export certificates issued to the employer in relation to that rebate year;
- exceeds the total of the rebate values of export certificates issued by the employer in relation to that rebate year.

- (2) The rebate values of export certificates issued to the employer as an export merchant shall not be taken into account for the purposes of the last preceding subsection to the extent, if any, to which the total of those rebate values exceeds the amount calculated in accordance with the formula:

$$\frac{a \times b}{c}$$

where:

- a* is the amount of tax in respect of the rebate year;
- b* is the total of considerations receivable by that employer for disposals in the rebate year of prescribed goods purchased by him from the producers for export of the goods and exported by him from Australia; and
- c* is the total of considerations receivable by that employer in respect of all disposals of goods by him during the rebate year.

16F Rebates

- (1) Subject to this Division, there is allowable to an employer, in respect of a year for which it has been determined under this Act that he has a rebate entitlement, a rebate of an amount equal to the rebate entitlement so determined.
- (2) For the purposes of this Division:
- (a) an employer shall be taken to have a rebate credit for a rebate year if his rebate entitlement for that rebate year, as determined under this Act, exceeds his tax for that rebate year; and
 - (b) the amount of the rebate credit is so much of the amount of that excess as does not exceed one-half of the amount of that tax.
- (3) Subject to the next succeeding section, where an employer has a rebate credit for a rebate year, a rebate is allowable to the employer in respect of a financial year that is one of the three next succeeding years (including a financial year subsequent to the last rebate year) of an amount equal to so much of the rebate credit as exceeds any rebate that has, by virtue of that rebate credit, become allowable under this subsection in respect of an earlier year.

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16G Limit and order of rebates

- (1) A rebate allowable under subsection (1) or subsection (3) of the last preceding section in respect of a financial year, and the sum of the rebates allowable under both those subsections in respect of a financial year, shall not exceed the amount of the employer's tax for that financial year.
- (2) Where, by reason of the last preceding subsection, two or more rebates otherwise allowable to an employer in respect of a financial year are not allowable in full:
 - (a) a rebate allowable under subsection (1) of the last preceding section is allowable in priority to a rebate under subsection (3) of that section; and
 - (b) a rebate under subsection (3) of that section in respect of a rebate credit for an earlier financial year is allowable in priority to a rebate in respect of a rebate credit for a later financial year.

16H Alternative basis for rebate for 1968-69 because of currency devaluation

- (1) This section applies in relation to the calculation of the increase in export sales of a person for the year ending on the thirtieth day of June, One thousand nine hundred and sixty-nine (in this section referred to as *the year to which this section applies*).
- (2) A person may, by application in writing to the Secretary, request the Secretary to certify that he is satisfied that the value of export sales of the person for the year to which this section applies is substantially less than it would have been if the currency of a country or countries outside Australia specified in the application had not been devalued during the next preceding financial year.
- (3) The application shall be made after the end of the year to which this section applies and at or before the time of lodging a claim in respect of that year.
- (4) The Secretary shall notify the Commissioner of receipt of an application under this section, and the Commissioner shall not determine a claim by the applicant in respect of the year to which this section applies unless and until:

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- (a) the Secretary has notified the applicant that the application has been rejected; or
 - (b) the Secretary has delivered to the applicant a certificate in accordance with subsection (6) of this section and:
 - (i) the applicant has not, within forty-two days from the date of receipt of the certificate, made an election under subsection (7) of this section; or
 - (ii) the applicant has duly made an election under subsection (7) of this section.
- (5) The Secretary is not required to determine the application unless the applicant has furnished such information, verified by such declarations, as the Secretary requires for the purposes of this section.
- (6) Subject to the last preceding subsection, the Secretary shall consider the application and, if he decides to grant the application, shall:
- (a) in respect of each of the two financial years next preceding the year to which this section applies, determine whether, in his opinion, the value of export sales of the applicant for that financial year was, by reason of abnormal trading conditions or other extraordinary circumstances in that financial year, in excess of the amount that would otherwise have been that value and, if so, the amount of the excess; and
 - (b) sign a certificate certifying as requested in the application and certifying also, in respect of each of the two financial years next preceding the year to which this section applies, the opinion formed by him, and the amount, if any, of the excess determined by him, in accordance with the last preceding paragraph; and
 - (c) deliver the certificate by post to the applicant and furnish a copy of the certificate to the Commissioner.
- (7) Where the Secretary has delivered to a person a certificate in accordance with the last preceding subsection, the person may, by notice in writing signed by him or on his behalf and delivered to the Commissioner within forty-two days from the date of receipt of the certificate, elect that his increase in export sales for the year to which this section applies shall be ascertained by reference to the value of export sales of the person for whichever of the two years

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next preceding the year to which this section applies is specified in the election.

- (8) Where a person makes an election under the last preceding subsection, his increase in export sales for the year to which this section applies shall be deemed to be an amount ascertained in accordance with the formula:

$$a - \frac{b}{2}$$

where:

- a** is the value of export sales of the person for whichever of the two years next preceding the year to which this section applies is specified in the election, less any excess in respect of that year determined by the Secretary in accordance with paragraph (a) of subsection (6) of this section; and
- b** is the value of export sales of the person for the period of two years that began on the first day of July, One thousand nine hundred and fifty-eight.
- (9) A person who is dissatisfied with a determination of the Secretary under subsection (6) of this section of an excess amount in respect of the value of export sales for a financial year may apply in writing to the Commissioner for a review by the Tribunal of the Secretary's determination.
- (10) An application under the last preceding subsection shall be made within the time allowed under subsection (7) of this section for making an election under that subsection and, if the applicant makes such an election, not later than the date on which he makes that election, but the application shall not be considered before the date of service on the applicant of notice of a determination by the Commissioner of a claim by the applicant in respect of the year to which this section applies.
- (11) The Commissioner shall refer an application duly made in accordance with the last two preceding subsections to the Tribunal, which shall determine, in respect of the financial year, or each of the two financial years, to which the application relates, whether, in its opinion, the value of export sales of the applicant for that financial year was, by reason of abnormal trading conditions or other extraordinary circumstances in that financial year, in excess

of the amount that would otherwise have been that value and, if so, the amount of the excess.

- (12) Where a determination has been made by the Tribunal in accordance with the last preceding subsection, the person concerned may, by notice in writing signed by him or on his behalf and delivered to the Commissioner within forty-two days from the date of the determination:
- (a) elect that his increase in export sales for the year to which this section applies shall be ascertained by reference to the value of export sales of that person for whichever of the two financial years next preceding that year is specified in the election; or
 - (b) elect that his increase in export sales for the year to which the section applies shall be ascertained as if this section did not apply.
- (13) Where a person makes an election in accordance with paragraph (a) of the last preceding subsection, the increase in export sales of the person for the year to which this section applies shall be deemed to be an amount ascertained in accordance with the formula:

$$a - \frac{b}{2}$$

where:

- a** is the value of export sales of the person for the year specified in the election, less any excess in respect of that year determined by the Board of Review in accordance with subsection (11) of this section; and
 - b** is the value of export sales of the person for the period of two years that began on the first day of July, One thousand nine hundred and fifty-eight.
- (14) For the purposes of subsections (8) and (13) of this section, where the value of export sales for the period of two years that began on the first day of July, One thousand nine hundred and fifty-eight, has been determined by the Commissioner for the purposes of the Division for which this Division was substituted, the amount last so determined to be that value (whether upon an amendment of a determination of the Commissioner as a result of a determination

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of the Tribunal, or otherwise) shall be deemed to be the value of export sales for that period.

- (15) A power or duty of the Secretary under this section may be exercised or performed on his behalf by a person authorized by him to act on his behalf under this section.

16J Claims

- (1) A person may make a claim in accordance with the next succeeding subsection in respect of a rebate year or any of the three years next succeeding the last rebate year.
- (2) The claim shall be:
- (a) in accordance with a form determined by the Commissioner;
 - (b) accompanied by such documents and declarations (including declarations made by or on behalf of the person making the claim) as are indicated on the form; and
 - (c) lodged with the Commissioner within one year after the end of the year in respect of which it is made, or within such further time as the Commissioner allows.

16K Determinations

- (1) Where a person has duly made a claim in respect of a rebate year, the Commissioner shall determine:
- (a) whether the person has a rebate entitlement for that year and, if so, the amount of the rebate entitlement; and
 - (b) whether that person has a rebate credit for that year and, if so, the amount of the credit.
- (2) Where a person has duly made a claim, whether in respect of a rebate year or a year subsequent to the last rebate year, the Commissioner shall determine whether a rebate is allowable to the employer in respect of that year under subsection (1) or subsection (3) of section sixteen F of this Act and, if so, the amount of any such rebate allowable.
- (3) Subject to subsection (5) of this section, if the person, in the claim, claims that there is, in relation to him, a value of export sales for the rebate year, the determination shall, whether or not a rebate entitlement is determined, include a determination of the value of

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export sales of the employer for each year of the base period and for the rebate year.

- (4) Except as otherwise required by reason of the provisions of subsection (6) or subsection (7) of section sixteen A, section sixteen D, section sixteen Q or section sixteen R of this Act, the value of export sales of an employer for a year of the base period as determined in relation to a claim in respect of a rebate year shall be adopted in any determination in relation to a claim by that employer in respect of any subsequent rebate year in the base period in relation to which the first-mentioned year is included.
- (5) Subject to the next succeeding subsection, if the Commissioner is not satisfied, upon consideration of the information furnished or otherwise available to him, as to the value of export sales of a person for the base period in relation to a rebate year, the Commissioner is not required to determine that value and this Division has effect, in relation to any rebate entitlement of that person or the issue of export certificates by that person, in relation to that rebate year, as if that person had no increase in export sales for that rebate year.
- (6) Where, in a case to which the last preceding subsection would otherwise apply, the Commissioner is satisfied that the value of export sales of the person for the base period does not exceed a particular amount, but is not satisfied that the value is less than that amount, this Division has effect, for the purposes referred to in that subsection, as if that amount were the value of export sales of the person for the base period.
- (7) As soon as conveniently may be after a determination is made, the Commissioner shall serve upon the person making the claim, by post or otherwise, a notice in writing of the determination.

16L Amendment of determinations

- (1) Subject to this section, the Commissioner may at any time amend a determination in such manner as he thinks necessary.
- (2) Where a person making a claim has made to the Commissioner a full and true disclosure of all the material facts necessary for the making of a determination and a determination is made after that disclosure, an amendment of that determination adversely affecting

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that person shall not be made except to correct an error in calculation or a mistake of fact and no such amendment shall be made more than three years from the date of service upon that person of notice of the determination.

- (3) An amendment favourable to the person to whom the determination relates shall not be made to a determination except to correct an error in calculation or a mistake of fact, and no such amendment shall be made more than three years from the date of service upon that person of notice of the determination.
- (4) Nothing in this section prevents the amendment of a determination:
 - (a) in order to give effect to a decision upon an appeal or a review or upon an application under section sixteen Q or section sixteen R of this Act;
 - (b) as a consequence of an election under subsection (12) of section sixteen H of this Act;
 - (c) as a consequence of an amendment of the value of export sales for a year of the base period as determined by another determination;
 - (d) as a consequence of the issue or receipt of export certificates by the person to whom the determination relates after the making of the claim to which the determination relates;
 - (e) so far as it relates to a rebate credit or a rebate allowable, to the extent necessary by reason of an assessment of tax for the year to which the determination relates, or an amendment of such an assessment; or
 - (f) in a manner favourable to the person to whom the determination relates, in pursuance of an objection made by him or pending an appeal or review.
- (5) An amendment of a determination shall, for the purposes of this Act, be deemed to be a determination.

16M Allowance of rebates

- (1) Notwithstanding anything contained in this Act, rebates under this Division are allowable in accordance with this section and not otherwise.
- (2) The amount of a rebate allowable in accordance with this section is the amount of the rebate as determined in accordance with this Act.

- (3) Subject to this section, the amount of a rebate allowable to an employer is a debt due and payable to the employer by the Commissioner on behalf of the Commonwealth.
- (4) The Commissioner may apply the whole or a part of a rebate allowable to an employer in total or partial discharge of any liability to the Commonwealth of the employer arising under or by virtue of this Act or any other Act of which the Commissioner has the general administration.
- (5) Where, under the last preceding subsection, the Commissioner has applied an amount of rebate in discharge of a liability of an employer to the Commonwealth, that employer shall be deemed to have paid the amount so applied for the purpose for which, and at the time at which, it has been so applied.
- (6) Where, by reason of an amendment of a determination, the amount, or the sum of the amounts, applied or paid by the Commissioner in respect of a rebate exceeds the amount of the rebate allowable to the employer, the Commissioner may recover the amount of the excess as if it were tax due and payable by the employer.
- (7) An amount payable by the Commissioner under this section is payable out of the Consolidated Revenue Fund, which is, to the necessary extent, appropriated accordingly.

16N Declarations regarding goods exported

- (1) A person (in this subsection referred to as *the producer*) from whom prescribed goods were, during the base period in relation to a rebate year or within one year before that base period, acquired by a person who was, at the time of the acquisition, an export merchant (in this subsection referred to as *the export merchant*) may, by notice in writing, require the export merchant to furnish to the Commissioner a declaration in accordance with this section giving particulars of all prescribed goods that were acquired by the export merchant at any time from the producer and were exported from Australia during that base period, other than prescribed goods:
 - (a) of which the export merchant or some other person became, by reason of something done by him to or in relation to the prescribed goods since the acquisition, the producer for export; or

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- (b) which were, after the acquisition and before being exported, physically included in other goods;
- and the producer is not entitled to have a claim in respect of that rebate year considered unless:
- (c) he has made such a requirement and states that fact in the claim, specifying the name and address of the export merchant; or
 - (d) he satisfies the Commissioner that it was impossible or impracticable for him to make such a requirement or that the failure to make the requirement will not prejudice the proper determination of the claim.
- (2) A person (in this subsection referred to as *the producer*) from whom prescribed goods were, during a rebate year or within one year before a rebate year, acquired by a person who was, at the time of the acquisition, an export merchant (in this subsection referred to as *the export merchant*) may, by notice in writing require the export merchant to furnish to the Commissioner a declaration in accordance with this section giving particulars of all prescribed goods that were acquired by the export merchant at any time from the producer and were exported from Australia during that rebate year, other than prescribed goods:
- (a) of which the export merchant or some other person became, by reason of something done by him to or in relation to the prescribed goods after the acquisition, the producer for export;
 - (b) which were, after the acquisition and before being exported, physically included in other goods;
 - (c) that are motor vehicle components that have been exported from Australia by a person who carried on the production of motor vehicles in Australia, not being components in respect of which a notification under subsection (3) of section sixteen B of this Act has been given; or
 - (d) that are components for prescribed goods of a particular kind that have been exported from Australia by a person who carried on the production in Australia of prescribed goods of that kind, not being components in respect of which a notification under subsection (3) of section sixteen B of this Act has been given.

- (3) Subject to the next succeeding subsection, a person who receives a notice in accordance with either of the last two preceding subsections shall, within sixty days after the receipt by him of the notice, or within such further time as the Commissioner in special circumstances allows, furnish to the Commissioner a declaration in accordance with the notice and the requirements of subsection (6) of this section.

Penalty: Two hundred dollars.

- (4) Where a person who receives a notice in accordance with subsection (1) or (2) of this section does not know, and is unable to ascertain from his books, accounts or records, a matter that is required by this section to be contained in the declaration, a declaration furnished by him to the Commissioner shall be taken to comply with the requirements of this section so far as that matter is concerned if the declaration states that that person does not know and is unable to ascertain that matter and sets out adequate reasons for the inability.

- (5) A person who, in pursuance of this section, furnishes a declaration to the Commissioner shall, at the same time, furnish a copy of the declaration to the person who requested that the declaration be so furnished.

Penalty: Forty dollars.

- (6) A declaration furnished in pursuance of this section shall specify the amount of the consideration given, or to be given, by the person furnishing the declaration in respect of the prescribed goods referred to in the declaration and shall be in accordance with a form determined by the Commissioner.

- (7) A person shall not:
- (a) in a declaration furnished to the Commissioner by reason of a request made in accordance with subsection (1) of this section, knowingly specify as the amount of a consideration an amount that is less than the true consideration; or

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- (b) in a declaration furnished to the Commissioner by reason of a request made in accordance with subsection (2) of this section, knowingly specify as the amount of a consideration an amount that is greater than the true consideration.

Penalty: An amount equal to the amount by which the consideration is understated or overstated, as the case may be, or One thousand dollars, whichever is the greater.

- (8) A person shall not, in a declaration furnished to the Commissioner by reason of a notice under subsection (2) of this section, knowingly specify a consideration in respect of goods that should not be included in the declaration.

Penalty: An amount equal to the consideration specified in the declaration or One thousand dollars, whichever is the greater.

16P Notice to Commissioner as to incorrect declarations

- (1) Where a person has reason to believe that a copy of a declaration that has been furnished to him in pursuance of the last preceding section contains information that is incorrect or does not contain information that should be contained in it, he shall, not later than the day prescribed by the next succeeding subsection, notify the Commissioner in writing accordingly, giving particulars of the extent to which he believes the information to be incorrect or deficient.

Penalty: One thousand dollars.

- (2) The prescribed day for the purposes of the last preceding subsection is:

- (a) the last day of the financial year next succeeding the relevant rebate year or if, on or before that day, the Commissioner has allowed to the person a further time for the making of a claim in respect of that rebate year, the day on which that further time expires; or

- (b) the day on which that person makes a claim in respect of that rebate year;
whichever is the earlier day, but, where that day is earlier than the thirtieth day after the day of receipt by the person of the copy of the declaration, the prescribed day is that thirtieth day.

16Q Review of base period export sales

- (1) A person may, in relation to a rebate year, apply in writing to the Commissioner for a reduction in the amount that would, apart from this section and section sixteen D of this Act, be the value of export sales of that person for a financial year (in this section referred to as *the base year*) that is included in the base period in relation to the rebate year on the ground that, by reason of abnormal trading conditions or other extraordinary circumstances during the base year, that amount is greater than it would otherwise have been and he is, by reason of that fact, unfairly disadvantaged for the purposes of this Division.
- (2) Applications under this section in relation to the one rebate year may be made in respect of more than one base year.
- (3) An application under this section shall be made at the time of the making by the applicant of a claim in respect of the rebate year in relation to which the application is made or at any time after the making of such a claim and before the expiration of forty-two days from the date of service on the applicant of notice of a determination of that claim by the Commissioner, but such an application shall not be considered before such a notice has been served.
- (4) The Commissioner shall refer every application duly made under this section to the Tribunal.
- (5) The Tribunal shall determine:
 - (a) whether the amount to which the application relates is, for the reasons referred to in subsection (1) of this section, greater than it would otherwise have been and, if so, the amount of the excess; and
 - (b) if there is such an excess, whether any reduction should be made in the value of export sales for the base year on the ground that the applicant is unfairly disadvantaged for the

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purposes of this Division by reason of the excess, and the extent of the reduction that should be so made.

- (6) In making a determination under paragraph (b) of the last preceding subsection, the Tribunal shall take into account:
 - (a) the amount, if any, of rebate of tax in respect of the base year allowed to the person under the *Pay-roll Tax Assessment Act 1941-1961*, or under that Act as amended at any time, that was attributable to the amount of the excess; and
 - (b) where there was such an amount of rebate, the amount of rebate that will, or is likely to be, attributable to the effect of the determination on the rebate entitlement of the person for each of the rebate years in relation to which the base year is or will be included in the base period.
- (7) Where, upon an application under this section, the Tribunal has determined that the value of export sales of a person for the base year should be reduced by a specified amount, the value of export sales as reduced by that amount shall, for the purposes of this Division but subject to the application of section sixteen D of this Act and the next succeeding section, be deemed to be the value of export sales of that person for that year for the purpose of ascertaining the increase in export sales of that person for the rebate year and for any subsequent rebate year in relation to which the base year is included in the base period, and the Commissioner shall give effect to the determination accordingly.
- (8) A person is not entitled to make more than one application under this section in relation to the one base year.

16R Review of amounts added to value of export sales for base period under section 16D

- (1) Where a person has acquired a business or any industrial property rights and, under section sixteen D of this Act, an amount is to be deemed to be added to the value of export sales of that person for the base period in relation to a rebate year, being the whole or a part of the value of export sales of a previous owner of the business or of the industrial property rights for a year (in this section referred to as *the vendor's base year*), that first-mentioned person may, in relation to that rebate year, apply in writing to the Commissioner for a reduction, for the purpose of calculating the amount to be so added, of the amount that represents so much of

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the value of export sales of the previous owner (apart from section sixteen D of this Act) for the vendor's base year as is attributable to that business or those industrial property rights, on the ground that, by reason of abnormal trading conditions or other extraordinary circumstances during the vendor's base year, the amount to which the application relates is greater than it would otherwise have been and the applicant is, by reason of that fact, unfairly disadvantaged for the purposes of this Division.

- (2) Applications under this section in relation to the one rebate year may be made in respect of the value of export sales of more than one previous owner.
- (3) An application under this section shall be made at the time of the making by the applicant of a claim in respect of the rebate year in relation to which the application is made or at any time after the making of such a claim and before the expiration of forty-two days from the date of service on the applicant of notice of a determination of that claim by the Commissioner, but such an application shall not be considered before such a notice has been served.
- (4) The Commissioner shall refer every application duly made under this section to the Tribunal.
- (5) The Tribunal shall determine:
 - (a) whether the amount to which the application relates is, for the reasons referred to in subsection (1) of this section, greater than it would otherwise have been and, if so, the amount of the excess; and
 - (b) if there is such an excess, whether any reduction should be made in the amount on the ground that the applicant is unfairly disadvantaged for the purposes of this Division by reason of the excess, and the extent of the reduction that should be made.
- (6) Where, upon an application under this section, the Tribunal has determined that the amount to which the application relates should be reduced, that amount shall be deemed to be reduced, to the extent determined by the Tribunal, for the purposes of the application of section sixteen D of this Act in relation to the applicant in respect of the rebate year to which the application related or in respect of any later rebate year in relation to which

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that amount is relevant, and no further application under this section shall be made in respect of that amount in respect of any later rebate year.

16S Export certificates

- (1) Export certificates may be issued in accordance with this section, and every export certificate:
 - (a) shall be in a form determined by the Commissioner; and
 - (b) shall specify a rebate value within the limits provided by this section and such other matters as are indicated on the form.

- (2) Subject to and in accordance with this section a person being:
 - (a) a person who has, in a rebate year, acquired from a supplier of components goods of the same kind as:
 - (i) prescribed goods that have, in that rebate year, been exported from Australia and in relation to which that person was the producer for export; or
 - (ii) goods that have been physically included in goods referred to in the last preceding subparagraph; or
 - (b) a supplier of components who has received an export certificate in relation to a rebate year in respect of goods and has, in that rebate year, acquired from another supplier of components goods of the same kind as the goods to which the certificate relates or goods of the same kind as goods that have been physically included in the goods to which the certificate relates;

may, during or after the end of the rebate year in which he so acquired those goods from the supplier of components, issue to the supplier of components an export certificate in relation to that rebate year.

- (3) Where a person issues an export certificate in relation to a rebate year to a supplier of components in respect of goods of any kind:

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- (a) he shall not specify in the certificate a rebate value that, when added to the rebate values specified in respect of goods of that kind in any other export certificate issued by him to suppliers of components (including that supplier) in relation to that rebate year, exceeds the amount ascertained in accordance with the formula:

$$\frac{21a}{200}$$

where *a* is the total of the considerations for which the person issuing the certificates has, during that rebate year and on or before the date of issue of the certificate, acquired from suppliers of components goods of that kind; and

- (b) where the total of the considerations for which he has, during that rebate year and on or before the date of issue of the certificate, acquired from that supplier of components goods of that kind is less than one-tenth of the total of the considerations for which he has, during that rebate year and on or before that date, acquired from suppliers of components (including that supplier) goods of that kind—he shall not specify in the certificate a rebate value that, when added to the rebate values specified in respect of goods of that kind in any other export certificates issued by him in relation to that rebate year in respect of goods of that kind to that supplier of components, exceeds the amount ascertained in accordance with the formula:

$$\frac{21a}{200}$$

where *a* is the total of the considerations for which he has, during that rebate year and on or before the date of issue of the certificate, acquired from that supplier of components goods of that kind.

Penalty: The greater of:

- (a) One thousand dollars; or
(b) the amount ascertained in accordance with the formula:

$$\frac{200a}{21}$$

where *a* is the amount of the excess.

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(4) Where:

- (a) a person has, during a rebate year, sold prescribed goods of any kind to an export merchant;
- (b) any of those goods have, whether during that rebate year or later, been exported from Australia and the first-mentioned person is the producer for export of the goods so exported; and
- (c) goods of that kind have been exported from Australia during that rebate year by that export merchant;

that first-mentioned person may, subject to and in accordance with this section, issue to that export merchant an export certificate in relation to that rebate year.

(5) A person shall not, in an export certificate issued under the last preceding subsection in relation to a rebate year by reference to the sale to an export merchant of goods of any kind, specify a rebate value that, when added to the rebate values specified in other export certificates issued by him under that subsection in relation to that rebate year to export merchants (including that export merchant) by reference to sales of goods of that kind, gives a total exceeding the amount ascertained in accordance with the formula:

$$\frac{21a}{200}$$

where *a* is the total of the considerations for which the person issuing the certificate has, during that rebate year and on or before the date of issue of the certificate, sold goods of that kind, to export merchants who have, during that rebate year, exported goods of that kind.

Penalty: The greater of:

- (a) One thousand dollars; or
- (b) the amount ascertained in accordance with the formula:

$$\frac{200a}{21}$$

where *a* is the amount of the excess.

(6) A person shall not specify in an export certificate issued by him in relation to a rebate year a rebate value that, when added to the rebate values specified in any other export certificates issued by him in relation to that rebate year, gives a total exceeding:

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- (a) if the certificate is issued after the rebate year—the total of the rebate values of the increase in export sales of the person for the rebate year and of any export certificates issued to him in respect of that rebate year; or
- (b) if the certificate is issued during the rebate year—the total of the rebate values of the amount that would be the increase in export sales of the person for the rebate year if the rebate year ended on the day on which the certificate is issued and of any export certificates issued to him on or before that day in respect of that rebate year.

Penalty: The greater of:

- (a) One thousand dollars; or
- (b) an amount ascertained in accordance with the formula:

$$\frac{200a}{21}$$

where *a* is the amount of the excess.

- (7) A person shall not, except with the approval in writing of the Commissioner, issue an export certificate in relation to a rebate year:
 - (a) after the making of a claim by that person in respect of the rebate year; or
 - (b) after the expiration of one year from the end of the rebate year and of the further time, if any, allowed by the Commissioner for the making of a claim by that person in respect of that rebate year.

Penalty: The greater of:

- (a) One thousand dollars; or
- (b) an amount ascertained in accordance with the formula:

$$\frac{200a}{21}$$

where *a* is the rebate value specified in the export certificate.

- (8) In this section:
 - (a) a reference to prescribed goods shall be read as not including:
 - (i) a reference to motor vehicle components that have, in a rebate year, been exported from Australia by a person

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who carried on the production of motor vehicles in Australia and in relation to which the exporter is not the producer for export; or

- (ii) a reference to components for prescribed goods of a kind in relation to which subsection (2) of section sixteen B of this Act applies, being components that have, in a rebate year, been exported from Australia by a person who carried on the production of prescribed goods of that kind in Australia and in relation to which the exporter is not the producer for export;

not being components in respect of which a person is, by virtue of section sixteen B of this Act, deemed to be a producer for export or in respect of which a notification under subsection (3) of section sixteen B of this Act has been given; and

- (b) a reference to the increase in export sales of a person for a rebate year shall be read as not including a reference to such part (if any) of that increase as is attributable to components in relation to which the last preceding paragraph applies.

16T Certain arrangements and transactions

- (1) Where the Commissioner is satisfied that arrangements have been made between any persons with a view to the affairs of those persons being so arranged or conducted that this Division, or the Division for which this Division was substituted, would have effect more favourably in relation to one of those persons than would otherwise have been the case, the amount of any increase in export sales, or of any rebate entitlement, of that person shall not exceed the amount that would, in the opinion of the Commissioner, have been the amount of that increase in export sales or of that rebate entitlement if those arrangements had not been made.
- (2) Where:
 - (a) by virtue of subsection (8) of section sixteen A of this Act, prescribed professional services are to be deemed to have been supplied by a person in relation to a contract for the construction by that person of a building or other work, being a contract that specifies an amount of consideration as being attributable to those services; and
 - (b) that amount exceeds the amount that, in the opinion of the Commissioner, could reasonably be expected to have been

the cost to that person of obtaining the performance of the work involved in those services by a person other than himself and his own employees, being a person with whom he was dealing at arm's length;
the Commissioner may treat the consideration receivable for the supply of those services as being reduced by the amount of the excess.

16U Obtaining rebate by fraud

A person shall not, by wilful act, default or neglect, by fraud, art or contrivance or by a wilfully false statement:

- (a) obtain or attempt to obtain a determination of a rebate entitlement to which he is not entitled; or
- (b) obtain or attempt to obtain a determination of a rebate entitlement of an amount exceeding the amount of the rebate entitlement to which he is entitled.

Penalty: In the case of an offence against paragraph (a) of this section, not less than One hundred dollars and the amount of the rebate entitlement or more than One thousand dollars and treble the amount of the rebate entitlement, and in the case of an offence against paragraph (b) of this section, not less than One hundred dollars and the amount of the excess or more than One thousand dollars and treble the amount of the excess.

16V Businesses conducted by States

Where a trade or business, or more than one trade or business, is carried on by the Crown in right of a State, this Division applies as if:

- (a) the Crown were, in respect of each trade or business, a separate employer; and
- (b) the Crown were not, as such an employer, entitled to any deduction under section fourteen of this Act.

16W Elections by marketing authorities

- (1) A marketing authority that came into existence on or after the date of commencement of the *Pay-roll Tax Assessment Act 1968*, or within sixty days before that date, may, by notice in writing lodged

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with the Commissioner, elect to be treated, for the purposes of this Division, as a producer for export in relation to prescribed goods produced in Australia of a class specified in the election exported or sold for export by the authority (including goods exported or sold before the date of the election), being goods in relation to which the authority would not, but for the election, be the producer for export.

- (2) A notice under this section shall be lodged not later than sixty days after the date on which the marketing authority came into existence.
- (3) Where a marketing authority duly makes an election under this section in relation to any goods:
 - (a) the marketing authority shall be deemed to be, and to have been, a producer for export in relation to those goods; and
 - (b) no other person shall be taken to be, or to have been, a producer for export in relation to those goods.
- (4) For the purposes of this section, an election by a marketing authority that had effect, immediately before the date of commencement of the *Pay-roll Tax Assessment Act 1968*, for the purposes of section sixteen P of the *Pay-roll Tax Assessment Act 1941-1967* shall be deemed to be an election duly made under this section.

16X Gold

- (1) For the purposes of this Division, where gold has been delivered in accordance with section forty-two of the *Banking Act 1959*:
 - (a) the gold shall be deemed to have been exported from Australia on the date on which the gold was so delivered;
 - (b) the person who by mining (including the working of alluvial or surface deposits) produced the minerals from which the gold was obtained, and no other person, shall be deemed to be the producer for export of the gold;
 - (c) except in a case to which the next succeeding paragraph applies, the value of export sales of that producer shall be deemed to include, in relation to the financial year in which the gold was so delivered, the consideration received in respect of the delivery of the gold by the person who so

- delivered the gold (whether the gold was so delivered by that producer or by another person);
- (d) where, at any time during the financial year in which the gold was so delivered, the producer referred to in paragraph (b) of this subsection was a shareholder in a prescribed company, the value of export sales of that producer shall be deemed to include:
- (i) in relation to the financial year in which the gold was so delivered—so much of the consideration received in respect of the delivery of the gold by the person who so delivered the gold (whether the gold was so delivered by that producer or by another person) as exceeds the amount that bears to that consideration the same ratio as the prescribed ratio in relation to that financial year; and
 - (ii) in relation to any financial year (including the financial year in which the gold was so delivered)—so much of the total of any dividends of the kind referred to in subsection (2) of section twenty-three C of the *Income Tax and Social Services Contribution Assessment Act 1936-1951*, or of that Act as amended and in force for the time being, received by him in that financial year as exceeds the amount that bears to the total of those dividends the same ratio as the prescribed ratio in relation to that financial year; and
- (e) except for the purpose of calculating the prescribed ratio in relation to a financial year that is a financial year later than the financial year that ended on the thirtieth day of June, One thousand nine hundred and sixty-eight, any actual export of the gold shall not be taken into account for the purposes of this Division.
- (2) Notwithstanding the provisions of the last preceding subsection, the provisions of this Division apply in relation to gold that:
- (a) has been purchased from the Reserve Bank; and
 - (b) has been sold to a person other than the Reserve Bank or a prescribed company;
- as if this section had not been enacted.
- (3) For the purposes of this section, gold delivered in accordance with section forty-two of the *Banking Act 1959* shall be deemed to have been so delivered at the time treated by the Reserve Bank as the

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time of delivery of the gold for the purpose of payment of the price fixed and published under section forty-four of the *Banking Act 1959*.

(4) A reference in this section to the *Banking Act 1959* shall be read as including a reference to that Act as amended and in force for the time being.

(5) In this section:

prescribed company means a company approved by the Treasurer for the purposes of section twenty-three C of the *Income Tax and Social Services Contribution Assessment Act 1936-1951* or of that Act as amended and in force for the time being.

the prescribed ratio means:

- (a) in relation to a financial year that ended on the thirtieth day of June of a year specified in the first column of the table in the First Schedule to this Act—the ratio of the number specified in the second column of that table opposite to that year to the number specified in the third column of that table opposite to that year; and
- (b) in relation to a financial year that is a financial year later than the financial year that ended on the thirtieth day of June, One thousand nine hundred and sixty-eight—the ratio of the total quantity of gold purchased from the Reserve Bank sold during the immediately preceding financial year by prescribed companies, being gold other than gold exported by or on behalf of a prescribed company, to the total quantity of all gold purchased from the Reserve Bank sold during that immediately preceding financial year by prescribed companies.

the Reserve Bank means the Reserve Bank of Australia.

16XA Certain gold deemed not to have been acquired from Reserve Bank

(1) In this section:

Banking Act means the *Banking Act 1959* as amended and in force for the time being.

delivered means delivered in accordance with section 42 of the Banking Act, and **delivery** has a corresponding meaning.

gold to which this section applies means gold referred to in subsection (2) of section 16X.

prescribed company and **Reserve Bank** have the same respective meanings as in section 16X.

producer, in relation to any gold, means the person who by mining (including the working of alluvial or surface deposits) produced the minerals from which the gold was obtained.

- (2) Where a prescribed company has, at any time in a rebate year, purchased from the Reserve Bank gold to which this section applies, the company shall, for the purposes of this Act, be deemed not to have purchased it from the Reserve Bank but to have acquired it at that time from persons who were, in the financial year immediately preceding that rebate year, shareholders in the company and were producers of gold delivered in that financial year.
- (3) Where in a rebate year a company is to be deemed, by virtue of subsection (2), to have acquired gold from a person, the company shall be deemed to have acquired the gold from that person for an amount of consideration that bears to the total consideration receivable for the disposal by the company of gold actually purchased by the company from the Reserve Bank in that rebate year, being gold to which this section applies, the same proportion as the quantity of gold delivered to the Reserve Bank in the financial year immediately preceding that rebate year of which the person was the producer bears to the total quantity of gold delivered to the Reserve Bank in that financial year of which shareholders in the company were producers.
- (4) For the purposes of this section, gold shall be deemed to have been delivered at the time treated by the Reserve Bank as the time of delivery of the gold for the purpose of payment of the price fixed and published under section 44 of the Banking Act.

16Y Amounts to be expressed in Australian currency

For the purposes of this Division, all amounts shall be expressed in terms of Australian currency.

Part IV—Registration and returns

17 Registration

An employer (not being an employer who is registered as an employer) who, in respect of a month, pays or is liable to pay wages at a rate in excess of Four hundred dollars per week shall, within seven days after the close of that month, apply to the Commissioner, in the prescribed form and manner, for registration as an employer.

18 Returns

- (1) Every employer who is registered or required to be registered in accordance with the provisions of the last preceding section shall, within seven days after the close of each month, furnish to the Commissioner, in accordance with the form and in the manner prescribed, a return of all wages paid or payable by him in respect of that month or in respect of each pay period of less than one month ending in that month, as the case may be.
- (2) Where the Commissioner is of opinion that it would be unduly onerous to require an employer to furnish returns in respect of the periods or within the time specified in the last preceding subsection, he may, by notice in writing, vary the periods in respect of which, or the time within which, that employer is required to furnish returns in pursuance of that subsection, and the employer shall, while that notice remains unrevoked, furnish returns accordingly.
- (3) The Commissioner may, at any time, by notice in writing, revoke any notice given in pursuance of the last preceding subsection.

19 Exemption from furnishing returns

- (1) If the Commissioner is of the opinion that no tax will be payable by an employer, or, if paid, would be refunded, he may issue a certificate to that employer exempting him from furnishing monthly returns in accordance with the provisions of the last preceding section, and any employer to whom such a certificate is

issued may refrain from furnishing monthly returns but shall, unless the contrary is expressed in the certificate, furnish an annual return within twenty-one days after the close of each financial year.

- (2) A certificate issued under the last preceding subsection may be either unconditional or subject to such conditions as are prescribed or as the Commissioner thinks fit.
- (3) The issue of a certificate under subsection (1) of this section shall not exempt an employer from the payment of any tax, notwithstanding that it may have the effect of postponing the time for payment of any tax.

20 Further returns

In addition to any return required to be furnished by this Act, the Commissioner may, by notice in writing, call upon any employer or person to furnish to him, within the time specified in the notice, such return or such further or fuller return, as the Commissioner requires, whether on his own behalf or as an agent or a trustee.

21 Power to obtain information and evidence

- (1) The Commissioner may, by notice in writing, require any employer or person:
 - (a) to furnish him with such information as he requires; or
 - (b) to attend and give evidence before him or before any officer authorized by him in that behalf;for the purpose of inquiring into or ascertaining his or any other person's liability or entitlement under any of the provisions of this Act, and may require him to produce all books, documents and other papers whatsoever in his custody or under his control relating thereto.
- (2) The Commissioner may require the information or evidence to be given on oath, and either orally or in writing, and for that purpose he or the officer so authorized by him may administer an oath.
- (3) Regulations made under this Act may prescribe scales of expenses to be allowed to persons required under this section to attend.

Part V—Collection and recovery of tax

22 Time for payment of tax

Every employer liable to pay tax shall pay the tax within the time within which he is required by this Act to lodge the return of the wages in respect of which the tax is payable.

23 Assessments

- (1) Where the Commissioner finds in any case that tax or further tax is payable by any employer, the Commissioner may:
 - (a) assess the amount of wages paid or payable by the employer; and
 - (b) calculate the tax or further tax payable thereon.

- (2) Where:
 - (a) any employer makes default in furnishing any return;
 - (b) the Commissioner is not satisfied with the return made by any employer; or
 - (c) the Commissioner has reason to believe or suspect that any employer (though he may not have furnished any return) is liable to pay tax;

the Commissioner may cause an assessment to be made of the amount upon which, in his judgment, tax ought to be levied and that person shall be liable to pay tax thereon, excepting in so far as he establishes on objection that the assessment is excessive.

- (3) Any employer who becomes liable to pay tax by virtue of an assessment made under the last preceding subsection shall also be liable to pay, by way of additional tax, double the amount of that tax or the amount of Two dollars, whichever is the greater:

Provided that the Commissioner may, in any particular case, for reasons which he thinks sufficient, remit the additional tax or any part thereof.

- (4) As soon as conveniently may be after an assessment is made under this section, the Commissioner shall cause notice in writing of the

assessment and of the tax or further tax to be given to the employer liable to pay the tax or further tax.

- (5) The amount of tax or further tax specified in the notice shall be payable on or before the date specified in the notice together with any other amount which may be payable in accordance with any other provision of this Act.
- (6) The omission to give any such notice shall not invalidate the assessment and calculation made by the Commissioner.

24 Refunds

Where the Commissioner finds in any case that tax has been overpaid he may refund to the employer who paid the tax the amount of tax found to be overpaid.

25 Employer leaving Australia

- (1) When the Commissioner has reason to believe that an employer may leave Australia before the tax or further tax becomes due and payable by him, the tax or further tax shall be due and payable on such date as the Commissioner fixes and notifies to the employer.

26 Time to pay—extensions and instalments

The Commissioner may, in such cases as he thinks fit:

- (a) extend the time for payment of any tax or further tax by such period as he considers the circumstances warrant; or
- (b) permit the payment of tax or further tax to be made by instalments within such time as he considers the circumstances warrant.

27 Penal tax

If the tax or further tax is not paid before the expiration of the time specified in section twenty-two or twenty-three of this Act, or such further time as may be allowed by the Commissioner under section twenty-six of this Act, additional tax shall be payable at the rate of ten per centum per annum upon the amount of tax unpaid, to be computed from the expiration of the time specified in section twenty-two or twenty-three of this Act, or, where further time has

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been allowed by the Commissioner under section twenty-six of this Act, from the expiration of that further time:

Provided that the Commissioner may, in any particular case, for reasons which in his discretion he thinks sufficient, remit the additional tax imposed or any part thereof.

28 Recovery of tax

- (1) Tax shall be deemed when it becomes due and payable to be a debt due to the King on behalf of the Commonwealth and payable to the Commissioner in the manner and at the place prescribed.
- (2) Any tax or further tax unpaid, including any additional tax, may be sued for and recovered in any court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his official name.

29 Substituted service

If, in any proceedings against an employer for the recovery of tax, further tax or additional tax, the defendant:

- (a) is absent from Australia and has not, to the knowledge of the Commissioner after reasonable inquiry in that behalf, any attorney or agent in Australia on whom service of process can be effected; or
- (b) cannot after reasonable inquiry be found;

service of any process in the proceedings may, without leave of the court, be effected on him by posting the same or a sealed copy thereof in a letter addressed to him at his last known place of business or abode in Australia.

30 Liquidator to give notice

- (1) Every person who is liquidator of any company which is being wound-up and which is, or on or after the first day of July, One thousand nine hundred and forty-one has been, an employer registered or required to be registered under this Act, shall, within fourteen days after he has become liquidator of that company, give notice in writing to the Commissioner of his appointment as liquidator.

- (2) The Commissioner shall, as soon as practicable thereafter, notify to the liquidator the amount which appears to the Commissioner to be sufficient to provide for any tax which then is or will thereafter become payable by the company.
- (3) The liquidator:
- (a) shall not without leave of the Commissioner part with any of the assets of the company until he has been so notified;
 - (b) shall set aside out of the assets available for the payment of the tax, assets to the value of the amount so notified, or the whole of the assets so available if they are of less than that value; and
 - (c) shall, to the extent of the value of the assets which he is so required to set aside, be liable as trustee to pay the tax.
- (4) If the liquidator fails to comply with any provision of this section (or fails as trustee duly to pay the tax for which he is liable under the last preceding subsection), he shall, to the extent of the value of the assets of which he has taken possession and which are, or were at any time, available to him for the payment of the tax, be personally liable to pay the tax, and shall be guilty of an offence.
- Penalty: Not less than Two dollars or more than One hundred dollars.
- (5) Where more persons than one are appointed liquidators or required by law to carry out the winding-up, the obligations and liabilities attaching to a liquidator under this section shall attach to each of such persons:
- Provided that where any one of such persons has paid the tax due in respect of the company being wound-up, the other person or persons shall be liable to pay that person each his equal share of the amount of the tax so paid.
- (6) Notwithstanding anything contained in this section, all costs, charges and expenses which, in the opinion of the Commissioner, have been properly incurred by the liquidator in the winding-up of a company, including the remuneration of the liquidator, may be paid out of the assets of the company in priority to any tax payable in respect of the company.
- (7) Nothing in this section shall limit the liability of a liquidator under section sixty-six of this Act.
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31 Agent for absentee principal winding-up business

- (1) Where an agent for an absentee principal has been required by the principal to wind-up the business of his principal he shall, before taking any steps to wind-up the business, notify the Commissioner of his intention so to do, and shall set aside such sum out of the assets of the principal as appears to the Commissioner to be sufficient to provide for any tax that becomes payable.
- (2) An agent who fails to give notice to the Commissioner or fails to provide for payment of the tax as required by this section shall be personally liable for any tax that becomes payable in respect of the business of the principal.

32 Where tax not paid during lifetime

In any case where, whether intentionally or not, an employer escapes full taxation in his lifetime by reason of not having duly made full, complete and accurate returns:

- (a) the Commissioner shall have the same powers and remedies against the executors and administrators of the employer in respect of the liability which the employer had as he would have had against the employer in his lifetime;
- (b) the executors and administrators shall make such returns and furnish such information as the Commissioner requires for the purpose of an accurate assessment;
- (c) the amount of tax shall (where the employer's default was intentional) be double the amount of the difference between the tax so assessed and the amount actually paid by the taxpayer, and shall be a first charge on all the employer's estate in the hands of the executors and administrators; and
- (d) no lapse of time shall prevent the operation of this section, and the Commissioner may take all such proceedings and exercise all such powers and remedies for the purpose of giving effect to this section and recovering the double tax as in the case of ordinary assessments and taxation.

33 Provision for payment of tax by executors and administrators

- (1) Where, at the time of an employer's death, he had not paid the whole of the tax payable up to the date of his death, the Commissioner shall have the same powers and remedies for the assessment and recovery of tax from the executors and

administrators as he would have had against that employer, if he were alive.

- (2) The executors or administrators shall furnish such of the returns mentioned in Part IV of this Act as have not been made by the deceased.
- (3) Where the executors or administrators are unable or fail to furnish a return, the Commissioner may estimate and make an assessment of the wages on which, in his judgment, tax ought to be charged.
- (4) Where, in respect of the estate of any deceased employer, probate has not been granted or letters of administration have not been taken out within six months of his death, the Commissioner may cause an assessment to be made of the amount of tax due by the deceased.
- (5) The Commissioner shall cause notice of the assessment to be published twice in a daily newspaper circulating in the State or Territory of the Commonwealth in which the deceased resided.
- (6) Any person claiming an interest in the estate of the deceased may, within 60 days after the first publication of notice of the assessment, lodge with the Commissioner an objection in writing against the assessment stating fully and in detail the grounds on which he relies and the provisions of this Act relating to objections, reviews and appeals shall thereupon apply in relation to the objection as if the person so claiming an interest were the deceased.
- (7) Subject to any amendment of the assessment, the assessment so made shall be conclusive evidence of the indebtedness of the deceased to the Commissioner.
- (8) The Commissioner may issue an order in the form in the Second Schedule to this Act authorizing any member of the police force of the Commonwealth or of a State or of a Territory of the Commonwealth or any other person named therein to levy the amount of tax due by the deceased, with costs, by distress and sale of any property of the deceased.
- (9) Upon the issue of any such order the member or person so authorized shall have power to levy that amount accordingly in the prescribed manner.

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- (10) Notwithstanding anything contained in the last three preceding subsections, if at any time probate of the will of the deceased is, or letters of administration of the estate are, granted to a person, that person may, within 60 days after the date on which probate was, or letters of administration were, granted, lodge an objection against the assessment, stating fully and in detail the grounds on which he relies, and thereupon the provisions of this Act relating to objections, reviews and appeals apply as if the objection had been made by the deceased person.

34 Recovery of tax paid on behalf of another person

Every person who, under the provisions of this Act, pays any tax for or on behalf of any other person shall be entitled to recover the amount so paid from that other person as a debt, together with the costs of recovery, or to retain or deduct that amount out of any money in his hands belonging or payable to that other person.

35 Contributions from joint taxpayers

Where two or more persons are jointly liable to pay tax they shall each be liable for the whole tax, but any of them who has paid the tax may recover contributions as follows:

- (a) a person who has paid the tax in respect of any wages may recover by way of contribution from any other person jointly liable to that tax a sum which bears the same proportion to the tax as the share of the wages which that other person was liable to pay bears to the total amount of wages which the persons jointly liable to tax were liable to pay;
- (b) every person entitled to contribution under this section may sue therefor in any court of competent jurisdiction as money paid to the use of the person liable to contribute at his request; or may retain or deduct the amount of the contribution out of any moneys in his hands belonging or payable to the person liable to contribute.

36 Commissioner may collect tax from person owing money to employer

- (1) The Commissioner may, by notice in writing (a copy of which shall be forwarded to the employer at the last place of address known to the Commissioner), require:

- (a) any person by whom any money is due or accruing or may become due to an employer;
- (b) any person who holds or may subsequently hold money for or on account of an employer;
- (c) any person who holds or may subsequently hold money on account of some other person for payment to an employer; or
- (d) any person having authority from some other person to pay money to an employer;

to pay to him, forthwith upon the money becoming due or being held, or within such further time as the Commissioner, a Second Commissioner, or a Deputy Commissioner allows, the money or so much thereof as is sufficient to pay the tax due by the employer or the fines and costs (if any) imposed by a court on him in respect of an offence against this Act.

- (2) Any person who fails to comply with any notice under this section shall be guilty of an offence.

Penalty: One hundred dollars.

- (3) Where any amount referred to in subsection (1) of this section is less than the amount of tax due by the employer, the person shall pay to the Commissioner in reduction of the amount of tax due the amount payable by that person to the employer.
- (4) Any person making any payment in pursuance of this section shall be deemed to have been acting under the authority of the employer and of all other persons concerned, and is hereby indemnified in respect of such payment.
- (5) If the tax due by the employer, or the fine and costs (if any) imposed by a court on him, are paid before any payment is made under a notice given in pursuance of this section, the Commissioner shall forthwith give notice to the person of the payment.
- (6) In this section:

tax includes further tax and additional tax chargeable under this Act, and any judgment debt and costs in respect of tax.

person includes company, partnership, Commonwealth or State Officer, and any public authority (corporate or unincorporate) of the Commonwealth or a State.

Section 37

37 Evidence

- (1) The production of any document or a copy of a document under the hand of the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a notice or a copy of a notice specifying any liability or entitlement of an employer under this Act, or to be a copy of a determination made under this Act, shall be conclusive evidence of the due exercise of any act required by this Act to be done or performed by the Commissioner, a Second Commissioner, or a Deputy Commissioner for the purpose of ascertaining the liability or entitlement so specified or making the determination and (except in proceedings on appeal when it shall be *prima facie* evidence only) shall be conclusive evidence of the correctness of any calculations upon which that liability or entitlement is ascertained or on which that determination is based.
- (2) The production of any document under the hand of the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of or extract from any document or return furnished to, or of any document issued by, the Commissioner shall for all purposes be sufficient evidence of the matter therein set forth, without producing the original.

Part VI—Objections and appeals

39 Objections

- (1) An employer who is dissatisfied with any decision made by the Commissioner under this Act, by which his liability to pay tax is affected, or with any assessment or determination made by the Commissioner under this Act, may, within 60 days after service of notice of the decision, assessment or determination, as the case may be, lodge with the Commissioner an objection in writing stating fully and in detail the grounds on which he relies.
- (2) The Commissioner shall consider the objection, and may either disallow it, or allow it, either wholly or in part.
- (3) The Commissioner shall give to the objector written notice of his decision on the objection.

40 Request for reference

An employer who is dissatisfied with a decision under section 39 on an objection by the employer may, within 60 days after service on the employer of notice of the decision, lodge with the Commissioner a request in writing to refer the decision to the Tribunal.

40A Applications for extension of time

- (1) Where the period for the lodgment by an employer of an objection has ended, the employer may, notwithstanding that that period has ended, send the objection to the Commissioner together with an application in writing requesting the Commissioner to treat the objection as having been duly lodged.
- (2) Where the period for the lodgment by an employer of a request under section 40 has ended, the employer may, notwithstanding that the period has ended, send the request to the Commissioner together with an application in writing asking that the request be treated as having been duly lodged.

Section 40B

- (3) An application under subsection (1) or (2) shall state fully and in detail the circumstances concerning, and the reasons for, the failure by the person to lodge the objection or request as required by this Act.

40B Consideration of applications for extension of time for lodging objections

- (1) The Commissioner shall consider each application made under subsection 40A(1) and may grant or refuse the application.
- (2) The Commissioner shall give to the employer who made the application notice in writing of the decision on the application.
- (3) An employer who is dissatisfied with a decision under subsection (1) in respect of an application made by the employer may apply to the Tribunal for review of the decision.
- (4) Where an application under subsection 40A(1) has been granted, the employer who made the application shall, for the purposes of this Part, be treated as having duly lodged the objection to which the application relates.

40C Consideration of applications for extension of time for lodging requests for reference

- (1) Where the Commissioner receives an application under subsection 40A(2), the Commissioner shall, as soon as practicable, send the application to the Tribunal.
- (2) The sending of an application to the Tribunal under subsection (1) shall, for the purposes of the *Administrative Appeals Tribunal Act 1975*, be deemed to constitute the making by the employer concerned of an application to the Tribunal to extend the time within which the request may be lodged with the Commissioner.
- (3) The Tribunal may grant or refuse the application.
- (4) Where an application under subsection 40A(1) has been granted, the employer shall, for the purposes of this Part, be treated as having duly lodged the request to which the application relates.

40D Reference to Tribunal

- (1) Where an employer duly lodges, or is to be treated as having duly lodged, a request under section 40 in relation to a decision on an objection, the Commissioner shall comply with the request.
- (2) The referral of a decision on an objection to the Tribunal shall, for the purposes of the *Administrative Appeals Tribunal Act 1975*, be deemed to constitute the making by the employer of an application to the Tribunal for review of the decision.

40E Notice to refer

- (1) Subject to subsections (2) and (3), if, within 60 days after receiving a request under section 40 in relation to a decision on an objection, the Commissioner does not comply with the request, the employer who made the request may give notice in writing to the Commissioner requiring the Commissioner to do so and the Commissioner shall, within 60 days after receiving the notice, comply with the request.
- (2) Where an application under section 40A in relation to a request has been granted, the employer who made the request is not entitled to give notice under subsection (1) in relation to the request before the expiration of 60 days after the day on which the application was granted.
- (3) If, within 60 days after receiving a request under section 40 in relation to a decision on an objection or, in a case to which subsection (2) of this section applies, within 60 days after an application under section 40A in relation to a request has been granted, the Commissioner, by notice in writing served on the employer who made the request, requires the employer to give information relating to the objection, the Commissioner is not required to comply with the request until the expiration of 60 days after the receipt by the Commissioner of that information.

40F Procedure on review

In proceedings under this Part on a review before the Tribunal:

- (a) the person who requested the review is, unless the Tribunal otherwise orders, limited to the grounds stated in the objection; and

Section 40G

- (b) the burden of proving that an assessment is excessive, or a decision or determination is incorrect, lies on the person who requested the review.

40G Implementation of decisions

- (1) When a decision of the Tribunal under this Part becomes final, the Commissioner shall, not later than 60 days after that decision becomes final, take such action, including amending the assessment concerned as may be necessary to give effect to that decision.
- (2) In determining, for the purposes of subsection (1), when a decision of the Tribunal becomes final, if an appeal has been made to the Full Court of the Federal Court of Australia in relation to that decision but no application for special leave to appeal to the High Court in relation to that decision is made within 30 days after the determination of the first-mentioned appeal, the decision of the Federal Court of Australia shall be taken to have become final on the expiration of that period.

41 Pending review or appeal not to affect assessment etc.

- (1) The fact that a review or appeal is pending in relation to an assessment, determination or decision does not in the meantime interfere with, or affect, the assessment, determination or decision and tax or additional tax may be recovered as if no review or appeal were pending.

Part VII—Penal provisions

42 Offences

- (1) Any person who:
- (a) fails or neglects duly to furnish any return or information or to comply with any requirement of the Commissioner as and when required by this Act or the Regulations thereunder, or by the Commissioner;
 - (b) without just cause shown by him refuses or neglects duly to attend and give evidence when required by the Commissioner or any officer duly authorized by him, or to answer truly and fully any questions put to him, or to produce any book or papers required of him by the Commissioner or any such officer;
 - (c) makes or delivers a return which is false in any particular or makes any false answer whether orally or in writing; or
 - (d) contravenes any provision of this Act for the contravention of which no penalty is expressly provided;

shall be guilty of an offence.

Penalty: Not less than Four dollars or more than Two hundred dollars.

- (2) In any prosecution, for an offence against paragraph (c) of subsection (1) of this section, of any person who has not previously been convicted of an offence against this Act, it shall be a defence if the defendant proves:
- (a) that the return or answer to which the prosecution relates was prepared or made by him personally; and
 - (b) that the false particulars were given or (as the case may be) the false statement was made through ignorance or inadvertence.
- (3) Any person who, after conviction for an offence against this section, continues to fail to comply with the requirements in respect of which he was convicted, shall be guilty of an offence and punishable as provided in section forty-five of this Act.

Section 43

43 Additional tax in certain cases

- (1) Notwithstanding anything contained in the last preceding section, any employer who:
- (a) fails or neglects duly to furnish any return or information as and when required by this Act or the Regulations thereunder or by the Commission; or
 - (b) fails to include in any return any particulars of wages paid or payable by him which are subject to tax under this Act;

shall, if an employer to whom paragraph (a) of this subsection applies, be liable to pay additional tax at the rate of ten per centum per annum upon the amount of tax payable by him (such percentage to be calculated for the period commencing on the last day allowed for furnishing the return or information and ending on the day upon which the return or information is furnished or the day upon which the assessment is made, whichever first happens), or the sum of Two dollars, whichever is the greater, or, if an employer to whom paragraph (b) of this subsection applies, shall be liable to pay by way of additional tax the amount of Two dollars or double the amount of the difference between the tax properly payable and the tax payable upon the basis of the return lodged, whichever is the greater:

Provided that the Commissioner may, in any particular case, for reasons which he thinks sufficient, remit the additional tax or any part thereof.

- (2) If the Commissioner considers that the circumstances of any case warrant action being taken to recover the penalty provided by the last preceding section, such action may be taken by the Commissioner, and in that case the additional tax payable under this section shall not be charged.

44 False declarations

If any person, in any declaration made under, or authorized or prescribed by, this Act or the Regulations thereunder, knowingly or wilfully declares to any matter or thing which is false or untrue, he shall be deemed to be guilty of wilful and corrupt perjury and shall upon conviction be liable to imprisonment for a period not exceeding four years.

45 Avoiding taxation

Any person who, by any wilful act, default or neglect, or by any fraud, art or contrivance whatever, avoids or attempts to avoid tax chargeable under this Act, shall be guilty of an offence.

Penalty: Not less than One hundred dollars and the amount of tax avoided or attempted to be avoided, or more than One thousand dollars and treble the amount of tax avoided or attempted to be avoided.

46 Time for commencing prosecutions

- (1) A prosecution in respect of any offence against the last preceding section may be commenced at any time within three years after the commission of the offence.
- (2) A prosecution in respect of any offence against a provision of Division 2 of Part III or against paragraph (a) or (c) of subsection (1) of section forty-two of this Act may be commenced at any time.

47 Penalties not to relieve from tax

Payment of penalties under this Act shall not relieve any person from liability to any tax for which he would otherwise be liable.

48 Obstructing officers

Any person who obstructs or hinders any officer acting in the discharge of his duty under this Act or the Regulations thereunder shall be guilty of an offence.

Penalty: Not less than Two dollars or more than One hundred dollars.

Part VIII—Taxation prosecutions

49 Taxation prosecutions

Proceedings by the Crown for the recovery of penalties under this Act are hereinafter referred to as *taxation prosecutions*.

50 How instituted

Taxation prosecutions may be instituted in the name of the Commissioner by action, information or other appropriate proceeding:

- (a) in the High Court of Australia; or
- (b) in the Supreme Court of any State or Territory of the Commonwealth;

and when the prosecution is for a pecuniary penalty not exceeding One thousand dollars or the excess is abandoned, the taxation prosecution may be instituted in the name of the Commissioner or a Deputy Commissioner:

- (c) in a County Court, District Court, Local Court or Court of Summary Jurisdiction of any State or Territory of the Commonwealth.

51 Evidence of authority to institute proceedings

- (1) Where any taxation prosecution has been instituted by an officer in the name of the Commissioner or a Deputy Commissioner, the prosecution shall, in the absence of evidence to the contrary, be deemed to have been instituted by the authority of the Commissioner or the Deputy Commissioner, as the case may be.
- (2) The production of a telegram purporting to have been sent by the Commissioner or a Deputy Commissioner and purporting to authorize an officer to institute any taxation prosecution or proceedings shall be admissible as evidence in the prosecution or proceedings, and shall be accepted as evidence of the authority of the officer to institute the prosecution or proceedings in the name of the Commissioner or Deputy Commissioner, as the case may be.

52 Defendant to have right of trial in High or State Court

In any taxation prosecution where the penalty exceeds Two hundred dollars and the excess is not abandoned, the defendant, within seven days after service of process, shall have the right to elect, in manner prescribed, to have the case tried, at the option of the prosecutor, either in the High Court of Australia or in the Supreme Court of the State or Territory of the Commonwealth in which the prosecution has been instituted, and thereupon the proceedings shall stand removed accordingly and may be conducted as if originally instituted in the court to which they are so removed.

53 Prosecution in accordance with Practice Rules

Every taxation prosecution in the High Court of Australia or the Supreme Court of any State or Territory of the Commonwealth may be commenced, prosecuted and proceeded with in accordance with any rules of practice established by the court for Crown suits in revenue matters or in accordance with the usual practice and procedure of the court in civil cases or in accordance with the directions of the court or a Judge.

54 State Court practice

Subject to this Act, the provisions of the law relating to summary proceedings before Justices in force in the State or Territory of the Commonwealth where the proceedings are instituted shall apply to all taxation prosecutions before a court of summary jurisdiction in that State or Territory and an appeal shall lie from any conviction or order of dismissal to the court, and in the manner, provided by the law of the State or Territory where such a conviction or order is made for appeals from convictions or orders of dismissal.

55 Information, etc., to be valid if in words of Act

All informations, summonses, convictions and warrants shall suffice if the offence is set forth as nearly as may be in the words of this Act.

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56 No objection for informality

- (1) An objection shall not be taken or allowed to any information or summons for any alleged defect therein in substance or in form or for any variance between the information or summons and the evidence adduced at the hearing in support thereof, and the court shall at all times make any amendment necessary to determine the real question in dispute or which may appear desirable.
- (2) If any such defect or variance appears to the court to be such that the defendant has been thereby deceived or misled, it shall be lawful for the court, upon such terms as it thinks just, to adjourn the hearing of the case to some future day.

57 Conviction not to be quashed

A conviction, warrant of commitment or other proceeding, matter or thing done or transacted in relation to the execution or carrying out of any taxation act shall not be held void, quashed or set aside by reason of any defect therein or want of form, and no party shall be entitled to be discharged out of custody on account of such defect.

58 Protection to witnesses

A witness on behalf of the Commissioner or a Deputy Commissioner in any taxation prosecution shall not be compelled to disclose the fact that he received any information, or the nature thereof or the name of the person who gave such information, and an officer appearing as a witness shall not be compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

59 Averment of prosecutor sufficient

- (1) In any taxation prosecution the averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim shall be *prima facie* evidence of the matter or matters averred.
- (2) This section shall apply to any matter so averred although:
 - (a) evidence in support or rebuttal of the matter averred or of any other matter is given by witnesses; or

- (b) the matter averred is a mixed question of law and fact, but in that case the averment shall be *prima facie* evidence of the fact only.
- (3) Any evidence given by witnesses in support or rebuttal of a matter so averred shall be considered on its merits and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.
- (4) The foregoing provisions of this section shall not apply to:
 - (a) an averment of the intent of the defendant; or
 - (b) proceedings for an indictable offence or an offence directly punishable by imprisonment.
- (5) This section shall not lessen or affect any onus of proof otherwise falling on the defendant.

60 Minimum penalties

No minimum penalty provided by this Act shall be liable to reduction under any power of mitigation which would, but for this section, be possessed by the court.

61 Treatment of convicted offenders

Where any pecuniary penalty is adjudged to be paid by any convicted person, the court:

- (a) may commit the offender to gaol until the penalty is paid; or
- (b) may release the offender upon his giving security for the payment of the penalty; or
- (c) may exercise for the enforcement and recovery of the penalty any power of distress or execution possessed by the court for the enforcement and recovery of penalties in any other case.

62 Release of offenders

The gaoler of any gaol to which any person has been committed for non-payment of any penalty shall discharge that person:

- (a) on payment to him of the penalty adjudged;
- (b) on a certificate by the Commissioner or a Deputy Commissioner that the penalty has been paid or realized; or

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(c) if the penalty adjudged to be paid is not paid or realized, according to the following table:

Amount of penalty	Period after commencement of imprisonment on the expiration of which defendant is to be discharged
\$4 and under	Seven days
Over \$4 and not more than \$10	Fourteen days
Over \$10 and not more than \$40	One month
Over \$40 and not more than \$100	Two months
Over \$100 and not more than \$200	Three months
Over \$200 and not more than \$400	Six months
Over \$400	One year

63 Parties may recover costs

In all taxation prosecutions, the court may award costs against any party, and all provisions of this Act relating to the recovery of penalties, except commitment to gaol, shall extend to the recovery of any costs adjudged to be paid.

Part IX—Miscellaneous**64 Application of Act to State**

- (1) Each State shall, for the purposes of this Act, be represented by such officer or officers as the State appoints.
- (2) Nothing in this Act imposing any penalty on an employer shall be construed as imposing a penalty on a State or any officer representing that State.

65 Public officer of company

Every company which is registered or required to be registered as an employer under this Act shall at all times be represented by a person residing in Australia duly appointed by the company or by its duly authorized agent or attorney, and with respect to every such company and person the following provisions shall apply:

- (a) Such person shall be called the public officer of the company for the purposes of this Act and shall be appointed within three months after the commencement of this Act or after the company commences to carry on business in Australia, whichever is the later date;
- (b) The company shall keep the office of public officer constantly filled and no appointment of a public officer shall be deemed to be duly made until after notice thereof in writing, specifying the name of the officer and address for service, has been given to the Commissioner;
- (c) If the company fails or neglects duly to appoint a public officer when and as often as such appointment becomes necessary, it shall be guilty of an offence;

Penalty: One hundred dollars for every day during which the failure or neglect continues.

- (d) Service of any document at the address for service or on the public officer of a company shall be sufficient service upon the company for all the purposes of this Act or the Regulations thereunder, and if at any time there is no public

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officer then service upon any person acting or appearing to act in the business of the company shall be sufficient;

- (e) The public officer shall be answerable for the doing of all such things as are required to be done by the company under this Act or the Regulations thereunder, and in case of default shall be liable to the same penalties;
- (f) Everything done by the public officer which he is required to do in his representative capacity shall be deemed to have been done by the company. The absence or non-appointment of a public officer shall not exclude the company from the necessity of complying with any of the provisions of this Act or the Regulations thereunder, or from the penalties provided by any section on the failure to comply therewith, but the company shall be liable to the provisions of this Act as if there were no requirement to appoint a public officer;
- (g) In any proceedings under this Act taken against the public officer of the company the proceedings shall be deemed to have been taken against the company, and the company shall be liable jointly with the public officer for any penalty imposed upon him;
- (h) Notwithstanding anything contained in this section, and without in any way limiting, altering or transferring the liability of the public officer of a company, every notice, process or proceeding which under this Act or the Regulations thereunder may be given to, served upon or taken against the company or its public officer may, if the Commissioner thinks fit, be given to, served upon or taken against any director, secretary or other officer of the company or any attorney or agent of the company and that director, secretary, officer, attorney or agent shall have the same liability in respect of that notice, process or proceedings as the company or public officer would have had if it had been given to, served upon, or taken against the company or public officer.

66 Agents and trustees

With respect to every agent and with respect also to every trustee, the following provisions shall apply:

- (a) He shall be answerable as an employer for the doing of all such things as are required to be done by virtue of this Act in

respect of the payment of any wages which are subject to tax under this Act;

- (b) He shall, in respect of any such wages, make the returns and be chargeable with tax thereon, but in his representative capacity only, and each return shall, except as otherwise provided by this Act, be separate and distinct from any other;
- (c) If he is an executor or administrator, the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make;
- (d) Where as agent or trustee he pays tax, he is hereby authorized to recover the amount so paid from the person in whose behalf he paid it, or to deduct it from any money in his hands belonging to that person;
- (e) He is hereby authorized and required to retain from time to time out of any money which comes to him in his representative capacity so much as is sufficient to pay the tax which is or will become due in respect of such wages;
- (f) He is hereby made personally liable for the tax payable in respect of such wages if, after the Commissioner has required him to make a return, or while the tax remains unpaid, he disposes of or parts with any fund or money which comes to him from or out of which tax could legally be paid, but he shall not be otherwise personally liable for the tax:
Provided that the Commissioner may, upon application by the agent or trustee permit disposal of such fund or money or part thereof as he considers necessary;
- (g) He is hereby indemnified for all payments which he makes in pursuance of this Act or by the requirements of the Commissioner;
- (h) For the purpose of insuring the payment of tax the Commissioner shall have the same remedies against attachable property of any kind vested in or under the control or management or in the possession of any agent or trustee, as he would have against the property of any other person in respect of tax, and in as full and ample a manner.

67 Person in receipt or control of money for absentee

With respect to every person who has the receipt, control or disposal of money belonging to a person resident out of Australia,

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who is liable to pay tax under this Act, the following provisions shall, subject to this Act, apply:

- (a) He shall when required by the Commissioner pay the tax due and payable by the person on whose behalf he has the control, receipt or disposal of money;
- (b) Where he pays tax in accordance with the preceding paragraph he is hereby authorized to recover the amount so paid from the person on whose behalf he paid it or to deduct it from any money in his hands belonging to that person;
- (c) He is hereby authorized and required to retain from time to time out of any money which comes to him on behalf of the person resident out of Australia so much as is sufficient to pay the tax which is or will become due by that person;
- (d) He is hereby made personally liable for the tax payable by him on behalf of the person resident out of Australia after the tax becomes payable, or if, after the Commissioner has required him to pay the tax, he disposes of, or parts with, any fund or money then in his possession, or which comes to him from or out of which the tax could legally be paid, but he shall not be otherwise personally liable for the tax:
Provided that the Commissioner may upon application permit disposal of such fund or money or part thereof as he considers necessary;
- (e) He is hereby indemnified for all payments which he makes in pursuance of this Act or in accordance with the requirements of the Commissioner.

68 Books, accounts etc. to be preserved

- (1) Every person who is an employer registered or required to be registered under this Act shall, for the purposes of this Act, keep proper books or accounts and shall preserve those books or accounts, for a period of not less than five years after the completion of the transactions to which they relate.

Penalty: Two hundred dollars.

- (2) This section shall not apply so as to require the preservation of any books, accounts or documents:
 - (a) in respect of which the Commissioner has notified the employer that such preservation is not required; or

- (b) of a company which has gone into liquidation and which has been finally dissolved.

69 Access to books etc.

The Commissioner, or any officer authorized by him in that behalf, shall at all times have full and free access to all buildings, places, books, documents and other papers for any of the purposes of this Act and for any such purpose may make extracts from or copies of any such books, documents or papers.

70 Release of employers in cases of hardship

- (1) In any case where it is shown to the satisfaction of a Board consisting of the Commissioner, the Secretary to the Department of Finance and the Comptroller-General of Customs or of such substitutes for all or any of them as the Minister appoints from time to time that:
 - (a) an employer has suffered such a loss or is in such circumstances; or
 - (b) owing to the death of a person who, if he had lived, would have been liable to pay tax, the dependants of that person are in such circumstances;that the exaction of the full amount of tax will entail serious hardship, the Board may release the employer or the trustee of the estate of the deceased person (as the case may be) wholly or in part from his liability, and the Commissioner may make such entries as are necessary for that purpose.
- (2) The Commissioner or his substitute shall be Chairman of the Board, and the decision of the majority shall prevail.
- (3) Where an application is made for release in respect of an amount of tax if that amount is not less than One thousand dollars, the Board shall, and if that amount is less than One thousand dollars, the Board may refer the application to the Tribunal and shall notify the applicant in writing of its having done so.
- (4) The President of the Tribunal shall designate the Registrar, a District Registrar or a Deputy Registrar of the Tribunal to be a designated person:
 - (a) for the purposes of dealing with the application; or

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- (b) for the purposes of dealing with applications under this section included in a specified class of applications.
- (5) The applicant may appear before the designated person or the designated person may require the applicant to appear before him, either in person or by a representative, and the designated person may examine the applicant or his representative upon oath or affirmation concerning any statements which the applicant has, or desires to have, placed before the Board constituted by this section.
- (6) The designated person shall be assisted in his examination of the applicant by an officer of the Australian Taxation Office who is a qualified accountant.
- (7) The designated person may permit the taxpayer to be assisted at the examination by such persons as the designated person considers the circumstances justify.
- (8) A record shall be made of the information elicited by the designated person during his examination.
- (9) The designated person shall:
 - (a) submit a report to the Board constituted under this section upon the facts disclosed by his examination, together with the record referred to in subsection (8); and
 - (b) draw the attention of that Board to any facts that, in his opinion, have particular bearing upon the application.

71 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and, in particular, for prescribing penalties not less than Two dollars or more than Forty dollars for any breach of the Regulations.
- (2) Without limiting the generality of the last preceding subsection, the regulations may make provision with respect to the place at which, and the manner in which, a return, objection, claim, declaration, notice, application or other document required or permitted by this Act to be made, furnished or given to, or lodged with, the

Commissioner may be, or is to be, so made, furnished, given or lodged.

First Schedule Table for ascertaining the prescribed ratio for the purposes of section 16X

The Schedules

First Schedule—Table for ascertaining the prescribed ratio for the purposes of section 16X

Section 16X

Column 1	Column 2	Column 3
1961	46,854	1,122,800
1962	47,558	1,081,253
1963	45,793	1,064,998
1964	60,192	1,040,998
1965	70,777	952,940
1966	89,006	911,875
1967	90,479	803,192
1968	112,217	738,952

Second Schedule—Commonwealth of Australia

Section 33

Pay-roll Tax Assessment Act 1941

Order

To _____ at _____
WHEREAS at the time of the death of _____
of _____ deceased, pay-roll tax has not been
levied and/or paid on the whole of the wages paid or payable by the said
_____ up to the date of his death:

AND WHEREAS probate has not been, or letters of administration have not
been, granted in respect of the estate of the said _____ deceased:

AND WHEREAS the amount of tax remaining due by the said
_____ at the time of his death is _____

THESE ARE THEREFORE to require and authorize you forthwith to levy
the said sum of _____ together with the costs of
these presents by distress and sale of any property of the estate of the said
_____ found by you and to require that you certify to me on the _____ day
of _____ what you shall do by
virtue of this warrant.

Dated this _____ day of _____ One thousand
nine hundred and _____

Commissioner of Taxation.

Table of Acts**Notes to the *Pay-roll Tax Assessment Act 1941*****Note 1**

The *Pay-roll Tax Assessment Act 1941* as shown in this compilation comprises Act No. 2, 1941 amended as indicated in the Tables below.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Pay-roll Tax Assessment Act 1941</i>	2, 1941	4 Apr 1941	2 May 1941	
<i>Pay-roll Tax Assessment Act 1942</i>	48, 1942	6 Oct 1942	Ss. 4 and 5: 1 July 1941 Remainder: 1 Nov 1942	—
<i>Taxation Administration Act 1953</i>	1, 1953	4 Mar 1953	1 Apr 1953	—
<i>Pay-roll Tax Assessment Act 1953</i>	40, 1953	2 Oct 1953	1 Oct 1953	S. 4(2)
<i>Pay-roll Tax Assessment Act 1954</i>	37, 1954	29 Oct 1954	1 Sept 1954	—
<i>Pay-roll Tax Assessment Act 1957</i>	68, 1957	3 Dec 1957	1 Sept 1957	—
<i>Pay-roll Tax Assessment Act 1961</i>	28, 1961	19 May 1961	19 May 1961	—
<i>Pay-roll Tax Assessment Act 1962</i>	41, 1962	28 May 1962	28 May 1962	—
<i>Pay-roll Tax Assessment Act 1963</i>	33, 1963	31 May 1963	31 May 1963	S. 5
<i>Pay-roll Tax Assessment Act 1965</i>	114, 1965	18 Dec 1965	18 Dec 1965	—
<i>Pay-roll Tax Assessment Act (No. 2) 1965</i>	148, 1965	18 Dec 1965	14 Feb 1966	—
<i>Pay-roll Tax Assessment Act 1966</i>	54, 1966	26 Oct 1966	S. 3: 1 Sept 1966 Remainder: Royal Assent	S. 5
<i>Statute Law Revision (Decimal Currency) Act 1966</i>	93, 1966	29 Oct 1966	1 Dec 1966	—
<i>Pay-roll Tax Assessment Act 1967</i>	20, 1967	12 May 1967	12 May 1967	—
<i>Pay-roll Tax Assessment Act (No. 2) 1967</i>	88, 1967	8 Nov 1967	28 Aug 1964	S. 4
<i>Pay-roll Tax Assessment Act 1968</i>	61, 1968	25 June 1968	1 July 1968	S. 8

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Pay-roll Tax Assessment Act 1969</i>	19, 1969	4 June 1969	4 June 1969	S. 7
<i>Pay-roll Tax Assessment Act 1973</i>	163, 1973	11 Dec 1973	11 Dec 1973	S. 5
<i>Statute Law Revision Act 1973</i>	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9(1) and 10
<i>Administrative Changes (Consequential Provisions) Act 1976</i>	91, 1976	20 Sept 1976	20 Sept 1976 (a)	S. 4
<i>Administrative Changes (Consequential Provisions) Act 1978</i>	36, 1978	12 June 1978	12 June 1978	S. 8
<i>Pay-roll Tax Assessment Amendment Act 1979</i>	63, 1979	15 June 1979	15 June 1979	—
<i>Sales Tax Laws Amendment Act 1985</i>	47, 1985	30 May 1985	S. 61: Royal Assent (b)	—
as amended by				
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 3 (item 46): 30 May 1985 (c)	—
<i>Taxation Boards of Review (Transfer of Jurisdiction) Act 1986</i>	48, 1986	24 June 1986	Part XIII (ss. 108–119): 1 July 1986 (d)	Ss. 213, 216, 218–223 and 228
as amended by				
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 3 (item 118): 24 June 1986 (e)	—
<i>Taxation Laws Amendment Act (No. 4) 1986</i>	154, 1986	18 Dec 1986	Part IX (ss. 51, 52): Royal Assent (f)	—
<i>Law and Justice Legislation Amendment Act (No. 1) 1995</i>	175, 1995	16 Dec 1995	16 Dec 1995	—

Act Notes

- (a) By virtue of subsection 2(7) of the *Administrative Changes (Consequential Provisions) Act 1979* the amendments made by that Act to the *Pay-roll Tax Assessment Act 1941* are deemed to have come into operation on 22 December 1975.
- (b) The *Pay-roll Tax Assessment Act 1941* was amended by section 61 only of the *Sales Tax Laws Amendment Act 1985*, subsection 2(1) of which provides as follows:
 - (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (c) The *Sales Tax Laws Amendment Act 1985* was amended by Schedule 3 (item 46) only of the *Statute Law Revision Act 1996*, subsection 2(3) of which provides as follows:
 - (3) Each item in Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.
- (d) The *Pay-roll Tax Assessment Act 1941* was amended by Part XIII (sections 108–119) only of the *Taxation Boards of Review (Transfer of Jurisdiction) Act 1986*, subsection 2(1) of which provides as follows:
 - (1) Subject to subsection (2), this Act shall come into operation on 1 July 1986.
- (e) The *Taxation Board of Review (Transfer of Jurisdiction) Act 1986* was amended by Schedule 3 (item 118) only of the *Statute Law Revision Act 1996*, subsection 2(3) of which provides as follows:
 - (3) Each item in Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.
- (f) The *Pay-roll Tax Assessment Act 1941* was amended by Part IX (sections 51 and 52) only of the *Taxation Laws Amendment Act (No. 4) 1986*, subsection 2(1) of which provides as follows:
 - (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 2.....	rs. No. 68, 1957; No. 28, 1961 am. No. 61, 1968 rep. No. 216, 1973
S. 3.....	am. No. 28, 1961; No. 93, 1966; No. 48, 1986
S. 4.....	rs. No. 1, 1953
S. 5.....	rep. No. 1, 1953
S. 6.....	am. No. 1, 1953; No. 28, 1961
Ss. 7, 8.....	rep. No. 1, 1953
S. 9.....	am. No. 1, 1953; No. 28, 1961
S. 11.....	am. No. 28, 1961; No. 93, 1966; No. 91, 1976; No. 36, 1978; No. 48, 1986
Heading to Div. 1 of Part III.....	ad. No. 28, 1961
S. 14.....	rs. No. 48, 1942 am. No. 40, 1953; No. 37, 1954; No. 68, 1957; No. 148, 1965
S. 15.....	am. No. 48, 1942; No. 40, 1953; No. 37, 1954; No. 28, 1961; No. 114, 1965; No. 54, 1966; Nos. 20 and 88, 1967
S. 16.....	am. No. 48, 1942; No. 40, 1953; No. 37, 1954; No. 68, 1957; No. 148, 1965
Div. 2 of Part III (ss. 16A–16R)	ad. No. 28, 1961 rep. No. 61, 1968
Div. 2 of Part III (ss. 16A–16Y)	ad. No. 61, 1968
S. 16A.....	ad. No. 28, 1961 am. No. 33, 1963; No. 114, 1965; No. 54, 1966 rs. No. 61, 1968 am. No. 91, 1976; No. 36, 1978
S. 16AA.....	ad. No. 114, 1965 rep. No. 61, 1968
S. 16B.....	ad. No. 28, 1961 rs. No. 61, 1968
S. 16C.....	ad. No. 28, 1961 am. No. 33, 1963 rs. No. 61, 1968
S. 16D.....	ad. No. 28, 1961 rs. No. 61, 1968
S. 16E.....	ad. No. 28, 1961 am. No. 114, 1965 rs. No. 61, 1968
Ss. 16F, 16G.....	ad. No. 28, 1961 rs. No. 61, 1968
S. 16H.....	ad. No. 28, 1961 am. No. 114, 1965; No. 93, 1966 rs. No. 61, 1968 am. No. 48, 1986

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 16J.....	ad. No. 28, 1961 am. No. 93, 1966 rs. No. 61, 1968
S. 16K.....	ad. No. 28, 1961 rs. No. 61, 1968
S. 16L.....	ad. No. 28, 1961 am. No. 114, 1965; No. 93, 1966 rs. No. 61, 1968
S. 16M.....	ad. No. 28, 1961 am. No. 93, 1966 rs. No. 61, 1968
Ss. 16N–16P.....	ad. No. 28, 1961 rs. No. 61, 1968
Ss. 16Q, 16R.....	ad. No. 28, 1961 rs. No. 61, 1968 am. No. 48, 1986
Ss. 16S–16W.....	ad. No. 61, 1968
S. 16X.....	ad. No. 61, 1968 rs. No. 19, 1969 am. No. 163, 1973
S. 16XA.....	ad. No. 163, 1973
S. 16Y.....	ad. No. 61, 1968
S. 17.....	rs. No. 40, 1953 am. No. 37, 1954; No. 68, 1957; No. 93, 1966
S. 18.....	am. No. 48, 1942
S. 21.....	am. No. 28, 1961
S. 23.....	am. No. 93, 1966
S. 25.....	am. No. 28, 1961; No. 41, 1962
S. 30.....	am. No. 93, 1966; No. 47, 1985 (as rep. by No. 43, 1996)
S. 33.....	am. No. 19, 1969; No. 48, 1986 (as am. by No. 43, 1996); No. 154, 1986
S. 36.....	am. No. 28, 1961; No. 93, 1966
S. 37.....	am. No. 28, 1961; No. 61, 1968
S. 38.....	am. No. 48, 1942; No. 28, 1961 rep. No. 48, 1986
S. 39.....	am. No. 28, 1961; No. 48, 1986
S. 40.....	am. No. 28, 1961; No. 93, 1966 rs. No. 48, 1986
S. 40A.....	ad. No. 28, 1961 am. No. 61, 1968 rs. No. 48, 1986
Ss. 40B–40G.....	ad. No. 48, 1986
S. 41.....	am. No. 28, 1961; No. 48, 1986
Ss. 42, 43.....	am. No. 93, 1966
S. 45.....	am. No. 93, 1966
S. 46.....	am. No. 28, 1961

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 48.....	am. No. 93, 1966
S. 50.....	am. No. 93, 1966
S. 52.....	am. No. 93, 1966
S. 62.....	am. No. 93, 1966
S. 65.....	am. No. 93, 1966
S. 68.....	am. No. 93, 1966
S. 70.....	am. No. 48, 1942; No. 1, 1953; No. 93, 1966; No. 63, 1979; No. 48, 1986; No. 175, 1995
S. 71.....	am. No. 28, 1961; No. 93, 1966
Heading to The Schedules.....	ad. No. 19, 1969
First Schedule.....	ad. No. 19, 1969
Heading to The Schedule.....	rep. No. 19, 1969
Heading to Second Schedule.....	ad. No. 19, 1969