

Taxation (Reciprocal Powers) Bill

No.

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Clause

1. Purpose.
2. Commencement.
3. Definitions.

PART 2—INVESTIGATIONS

4. Investigations by Corresponding Commissioners.
5. Investigations on behalf of Corresponding Commissioners.
6. Investigation powers.

PART 3—DISCLOSURE OF INFORMATION

7. Disclosure of information to Commonwealth, State or Territory officers.

PART 4—GENERAL

8. Evidence.
9. Regulations.

PART 5—CONSEQUENTIAL AMENDMENTS

10. Amendment of Taxation Acts.

SCHEDULE 1

Warrant to enter premises.

LEGISLATIVE ASSEMBLY

Read 1° 18 March 1987

(Brought in by Mr Jolly and Mr Spyker)

A BILL

to make provision for the reciprocal enforcement of taxation laws and for other purposes.

Taxation (Reciprocal Powers) Act 1987

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

Purpose.

- 5 1. The purpose of this Act is to make provision for the reciprocal enforcement of taxation laws.

Commencement.

2. This Act comes into operation on a day or days to be proclaimed.

Definitions.

- 10 3. (1) In this Act—
“**Book**” includes any register or other record of information and any accounts or accounting records, however compiled, recorded or stored and also includes any document.
“**Corresponding Commissioner**”, in relation to a State Taxation Act, means the holder of an office declared under sub-section

(2) to be a corresponding office in relation to the office of State Commissioner under that Act.

“**Corresponding law**” in relation to a State Taxation Act, means a law of the Commonwealth or of another State or of a Territory declared under sub-section (2) to be a corresponding law. 5

“**Relevant goods**” means tobacco, petroleum products or other goods to which a corresponding law applies.

“**State Commissioner**” means any of the following:

- (a) The Comptroller of Stamps; 10
- (b) The Commissioner of Land Tax;
- (c) The Commissioner of Pay-roll Tax;
- (d) The Commissioner of Business Franchises.
- (e) The Accident Compensation Commission.

“**State Taxation Act**” means any of the following: 15

- (a) *Land Tax Act* 1958;
- (b) *Stamps Act* 1958;
- (c) *Pay-roll Tax Act* 1971;
- (d) *Business Franchise Acts*;
- (e) *Energy Consumption Levy Act* 1982; 20
- (f) *Financial Institutions Duty Act* 1982;
- (g) *Accident Compensation Act* 1985.

(2) The Governor in Council may, by Order published in the *Government Gazette*, declare—

(a) a law of the Commonwealth or of another State or of a Territory that— 25

(i) corresponds to this Act; or

(ii) is a Commonwealth, State or Territory Taxation Act within the meaning of an Act of the Commonwealth, the other State or the Territory corresponding to this Act— 30

to be a corresponding law for the purposes of this Act in relation to a State Taxation Act; and

(b) an office under such a law to be a corresponding office for the purposes of this Act in relation to the office of State Commissioner under the State Taxation Act. 35

PART 2—INVESTIGATIONS

Investigations by Corresponding Commissioners.

4. (1) If the State Commissioner under a State Taxation Act has given approval in writing to a proposed investigation by a Corresponding Commissioner, the Corresponding Commissioner may, 40

while the approval is in force and subject to and in accordance with any conditions of that approval, exercise, or authorise in writing a person to exercise, any power referred to in section 6 that the Corresponding Commissioner, or a person authorised by the
5 Corresponding Commissioner, may exercise under the corresponding law.

(2) The State Commissioner may, in writing given to the Corresponding Commissioner, vary or revoke an approval, or any condition of an approval, given under sub-section (1).

10 **Investigations on behalf of Corresponding Commissioners.**

5. If a Corresponding Commissioner in writing requests the State Commissioner under a State Taxation Act to exercise on behalf of the Corresponding Commissioner any power referred to in section 6 that the Corresponding Commissioner, or person authorised by the
15 Corresponding Commissioner, may exercise under the corresponding law, the State Commissioner, or a person authorised in writing by the State Commissioner for that purpose, may, for and on behalf of the Corresponding Commissioner, exercise that power subject to and in accordance with—

- 20 (a) any conditions specified by the Corresponding Commissioner whether in the request or at any later time; and
(b) any conditions determined by the State Commissioner.

Investigation powers.

25 6. (1) For the purposes of and in accordance with sections 4 and 5, a Corresponding Commissioner or a State Commissioner or any other person authorised under section 4 or 5 (in this section called an “inspector”) may, in relation to a corresponding law—

- 30 (a) at any reasonable time, on production of a certificate under the hand of the Corresponding Commissioner or the State Commissioner, as the case may be, of the authority of the inspector—
35 (i) require any person to produce for inspection any books in his or her possession or under his or her control, the inspection of which may show whether or not the provisions of the corresponding law are being or have been complied with;
40 (ii) enter and remain in any place at or in which the inspector reasonably suspects there are any such books;
(iii) inspect any such books;
(iv) make copies of or take extracts from any such books;
(v) seize any such books;
(b) if the corresponding law relates to relevant goods, at any reasonable time, on production of a certificate under the

hand of the Corresponding Commissioner or the State Commissioner, as the case may be, of the authority of the inspector—

- (i) require any person to produce for inspection any books in his or her possession or under his or her control, the inspection of which may show whether or not the provisions of the corresponding law are being or have been complied with; 5
 - (ii) enter and remain in any place at or on which the inspector reasonably suspects the business of selling relevant goods is carried on or which is, or which the inspector reasonably suspects is, being used for the storage or custody of relevant goods or of any books relating to the sale or purchase of relevant goods; 10
 - (iii) inspect any books referred to in sub-paragraph (i) or (ii); 15
 - (iv) make copies of, or take extracts from, any such books;
 - (v) seize any such relevant goods or books;
 - (vi) request any person holding a licence under the corresponding law or any person reasonably believed by the inspector to be involved in the sale, purchase or storage of relevant goods— 20
 - (A) to produce any books which relate to, or which the inspector reasonably suspects relate to, the sale or purchase of relevant goods and which at the time of the request are in the possession or under the control of that person; and 25
 - (B) to answer any question with respect to any such books or the sale or purchase of any relevant goods.
- (2) For the purposes of, and in accordance with sections 4 and 5, a Corresponding Commissioner or a State Commissioner authorised under section 4 or 5 to exercise the power under this sub-section may, by notice in writing require a person— 30
- (a) to furnish the Corresponding Commissioner or State Commissioner with such information as he or she requires; 35
 - or
 - (b) to attend and give evidence before the Corresponding Commissioner or State Commissioner or person authorised by him or her—
- for the purpose of inquiring into or ascertaining the person's or any other person's liability or entitlement under the corresponding law and may require the person to produce all books in the person's possession or under the person's control relating to that liability or entitlement. 40
- (3) For the purposes of sub-section (2), the Corresponding Commissioner or State Commissioner may require the information or evidence to be given on oath or affirmation, and either orally or in 45

writing, or to be given by statutory declaration and for that purpose the Corresponding Commissioner or State Commissioner or person authorised under sub-section (2) may administer an oath or take an affirmation.

5 (4) The regulations may prescribe scales of expenses to be allowed to persons who attend and give evidence under sub-section (2).

(5) For the purposes of, and in accordance with sections 4 and 5, a Corresponding Commissioner or a State Commissioner may lay an information on oath or affirmation for the purposes of obtaining a
10 search warrant under sub-section (6).

(6) If a justice is satisfied, on information on oath or affirmation laid by a Corresponding Commissioner or a State Commissioner authorised under section 4 or 5 to lay an information under sub-section (2), that there is reasonable ground for suspecting that there are on
15 particular premises any relevant goods or books which are relevant to the assessment or collection of a licence fee relating to relevant goods, or any books which are relevant to the assessment or collection of any other amount, payable under a corresponding law, the justice may issue a warrant in the form or to the effect of Schedule 1 authorising any
20 member of the police force together with any other person named in the warrant—

- (a) to enter those premises (using such force as is necessary for the purpose);
- 25 (b) to search the premises and to break open and search any cupboard, drawer, chest, trunk, box, package or other receptacle, whether or not a fixture in the premises;
- (c) to take possession of or secure against interference any relevant goods or books that appear to be relevant to the assessment or collection of a licence fee or other amount
30 payable under the corresponding law;
- (d) to deliver any relevant goods or books of which possession has been taken under an authorisation under paragraph (c) into the possession of the Corresponding Commissioner or the State Commissioner or a person authorised by the
35 Corresponding Commissioner or the State Commissioner to receive them.

(7) If, under sub-section (6) a person takes possession of, or secures against interference, any books that person, or any person into whose possession they were delivered under sub-section (6) (d)—

- 40 (a) may make copies of or take extracts from the books;
- (b) may retain possession of the books for such period as is necessary to enable them to be inspected and copies of or extracts from them to be made or taken by or on behalf of the corresponding Commissioner or the State
45 Commissioner; and

(c) during that period, shall permit a person who would be entitled to inspect any of those books if they were not in the possession of the first-mentioned person to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

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(8) If a person records or stores any matters by means of a mechanical, electronic or other device, any duty imposed by this Part to produce a book containing those matters shall be construed as a duty to make the matters available in written form or to provide a document containing a clear reproduction in writing of the matters.

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(9) A person must not fail, neglect or refuse to comply with a request made under this section by a Corresponding Commissioner or a State Commissioner or a person authorised by a Corresponding Commissioner or State Commissioner or delay or obstruct a corresponding Commissioner or a State Commissioner or a person so authorised in exercising powers under this section.

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Penalty: 10 penalty units.

PART 3—DISCLOSURE OF INFORMATION

Disclosure of information to Commonwealth, State or Territory officers.

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7. (1) A State Commissioner and any person authorised by a State Commissioner may communicate any information respecting the affairs of a person disclosed or obtained under a State Taxation Act to any of the following:

(a) The Commissioner, Second Commissioner or a Deputy Commissioner under any law of the Commonwealth relating to taxation or to any person authorised by such a Commissioner, Second Commissioner or Deputy Commissioner;

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(b) The Commissioner or any other officer of any State or Territory of the Commonwealth administering any law of the State or Territory relating to taxation or to any person authorised by such a Commissioner or other officer;

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(c) The National Companies and Securities Commission or a person authorised by that Commission;

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(d) The National Crime Authority or a person authorised by that Authority.

(2) If the State Commissioner under a State Taxation Act gives consent to the communication of any information respecting the affairs of a person disclosed to, or obtained under this Act by, a Corresponding Commissioner under a corresponding law, the Corresponding Commissioner and any person authorised by the Corresponding Commissioner, may, subject to and in accordance with the terms of the consent, communicate any such information—

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- (a) to any person referred to in sub-section (1); and
- (b) to any person to whom he or she is permitted under the corresponding law to communicate information disclosed or obtained under the corresponding law.

5 (3) If a Corresponding Commissioner under a corresponding law gives consent to the communication of any information respecting the affairs of a person disclosed to, or obtained under the corresponding law by, a State Commissioner under a State Taxation Act, the State
10 Commissioner and any person authorised by the State Commissioner, may, subject to and in accordance with the terms of the consent, communicate any such information—

- (a) to any person referred to in sub-section (1); and
- (b) to any person to whom he or she is permitted under the State Taxation Act to communicate information disclosed or obtained under the State Taxation Act.

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(4) Except as provided in sub-section (2) or (3) a person shall not—

(a) make a record of, divulge or communicate to any person or publish any information or book that is or was acquired by the person under this Act, or under a corresponding law for the purposes of a State Taxation Act, by reason of being, or
20 having been, employed for the purposes of or in connection with the administration or execution of a corresponding law; or

(b) be required to produce in court any book connected with the administration or execution of a corresponding law acquired by the person under this Act, or under a corresponding law for the purposes of a State Taxation Act, or to divulge or communicate to any court any matter or thing coming under the notice of the person under this Act
25 or such a corresponding law—

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unless the recording, divulgence, communication, publication or production is made—

(c) with the consent of the person from whom the information or book was obtained; or

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(d) in connection with the administration or execution of this Act, a State Taxation Act or a corresponding law for the purposes of a State Taxation Act and in accordance with any consent given by the State Commissioner or the Corresponding Commissioner under the corresponding law to the communication of the information; or

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(e) for the purpose of any legal proceedings arising out of this Act, a State Taxation Act or the corresponding law or any report of any such proceedings.

Penalty: 10 penalty units.

PART 4—GENERAL

Evidence.

8. The production of a document purporting to be certified by a Corresponding Commissioner as a copy of, or extract from, a document furnished to, or issued by, the Corresponding Commissioner is, for all purposes, sufficient evidence of the matter contained in the document, without production of the original. 5

Regulations.

9. The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act. 10

PART 5—CONSEQUENTIAL AMENDMENTS

Amendment of Taxation Acts.

No. 6289
Reprinted to
No. 9969 and
amended by
Nos. 10058,
10070, 10121,
10155, 10210,
23/1986, 81/1986
and 109/1986

10. (1) Section 4 of the *Land Tax Act* 1958 is amended as follows:

(a) In sub-section (4), paragraphs (a) and (c) are repealed; 15

(b) In sub-section (5)—

(i) after “Except as provided in sub-section (4)” insert “or in the *Taxation (Reciprocal Powers) Act* 1987”; and

(ii) in paragraph (a), after “publish any” insert “information or any”. 20

No. 6375.
Reprinted to
No. 10256 and
amended by
Nos. 16/1986,
19/1986,
23/1986, 59/
1986, 88/1986,
104/1986, 109/
1986, 110/1986,
125/1986 and
127/1986

(2) Section 140A of the *Stamps Act* 1958 is amended as follows:

(a) In sub-section (1), paragraphs (a), (b) and (da) are repealed;

(b) In sub-section (2)—

(i) after “Except as provided in sub-section (1)” insert “or in the *Taxation (Reciprocal Powers) Act* 1987”; 25

(ii) in paragraph (a), after “publish any” insert “information or any”.

No. 8154.
Reprinted to
No. 10009 and
amended by
Nos. 10123,
10155, 10191,
10212, 10255,
23/1986,
77/1986, 104/
1986 and 127/
1986.

(3) Section 5 of the *Pay-roll Tax Act* 1971 is amended as follows:

(a) In sub-section (1), paragraphs (a) and (c) are repealed;

(b) In sub-section (2)— 30

(i) after “Except as provided in sub-section (1)” insert “or in the *Taxation (Reciprocal Powers) Act* 1987”; and

(ii) in paragraph (a), after “publish any” insert “information or any”.

No. 8597
Reprinted to
No. 9982 and
amended by
Nos. 10087,
10155, 10256,
16/1986, 23/1986
and 88/1986

(4) Section 5 of the *Business Franchise (Tobacco) Act* 1974 is amended as follows: 35

(a) In sub-section (1), paragraphs (a) and (b) are repealed;

(b) In sub-section (2)—

(i) after “Except as provided in sub-section (1)” insert “or in the *Taxation (Reciprocal Powers) Act 1987*”; and

(ii) in paragraph (a), after “publish any” insert “information or any”.

(5) Section 5 of the *Energy Consumption Levy Act 1982* is amended as follows:

(a) In sub-section (1), paragraphs (a) and (b) are repealed;

(b) In sub-section (2)—

(i) after “Except as provided in sub-section (1)” insert “or in the *Taxation (Reciprocal Powers) Act 1987*”; and

(ii) in paragraph (a), after “publish any” insert “information or any”;

(6) Section 17 of the *Financial Institutions Duty Act 1982* is amended as follows:

(a) In sub-section (1), paragraphs (a) and (b) are repealed;

(b) In sub-section (2)—

(i) after “Except as provided in sub-section (1)” insert “or in the *Taxation (Reciprocal Powers) Act 1987*”; and

(ii) in paragraph (a), after “information” insert “or document”; and

(iii) in paragraph (c), after “information” insert “, document”.

(7) Section 244 of the *Accident Compensation Act 1985* is amended as follows:

(a) In sub-section (1)—

(i) for “Subject to this section” substitute “Except as provided in sub-section (2) or in the *Taxation (Reciprocal Powers) Act 1987*”; and

(ii) after “information” (where twice occurring) insert “or document”;

(b) In sub-section (2) (c), sub-paragraphs (i) and (iv) are repealed.

No. 9846 as amended by Nos. 9989, 10155, 23/1986 and 88/1986.

No. 9850. Reprinted to No. 10168 and amended by Nos. 23/1986, 88/1986 and 119/1986.

No. 10191 as amended by Nos. 10255, 23/1986, 48/1986 and 111/1986.

SCHEDULE 1

s.6

WARRANT TO ENTER PREMISES

To _____, a member of the Police Force of the State of Victoria and
to _____

WHEREAS it appears to me _____, a Justice of the Peace for Victoria,
of _____, by the information on oath/affirmation* of
, Commissioner of _____, that there is reasonable ground for suspecting
that there are in certain premises situated at _____ any relevant goods or
books which are relevant to the assessment or collection of a licence fee, or any books
which are relevant to the assessment or collection of any other amount, payable
under _____, this is to authorise you, with such assistance as you
may find necessary, to enter upon those premises and if necessary to use force for making
entry whether by breaking open doors or otherwise and to search the premises and to
break open and search any cupboard drawer chest trunk box package or other receptacle
whether a fixture or not on the premises and to take possession or secure against
interference any relevant goods or books and to deliver any relevant goods or books into
the possession of the Commissioner or a person authorised by the Commissioner to
receive them and for so doing this shall be your warrant.

Given under my hand at _____ this
day of 19 _____.

Justice of the Peace.

*Strike out whichever is not applicable.

