



Product Grants and Benefits Administration Act 2000

No. 61, 2000



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**An Act to provide for assessment and payment of
certain grants and benefits, and for related
purposes**

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**An Act to provide for assessment and payment of
certain grants and benefits, and for related
purposes**

[Assented to 19 June 2000]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Product Grants and Benefits
Administration Act 2000*.

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2 Commencement

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

3 Object

The object of this Act is to provide a scheme for the administration of a number of grants and benefits that are administered by the Commissioner of Taxation.

4 States and Territories are bound

This Act binds the Crown in right of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island. However, it does not make the Crown liable to be prosecuted for an offence.

5 Definitions

In this Act, unless the contrary intention appears:

ABN has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

amount includes a nil amount.

approved form has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*.

assessment includes an assessment of a nil amount.

authorised officer means an APS employee who has been authorised by the Commissioner under section 59 for the purposes of the provision in which the expression occurs.

benefit means a grant that is covered by this Act that is known as a benefit.

claim period has the meaning given by section 12.

Commissioner means the Commissioner of Taxation.

Deputy Commissioner means a Deputy Commissioner of Taxation.

entitlement Act means an Act under which the entitlement to a grant or benefit arises. The entitlement Acts are listed in section 8.

entity has the meaning given by section 37 of the *A New Tax System (Australian Business Number) Act 1999*.

false statement means a statement (whether made orally, in a document or in any other way) that:

- (a) is false or misleading in a material particular; or
- (b) omits any matter or thing without which the statement is misleading in a material particular;

but does not include a statement made in a document produced under paragraph 42(2)(b) or (c).

general interest charge means the charge worked out under Division 1 of Part IIA of the *Taxation Administration Act 1953*.

goods includes a substance and a tangible thing.

grant means a grant that is covered by this Act that is known as a grant.

occupier, in relation to premises, includes a person present at the premises who is in apparent control of the premises.

overpayment debt means so much of an amount paid, or purportedly paid, to an entity by way of:

- (a) a grant or benefit as represents an overpayment; or
- (b) an amount that is repayable as mentioned in subsection 13(2) or (3) (which deals with advances).

premises includes the following:

- (a) a structure, building, aircraft, vehicle or vessel;
- (b) a place (whether enclosed or built on or not);
- (c) a part of a thing referred to in paragraph (a) or (b).

scheme debt means:

- (a) an overpayment debt; or
- (b) an amount payable by way of a penalty under Part 8.

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trustee includes an executor and an administrator.

you: if a provision of this Act or an entitlement Act uses the expression *you*, it applies to entities generally, unless its application is expressly limited.

Note: The expression *you* is not used in provisions that apply only to entities that are not individuals.

6 Operation of offence provisions

If a maximum penalty is specified:

- (a) at the foot of a section of this Act (other than a section that is divided into subsections); or
- (b) at the foot of a subsection of this Act;

then:

- (c) a person who contravenes the section or subsection is guilty of an offence punishable, on conviction, by a penalty not exceeding the specified penalty; or
- (d) the offence referred to in the section or subsection is punishable, on conviction, by a penalty not exceeding the specified penalty.

7 Commissioner has general administration of this Act

The Commissioner has the general administration of this Act.

Note: An effect of this provision is that the *Taxation Administration Act 1953* applies to this Act as a taxation law.

Part 2—Grants and benefits covered by Act**8 Grants and benefits covered by Act**

The following table sets out the grants and benefits that are covered by this Act and the Acts (the *entitlement Acts*) under which those grants and benefits are payable:

Table of grants and benefits covered by Act		
Item	Grant or benefit	Entitlement Act
1	fuel sales grants	<i>Fuel Sales Grants Act 2000</i>

Part 3—Registration for grants and benefits

9 Registration for entitlement to grants or benefits

- (1) On or after the commencement of this section, you may apply for registration for entitlement to a specific grant or benefit. The application must be in the approved form.

General requirements

- (2) If you apply in accordance with subsection (1), the Commissioner must register you for entitlement to the grant or benefit if the Commissioner is satisfied that:
 - (a) you have an ABN; and
 - (b) you satisfy any specific requirements set out in this section in relation to registration for that grant or benefit; and
 - (c) you satisfy any prescribed conditions.

Specific requirement for fuel sales grants

- (3) The specific requirement in relation to registration for the fuel sales grant is that you satisfy any prescribed conditions.

Change of registration details to be notified

- (4) If:
 - (a) you are registered for entitlement to a grant or benefit; and
 - (b) any of your prescribed registration details change;you must notify the Commissioner of the change within 28 days after the change happens.
- (5) In this section:

prescribed registration details means matters or circumstances specified in the regulations.

10 Refusal to register

- (1) If the Commissioner refuses your application for registration, the Commissioner must give you written notice of:
 - (a) the refusal; and
 - (b) the reasons for the refusal.
- (2) If the Commissioner has not decided your application for registration within 28 days after your application is made, you may, at any time, give the Commissioner written notice that you wish to treat your application as having been refused.
- (3) For the purposes of section 53, if you give notice under subsection (2), the Commissioner is taken to have refused your application for registration on the day on which the notice is given.

11 Cancellation of registration

- (1) If:
 - (a) the Commissioner has registered you for entitlement to a grant or benefit; and
 - (b) you do not make a claim for that grant or benefit within any 13 month period beginning on or after the later of the day on which you are registered and 1 July 2000;the Commissioner may cancel that registration.
- (2) If:
 - (a) the Commissioner has registered you for entitlement to a grant or benefit; and
 - (b) the Commissioner is satisfied that you no longer satisfy one or more of the provisions in section 9 that set out the requirements for registration for that grant or benefit;the Commissioner may cancel that registration.
- (3) The Commissioner must cancel your registration if you ask the Commissioner to do so.
- (4) This section does not prevent you applying for fresh registration.
- (5) If the Commissioner cancels your registration, the Commissioner must give you written notice of the cancellation.

Part 4—Payment of grants and benefits

12 Claim periods

- (1) The Commissioner must, in writing, determine the claim periods for each particular grant or benefit. The claim periods may be different for entities of a kind specified in the determination.
- (2) Despite subsection (1), the *claim periods*, for a particular grant or benefit, for entities of a kind in respect of which a determination under subsection (3) is in force, are the periods worked out in accordance with that determination.
- (3) The Commissioner may, in writing, determine the claim periods for a particular grant or benefit for particular entities specified in the determination.

13 Advances on account of grants or benefits

- (1) The Commissioner may, on behalf of the Commonwealth, make an advance on account of a grant or benefit that may become payable.
- (2) If:
 - (a) you receive an advance on account of a grant or benefit that may become payable; and
 - (b) the amount of the advance is greater than the amount of the grant or benefit;you are liable to repay the amount of the excess to the Commonwealth.
- (3) If:
 - (a) you receive an advance on account of a grant or benefit that may become payable; and
 - (b) you do not make a claim for payment of the grant or benefit within 28 days after the end of the claim period concerned;you are liable to repay the amount of the advance to the Commonwealth.

- (4) An amount that you are liable to repay under this section is due and payable:
 - (a) if subsection (2) applies—at the time that you make the claim for the grant or benefit in respect of which the advance was made; or
 - (b) if subsection (3) applies—at the end of the period of 28 days referred to in that subsection.
- (5) The Commissioner must not make an advance to an entity unless the entity has requested the Commissioner to make the advance. The amount of the advance must not exceed the amount requested by the entity.

14 Guidelines for making advances

- (1) The Commissioner may, by writing, formulate guidelines to be complied with by him or her in deciding whether to make advances under section 13.
- (2) In deciding whether to make advances under section 13, the Commissioner must comply with any relevant guidelines under subsection (1).

15 Claims for grants or benefits

- (1) Despite the provisions of Part 3 and the entitlement Acts, you are not entitled to a grant or benefit in respect of a claim period unless you make a claim for payment of the grant or benefit.
- (2) The claim:
 - (a) must relate to all the goods in respect of which you are entitled to a grant or benefit for the claim period in question; and
 - (b) must be in the approved form; and
 - (c) must include such information as is specified in the regulations; and
 - (d) must be signed by you, unless it is transmitted to the Commissioner in an electronic format approved by the Commissioner and contains your electronic signature; and

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- (e) must be given to the Commissioner before the end of 2 years after the end of the claim period.
- (3) Section 9 does not, by implication, limit subsection (2) of this section.
- (4) However, you cannot make more than one claim for a particular grant or benefit under this section in respect of a claim period.
- Note: You may request the Commissioner to amend an assessment (see section 21).
- (5) Despite the provisions of Part 3 and the entitlement Acts, if you contravene subsection (4) in relation to a particular claim period, you are not entitled, and are taken never to have been entitled, to the grant or benefit in respect of that claim period.
- (6) In this section:
- electronic signature* means an entity's unique identification in an electronic form that is approved by the Commissioner.

16 Further information

- (1) This section applies to you if you have made a claim for a grant or benefit.
- (2) The Commissioner may, within 28 days after the claim is made, request you to give the Commissioner, within the period specified in the request, further information about the claim.
- (3) The Commissioner may refuse to consider the claim until you give the Commissioner the information.

17 Assessment

- (1) This section applies to you if you have made a claim for a grant or benefit in respect of a claim period.
- (2) The Commissioner must make an assessment of the amount of the grant or benefit to which you are entitled in respect of the claim period.
- Note: Under section 5, *assessment* includes a nil assessment.

18 Reliance by Commissioner on claim

- (1) If you make a claim for a grant or benefit in respect of a claim period, the Commissioner may, for the purposes of making an assessment, accept (either in whole or in part):
 - (a) a statement in the claim; and
 - (b) any other statement otherwise made by you or on your behalf.
- (2) In determining whether an assessment is correct, any determination, opinion or judgment of the Commissioner made, held or formed in connection with the consideration of an objection against the assessment is taken to have been made, held or formed when the assessment was made.

19 Commissioner must give you notice of an assessment

- (1) The Commissioner must give you notice of an assessment as soon as practicable after the assessment is made. However, failing to do so does not affect the validity of the assessment.
- (2) The Commissioner may give you the notice electronically if you transmitted the relevant claim to the Commissioner in an electronic format.

20 Amendment of assessment

- (1) The Commissioner may at any time amend an assessment under this Part.
- (2) An amended assessment is an assessment for all purposes of this Act.
- (3) If, as a result of an amended assessment, you are liable to pay an amount to the Commissioner, the amount is taken to have become due and payable at the time that the original assessment was made.

21 Request for amended assessment

- (1) You may request the Commissioner in the approved form to make an amended assessment.

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- (2) The Commissioner must comply with the request if it is made within:
 - (a) 2 years after the end of the claim period; or
 - (b) such further period as the Commissioner allows.

22 Production of assessment is conclusive evidence

The production of a notice of assessment under this Part is conclusive evidence:

- (a) that the assessment was properly made; and
- (b) except in proceedings under Part IVC of the *Taxation Administration Act 1953* on a review or appeal relating to the assessment—that the amounts and particulars in the assessment are correct.

23 Payment of grants or benefits

- (1) If you are entitled to a grant or benefit in respect of a claim period:
 - (a) the grant or benefit is a debt due to you by the Commissioner on behalf of the Commonwealth; and
 - (b) you may recover the grant or benefit by action in a court of competent jurisdiction.
- (2) Grant or benefits are payable by the Commonwealth in the manner determined by the Commissioner.

24 Recovery by set-off

If an entity is liable to pay a scheme debt, the scheme debt may be deducted from one or more grants or benefits that are payable to the entity, and if the scheme debt is so deducted, the grant or benefit is taken to have been paid in full to the entity.

Part 5—Record-keeping requirements

25 No entitlement to grants or benefits unless record-keeping requirements met

- (1) Despite the provisions of Part 3 and the entitlement Acts:
 - (a) you are not entitled to a grant or benefit in respect of a particular claim period unless you comply with the pre-claim record-keeping requirements set out in section 26; and
 - (b) if you have made a claim for a grant or benefit in respect of a particular claim period—you are not entitled, and are taken never to have been entitled, to the grant or benefit in respect of that claim period unless you have complied with the post-claim record-keeping requirements set out in section 27.
- (2) If:
 - (a) you make a claim for a grant or benefit in respect of a claim period; and
 - (b) you make a statement in the claim to the effect that you undertake to comply with the post-claim record-keeping requirements set out in section 27;

the Commissioner may, for the purposes of making an assessment, assume that you will comply with those requirements. However, if you do not comply with those requirements, the Commissioner may amend your assessment under section 20.

26 Pre-claim record-keeping requirements

- (1) This section sets out the pre-claim record-keeping requirements that apply to you in relation to a grant or benefit in respect of a particular claim period.
- (2) You must:
 - (a) keep records that enable you to substantiate your claim for the grant or benefit; and
 - (b) retain those records until you make the claim.

Part 5 Record-keeping requirements

Section 27

Note: Section 27 provides that you must continue to retain those records for 5 years after you make the claim.

- (3) The records must be:
 - (a) in English; or
 - (b) readily accessible, and easily convertible into English.
- (4) You are taken to have met the requirement set out in paragraph (2)(a) if you keep records of a kind, and in a manner, specified in a written determination made by the Commissioner.

Note: Sections 8L, 8Q and 8T of the *Taxation Administration Act 1953* deal with keeping records incorrectly.

27 Post-claim record-keeping requirements

- (1) This section sets out the post-claim record-keeping requirements that apply to you in relation to a grant or benefit in respect of a particular claim period.
- (2) You must continue to retain, for the period of 5 years after the claim was made, the records that the pre-claim record-keeping requirements set out in section 26 required you to retain.
- (3) If the Commissioner gives you a written notice telling you to produce records that subsection (2) required you to retain, you must comply with the notice.
- (4) A notice under subsection (3) must give you 28 days or more to comply, starting on the day after the notice is given. The Commissioner may allow you more time to comply with the notice.
- (5) Despite subsection (2), it is not necessary to continue to retain records:
 - (a) if the Commissioner tells you that you do not need to retain them; or
 - (b) for a company that has been finally dissolved.
- (6) Despite section 8C of the *Taxation Administration Act 1953*, you do not commit an offence merely by not complying with a notice under subsection (3).

Note: Sections 8L, 8Q and 8T of the *Taxation Administration Act 1953* deal with keeping records incorrectly.

28 Records that are lost or destroyed

- (1) This section applies to you if:
 - (a) section 26 or 27 requires you to retain a particular record;
and
 - (b) the record is lost or destroyed.
- (2) If you have a complete copy of the record that is lost or destroyed, it is treated as the original from the time of the loss or destruction.
- (3) If you do not have such a copy, but the Commissioner is satisfied that you took reasonable precautions to prevent the loss or destruction, your entitlement to a grant or benefit is not affected by your failing to retain or produce the original record.
- (4) This section has effect despite anything in section 25, 26 or 27.

Part 6—Disqualification for fraud

29 Disqualification of claimant for fraud

Despite the provisions of Part 3 and the entitlement Acts, if:

- (a) you make a false statement to a person who is exercising powers, or performing functions, under or in connection with this Act or an entitlement Act; and
- (b) you do so knowing that, or reckless as to whether, the statement:
 - (i) is false or misleading in a material particular; or
 - (ii) omits any matter or thing without which the statement is misleading in a material particular; and
- (c) the amount of a grant or benefit that would have been payable to you in respect of a claim period if the statement was not false exceeds the amount of the grant or benefit properly payable to you in respect of that claim period;

you are disqualified, and are taken to have been disqualified, from receiving that grant or benefit in relation to the period:

- (d) beginning at the start of that claim period; and
- (e) ending at the end of 2 years or such shorter period as is determined by the Commissioner.

Note: Recklessly making a false statement can be an offence against section 8N of the *Taxation Administration Act 1953*, and knowingly making a false statement can be an offence against section 8P of that Act.

30 Disqualification for aiding and abetting etc. fraud

Despite the provisions of Part 3 and the entitlement Acts, if:

- (a) an entity makes a false statement to a person who is exercising powers, or performing functions, under or in connection with this Act or an entitlement Act; and
- (b) the entity does so knowing that, or reckless as to whether, the statement:
 - (i) is false or misleading in a material particular; or

- (ii) omits any matter or thing without which the statement is misleading in a material particular; and
 - (c) the amount of a grant or benefit that would have been payable to the entity in respect of a claim period if the statement was not false exceeds the amount of the grant or benefit properly payable to the entity in respect of that claim period; and
 - (d) you:
 - (i) aided, abetted, counselled or procured the making of the statement by the entity; or
 - (ii) were in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the making of the statement by the entity;
- you are disqualified, and are taken to have been disqualified, from receiving that grant or benefit in relation to the period:
- (e) beginning at the start of that claim period; and
 - (f) ending at a time determined by the Commissioner.

Note: Recklessly making a false statement can be an offence against section 8N of the *Taxation Administration Act 1953*, and knowingly making a false statement can be an offence against section 8P of that Act.

31 Disqualification of body corporate—executive disqualified etc.

Despite the provisions of Part 3 and the entitlement Acts, a body corporate is disqualified, and is taken to have been disqualified, from receiving a grant or benefit in relation to a particular time if any of the following individuals is disqualified under section 29 or 30 from receiving that grant or benefit in relation to that time:

- (a) a director of the body corporate;
- (b) the secretary of the body corporate;
- (c) a person (by whatever name called and whether or not a director of the body corporate) who is concerned in, or takes part in, the management of the body corporate.

32 Disqualification of partnership—partner disqualified etc.

Despite the provisions of Part 3 and the entitlement Acts, a partnership is disqualified, and is taken to have been disqualified,

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from receiving a grant or benefit in relation to a particular time if any of the following entities is disqualified under section 29 or 30 from receiving that grant or benefit in relation to that time:

- (a) a partner;
- (b) an individual who:
 - (i) is an employee of the partnership; and
 - (ii) is concerned in, or takes part in, the management of the partnership;
- (c) in a case where a partner is a body corporate:
 - (i) a director of the body corporate; or
 - (ii) the secretary of the body corporate; or
 - (iii) a person (by whatever name called and whether or not a director of the body corporate) who is concerned in, or takes part in, the management of the body corporate.

33 Disqualification of trust—trustee disqualified etc.

Despite the provisions of Part 3 and the entitlement Acts, a trust is disqualified, and is taken to have been disqualified, from receiving a grant or benefit in relation to a particular time if any of the following entities is disqualified under section 29 or 30 from receiving that grant or benefit in relation to that time:

- (a) a trustee;
- (b) an individual who:
 - (i) is an employee of the trust; and
 - (ii) is concerned in, or takes part in, the management of the trust;
- (c) in a case where a trustee is a body corporate:
 - (i) a director of the body corporate; or
 - (ii) the secretary of the body corporate; or
 - (iii) a person (by whatever name called and whether or not a director of the body corporate) who is concerned in, or takes part in, the management of the body corporate.

Part 7—Contrived schemes etc.**34 Contrived schemes etc.**

- (1) If:
- (a) one or more entities enter into, commence to carry out, or carry out a scheme; and
 - (b) it would be concluded that the entity, or any of the entities, who entered into, commenced to carry out, or carried out the scheme or any part of the scheme did so for the sole or dominant purpose of enabling a particular act or transaction to be taken into account in determining a grant or benefit entitlement of any entity (whether or not the entity, or any of the entities, who entered into, commenced to carry out, or carried out the scheme or any part of the scheme); and
 - (c) the scheme or part of the scheme has achieved, or apart from this section, would achieve, that purpose;

the Commissioner may determine that this Act or an entitlement Act has, and is taken always to have had, effect as if the act or transaction had never happened.

- (2) A determination under subsection (1) has effect accordingly.

- (3) In this section:

scheme means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

Part 8—Civil penalties

35 General interest charge on unpaid scheme debts

- (1) For the purposes of this section, a *designated scheme debt* is:
- (a) an overpayment debt; or
 - (b) an amount payable by way of a penalty under section 36.

- (2) If an amount of a designated scheme debt that is payable by you remains unpaid after the day by which it must be paid, you are liable to pay the general interest charge (*GIC*) on the unpaid amount.

Note: The GIC is worked out under Division 1 of Part IIA of the *Taxation Administration Act 1953*.

- (3) You are liable to pay the GIC for each day in the period that:
- (a) started at the beginning of the day by which the designated scheme debt was due to be paid; and
 - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
 - (i) the designated scheme debt;
 - (ii) GIC on any of the designated scheme debt.

- (4) This section does not apply to an overpayment debt that is attributable (in whole or in part) to an error made by the Commissioner, where the grant or benefit concerned was received in good faith.

Note: The overpayment debt is recoverable as an administrative overpayment under section 8AAZN of the *Taxation Administration Act 1953*.

- (5) This section does not apply to an overpayment debt that is attributable (in whole or in part) to a change in regulations made for the purposes of working out the amount of a grant or benefit.

36 Penalty for making false statements

- (1) You are liable to a penalty if:
-

- (a) you make a false statement to a person who is exercising powers, or performing functions, under or in connection with this Act or an entitlement Act (whether or not you know that the statement is a false statement); and
 - (b) the amount of a grant or benefit that would have been payable to you in respect of a claim period if the statement was not false exceeds the amount of the grant or benefit properly payable to you in respect of that claim period.
- (2) The amount of the penalty is double the excess.

37 Assessment of penalty

- (1) The Commissioner must make an assessment of the penalty payable by you under section 36.
- (2) The Commissioner must give you notice of an assessment as soon as practicable after the assessment is made. However, failing to do so does not affect the validity of the assessment.
- (3) The Commissioner may give you the notice electronically if you transmitted the relevant claim to the Commissioner in an electronic format.
- (4) The notice may be included in any other notice the Commissioner gives you.
- (5) The penalty becomes due for payment on the day specified in the notice, which must be at least 14 days after the notice is given to you.

38 Remission of penalty

- (1) The Commissioner may remit some or all of the penalty that an entity is liable to pay under section 36 if the Commissioner is satisfied that it is fair and reasonable to do so.
- (2) The Commissioner may decide to do this before or after making an assessment under this Part.

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39 Amendment of assessment

- (1) The Commissioner may at any time amend an assessment under this Part.
- (2) An amended assessment is an assessment for all purposes of this Act.

40 Production of assessment is conclusive evidence

The production of a notice of assessment under this Part is conclusive evidence:

- (a) that the assessment was properly made; and
- (b) except in proceedings under Part IVC of the *Taxation Administration Act 1953* on a review or appeal relating to the assessment—that the amounts and particulars in the assessment are correct.

41 Relationship with offence provisions

Nothing in this Part makes it an offence to do or omit to do anything.

Note: However, some of the conduct covered by this Part might constitute an offence against a provision outside this Part. An entity that is prosecuted for such an offence is not liable to pay any penalty under this Part: see section 8ZE of the *Taxation Administration Act 1953*.

Part 9—Information-gathering powers

42 Commissioner may obtain information and documents

- (1) This section applies to a person if the Commissioner has reason to believe that the person:
 - (a) has information or a document that is relevant to the operation of this Act or an entitlement Act; or
 - (b) is capable of giving evidence which the Commissioner has reason to believe is relevant to the operation of this Act or an entitlement Act.
- (2) The Commissioner may, by written notice given to the person, require the person:
 - (a) to give to the Commissioner, within the period and in the manner and form specified in the notice, any such information; or
 - (b) to produce to the Commissioner, within the period and in the manner specified in the notice, any such documents; or
 - (c) to attend before the Commissioner at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.

Note: Failing to comply with a notice can be an offence against section 8C of the *Taxation Administration Act 1953*.
- (3) The regulations may prescribe scales of expenses to be allowed to persons who are required to attend under this section.

43 Self-incrimination

- (1) An individual is not excused from giving information or evidence or producing a document under this Part on the ground that the information or evidence or the production of the document might tend to incriminate the individual or expose the individual to a penalty.
- (2) However:

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- (a) giving the information or evidence or producing the document; or
- (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or evidence or producing the document;

is not admissible in evidence against the individual in criminal proceedings other than proceedings for an offence against section 8C, 8K, 8N or 8P of the *Taxation Administration Act 1953*, being an offence that relates to this Part.

44 Copies of documents

The Commissioner may inspect a document produced under this Part and may make and retain copies of, or take and retain extracts from, such a document.

45 Commissioner may retain documents

- (1) The Commissioner may take, and retain for as long as is necessary, possession of a document produced under this Part.
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Commissioner to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the Commissioner must, at such times and places as the Commissioner thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

46 Commonwealth bound by this Part

- (1) This Part binds the Crown in right of the Commonwealth. However, it does not make the Crown liable to be prosecuted for an offence.
- (2) This section has effect in addition to section 4.

Part 10—Protection of confidentiality of information

47 Protection of confidentiality of information

(1) This section restricts what a person (the *entrusted person*) may do with protected information, or protected documents, that the person has obtained in the course of official employment.

(2) The entrusted person:

- (a) must not make a record of protected information; and
- (b) must not disclose it to anyone else;

if the recording or disclosure is not in accordance with subsection (3).

Maximum penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(3) It is not an offence against subsection (2) if any of the following apply to the recording or disclosure:

- (a) the recording or disclosure is for the purposes of this Act or an entitlement Act;
- (b) the recording or disclosure happens in the course of the performance of the duties of the entrusted person's official employment;
- (c) the entrusted person is the Commissioner or a Deputy Commissioner and the disclosure is to:
 - (i) the Australian Statistician and is of information to be used for the purposes of the *Census and Statistics Act 1905*; or
 - (ia) an officer of the ACCC and is of information that is related to fuel sales grants and is to be used for the purposes of Part V or VB of the *Trade Practices Act 1974*; or

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- (ii) another person for the purpose of that other person carrying out functions under a taxation law; or
- (iii) the Administrative Appeals Tribunal in connection with proceedings under a taxation law;
- (d) the disclosure is by a person authorised by the Commissioner or a Deputy Commissioner to disclose the information and the disclosure is to:
 - (i) the Australian Statistician and is of information to be used for the purposes of the *Census and Statistics Act 1905*; or
 - (ia) an officer of the ACCC and is of information that is related to fuel sales grants and is to be used for the purposes of Part V or VB of the *Trade Practices Act 1974*; or
 - (ii) another person for the purpose of that other person carrying out functions under a taxation law.

Note: A defendant bears an evidential burden in relation to a matter in subsection (3)—see subsection 13.3(3) of the *Criminal Code*.

(4) Subsection (3) does not authorise the disclosure of information to a Minister.

(5) In this section:

ACCC means the Australian Competition and Consumer Commission.

disclose means divulge or communicate.

official employment means:

- (a) appointment or employment by the Commonwealth, or the performance of services for the Commonwealth; or
- (b) the exercise of powers or performance of functions under a delegation by the Commissioner.

protected document means any document made or given under, or for the purposes of, this Act or an entitlement Act.

protected information means information that meets all the following conditions:

- (a) it relates to the personal information of a person other than the entrusted person;
- (b) it was obtained by the entrusted person, or by any other person, in the course of official employment;
- (c) it was disclosed or obtained for the purposes of this Act or an entitlement Act.

taxation law has the same meaning as in section 995-1 of the *Income Tax Assessment Act 1997*.

Part 11—Access to premises

48 Access to premises etc.

- (1) This section applies to premises if an authorised officer has reason to believe that:
 - (a) there are on the premises any documents or goods that are relevant to the operation of this Act or an entitlement Act; or
 - (b) there is on the premises any other property that is relevant to the operation of this Act or an entitlement Act.
- (2) The authorised officer:
 - (a) may at all reasonable times enter and remain on those premises; and
 - (b) is entitled to full and free access at all reasonable times to any such documents, goods or other property on those premises; and
 - (c) may inspect, examine, make copies of, or take extracts from, any such documents on those premises; and
 - (d) may inspect, examine, count, measure, weigh, gauge, test or analyse any such goods or other property on those premises and, to that end, take samples.
- (3) An authorised officer is not entitled to enter or remain on any premises if, after having been requested by the occupier to produce his or her identity card, the officer fails to comply with that request.
- (4) If an authorised officer enters, or proposes to enter, premises under this section, the occupier must provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this section.
- (5) An occupier who contravenes subsection (4) is guilty of an offence punishable on conviction by a fine not exceeding 10 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

49 Identity cards

- (1) The Commissioner must issue an identity card to a person who is an authorised officer for the purposes of section 48.
- (2) The identity card must be in the form prescribed by the regulations.
- (3) The identity card must contain a recent photograph of the authorised officer.
- (4) A person is guilty of an offence if:
 - (a) the person has been issued with an identity card under subsection (1); and
 - (b) the person ceases to be an authorised officer for the purposes of section 48; and
 - (c) the person does not immediately return the identity card to the Commissioner.

Maximum penalty: 1 penalty unit.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (5) A person who is an authorised officer for the purposes of section 48 must carry the identity card at all times when exercising the powers or performing the functions of such an authorised officer.

50 Commonwealth bound by this Part

- (1) This Part binds the Crown in right of the Commonwealth. However, it does not make the Crown liable to be prosecuted for an offence.
- (2) This section has effect in addition to section 4.

Part 12—Special rules for certain entities

51 Treatment of partners

- (1) This Act and the entitlement Acts apply to a partnership as if the partnership were a person, but it applies with the following changes.
- (2) Obligations that are imposed under this Act on a partnership are imposed on each partner, but may be discharged by any of the partners.
- (3) The partners are jointly and severally liable to pay any amount that is payable under this Act by the partnership.
- (4) Any offence against this Act that is committed by a partnership is taken to have been committed by each partner who:
 - (a) aided, abetted, counselled or procured the relevant act or omission; or
 - (b) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the entity).
- (5) For the purposes of this Act and the entitlement Acts, a change in the composition of a partnership does not affect the continuity of the partnership.
- (6) In this section:

this Act includes the *Taxation Administration Act 1953*, to the extent to which that Act relates to this Act or an entitlement Act.

52 Treatment of unincorporated associations

- (1) This Act and the entitlement Acts apply to an unincorporated association or body of persons as if the association or body were a person, but it applies with the following changes.

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- (2) Obligations that would be imposed under this Act on an unincorporated association or body of persons are imposed on each member of the committee of management of the association or body, but may be discharged by any of those members.
- (3) Any offence against this Act that is committed by the association or body is taken to have been committed by each member of its committee of management who:
 - (a) aided, abetted, counselled or procured the relevant act or omission; or
 - (b) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the entity).
- (4) In this section:

this Act includes the *Taxation Administration Act 1953*, to the extent to which that Act relates to this Act or an entitlement Act.

Part 13—Miscellaneous

53 Reviewable grant or benefit decisions

- (1) If you are dissatisfied with a reviewable grant or benefit decision relating to you, you may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.
- (2) Each of the following decisions is a **reviewable grant or benefit decision**:

Reviewable grant or benefit decisions		
Item	Decision	Provision under which decision is made
1	refusing an application for registration	section 10
2	cancelling registration	section 11
3	making an assessment of the amount of a grant or benefit	section 17
4	amending an assessment of the amount of a grant or benefit	section 20
5	making an assessment of the amount of a penalty	section 37
6	amending an assessment of the amount of a penalty	section 39

54 Application of the *Criminal Code*

The *Criminal Code* applies to all offences against this Act.

55 Appropriation

Grants and benefits must be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

56 Grants and benefits to be treated as subsidies for the purposes of section 15-10 of the *Income Tax Assessment Act 1997*

A grant or benefit is taken to be a subsidy for the purposes of section 15-10 of the *Income Tax Assessment Act 1997*.

57 Address for service

- (1) An entity's address for service for the purposes of this Act is:
 - (a) if the entity is registered in the Australian Business Register—the address shown in the Register as the entity's address for service; or
 - (b) if the entity is not registered in that Register—the address last notified by the entity in a claim, application or any other document under this Act or an entitlement Act; or
 - (c) any other address that the Commissioner reasonably believes to be the entity's address for service.
- (2) If an entity on whom a notice or other document must be served:
 - (a) under this Act or an entitlement Act; or
 - (b) in proceedings for recovery of a scheme debt;has notified the Commissioner of an Australian address for service, the Commissioner may serve the notice or document by post to that address.
- (3) However, if an entity that has made claims electronically notifies the Commissioner of an address for effecting service by way of electronic transmission, the Commissioner may serve a notice under this Act or an entitlement Act on the entity by electronic transmission to that address.

58 Service of documents if entity absent from Australia or cannot be found

- (1) This section applies if:
 - (a) a document needs to be served on an entity in respect of any proceeding to recover a scheme debt; and
 - (b) the Commissioner, after making reasonable inquiries, is satisfied that:

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- (i) the entity is absent from Australia and does not have any agent in Australia on whom the document can be served; or
 - (ii) the entity cannot be found.
- (2) The Commissioner may, without the court's leave, serve the document by posting it, or a sealed copy of it, in a letter addressed to the entity at any Australian address of the entity (including the entity's Australian place of business or residence) that is last known to the Commissioner.

59 Authorised officers

The Commissioner may, by writing, authorise an APS employee to be an authorised officer for the purposes of a specified provision or provisions of this Act.

60 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[Minister's second reading speech made in—
House of Representatives on 12 April 2000
Senate on 11 May 2000]*

(60/00)

