

Serial 317
Taxation (Administration) Amendment Bill 2001
Mr Reed

**A BILL
for
AN ACT**

to amend the *Taxation (Administration) Act* and to make a consequential
amendment of the Taxation (Administration) Regulations



NORTHERN TERRITORY OF AUSTRALIA
TAXATION (ADMINISTRATION) AMENDMENT ACT 2001

No. of 2001

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2001

AN ACT

to amend the *Taxation (Administration) Act* and to make a consequential amendment of the *Taxation (Administration) Regulations*

[Assented to 2001]
[Second reading 2001]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Taxation (Administration) Amendment Act 2001*.

2. Commencement

(1) Sections 4(1), 5, 15, 23 and 26 are to be taken to have come into operation on 29 May 2001.

(2) Sections 4(2), 6, 7, 8, 14, 16 to 22 (inclusive), 24, 25, 27, 28 and 30 come into operation on 1 July 2001.

(3) Section 4(3) comes into operation on 1 July 2001, but immediately after Part 6 of the *Financial Relations Agreement (Consequential Provisions) Act* commences.

(4) Sections 9 to 13 (inclusive) and 29 come into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Principal Act

The *Taxation (Administration) Act* is in this Act referred to as the Principal Act.

4. Interpretation

(1) Section 4 of the Principal Act is amended by inserting after the definition of "tax" in subsection (1) the following:

" 'tax avoidance scheme' has the meaning in section 4B;".

(2) Section 4 of the Principal Act is amended –

(a) by omitting from subsection (1) the definition of "agreement" and substituting the following:

" 'agreement', in relation to a conveyance, includes –

- (a) a memorandum of agreement;
- (b) an arrangement or understanding, whether wholly or partly in writing or otherwise and whether or not between all the parties to the agreement, constituting or forming part of the agreement; and
- (c) an application to transfer a licence under the *Fisheries Act* or to transfer a share, unit or other right or interest attaching to such a licence;"

(b) by omitting from subsection (1) the definition of "debenture";

(c) by omitting paragraph (g) of the definition of "dutiable property" in subsection (1) and substituting the following:

"(g) a statutory licence or permission given, granted or issued under a law of the Commonwealth and used in connection with such a business undertaking, including a licence or permission surrendered or relinquished or for which an application for renewal is not made and the licence or permission, or a similar licence or permission, is given, granted or issued to another person where, in the opinion of the Commissioner, the giving, grant or issue amounts to or has the same effect as a transfer of the licence or permission;

"(ga) a statutory licence or permission given, granted or issued under a law of the Territory and used in connection with a business undertaking wherever the undertaking is carried on or to be carried on, including a licence or permission

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surrendered or relinquished or for which an application for renewal is not made and the licence or permission, or a similar licence or permission, is given, granted or issued to another person where, in the opinion of the Commissioner, the giving, grant or issue amounts to or has the same effect as a transfer of the licence or permission;";

- (d) by inserting after the definition of "goods" in subsection (1) the following:

" 'Government Business Division' has the same meaning as in the *Financial Management Act*";

- (e) by inserting before paragraph (e) of the definition of "hiring arrangement" in subsection (1) the following:

"(d) an arrangement between a lender and a motor vehicle dealer relating to the supply of a motor vehicle for display or demonstration by the dealer before sale or lease to another person;";

- (f) by omitting from paragraph (e) of the definition of "hiring arrangement" in subsection (1) "or" (last occurring);

- (g) by omitting from paragraph (f) of the definition of "hiring arrangement" in subsection (1) "goods;" and substituting "goods; or";

- (h) by adding at the end of the definition of "hiring arrangement" in subsection (1) the following:

"(g) an arrangement between related persons unless the lender under the arrangement also enters into a hiring arrangement as the lender with a person in respect of whom the lender is not a related person;";

- (i) by omitting from paragraph (a) of the definition of "insurance" in subsection (1) "keeping in force" and substituting "renewal";

- (j) by omitting from subsection (1) the definition of "insurer" and substituting the following:

" 'insurer' means a person who grants, issues or renews, or intends to grant, issue or renew, a policy of insurance in respect of which tax is imposed;"; and

- (k) by inserting after subsection (2) the following:

"(2A) For the purposes of paragraph (g) of the definition of 'hiring arrangement', the following are related persons:

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- (a) related corporations within the meaning of the Corporations Law or related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth;
- (b) corporations in which the same person has, or the same persons have together, a controlling interest;
- (c) a natural person and a corporation where the person has a controlling interest in the corporation;
- (d) partnerships in which the same person has, or the same persons have together, a controlling interest;
- (e) a natural person and a partnership where the person has a controlling interest in the partnership;
- (f) a corporation and a partnership where the same person has, or the same persons have together, a controlling interest in both the corporation and the partnership.

"(2B) For the purposes of subsection (2A) –

- (a) a person has, or persons have together, a controlling interest in a corporation if that person or those persons may exercise, control the exercise of, or substantially influence the exercise of, whether directly or indirectly, more than 50% of –
 - (i) the voting power at meetings of the corporation's directors; or
 - (ii) the voting power attached to voting shares issued by the corporation; and
- (b) a person has, or persons have together, a controlling interest in a partnership if that person or those persons –
 - (i) own or own together (whether beneficially or not) more than 50% of the capital of the partnership; or
 - (ii) is or are together entitled (whether beneficially or not) to more than 50% of the profits of the partnership."

(3) Section 4 of the Principal Act is amended –

- (a) by omitting from paragraph (a) of the definition of "marketable security" in subsection (1) ", or a debenture of,"; and
- (b) by omitting from paragraph (b) of the definition of "marketable security" in subsection (1) "or debenture".

5. New section

The Principal Act is amended by inserting after section 4A in Part I the following:

"4B. Tax avoidance schemes

"(1) In this section –

'scheme' includes –

- (a) an agreement, arrangement or undertaking –
 - (i) in whatever form;
 - (ii) wherever entered into, made or given;
 - (iii) whether unilateral, bilateral or multilateral; and
 - (iv) whether enforceable or not; and
- (b) an act done or omitted to be done, or a course of conduct carried out or not or engaged in or not, by any person whomever in any place wherever.

"(2) For the purposes of this Act, a tax avoidance scheme is a scheme that, in the opinion of the Commissioner, has or is intended to have a collateral purpose of –

- (a) reducing the tax or duty otherwise payable under this Act in respect of a conveyance of dutiable property or marketable securities; or
- (b) obtaining the benefit of an exemption or concession under this Act in respect of a conveyance of dutiable property or marketable securities.

"(3) In considering whether a scheme is a tax avoidance scheme, the Commissioner may have regard to any matter whatever that the Commissioner thinks is relevant."

6. When instruments lodged and duty payable

Section 9 of the Principal Act is amended –

- (a) by omitting subsection (1)(b) and substituting the following:
 - "(b) duty on an instrument that is required by this Act to be lodged with the Commissioner for assessment is due and payable by the person liable to pay it –

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- (i) at the end of the period within which the instrument is required by this Act to be lodged with the Commissioner for assessment; or
 - (ii) if the notice of assessment specifies a date after the end of the period referred to in subparagraph (i) on which the duty is due and payable – on that date; and";
- (b) by omitting paragraph (1A)(b) and substituting the following:
 - "(b) in any other case, lodge the instrument with the Commissioner for assessment within 60 days after it is first executed, regardless of whether it was first executed in the Territory or at a place outside the Territory and regardless of when it is first received in the Territory.";
- (c) by omitting subsection (1B); and
- (d) by omitting from subsection (1C) "(1), (1A) or (1B)" and substituting "(1) or (1A)".

7. New section

The Principal Act is amended by inserting after section 9BA the following:

"9BB. Apportioning certain dutiable property where business in Territory and elsewhere

"(1) For the purposes of section 9BA, where a business undertaking is carried on both in and outside the Territory, the proportion of dutiable property situated in the Territory or related to the business undertaking carried on in the Territory is to be determined in accordance with this section.

"(2) Where the principal place of business of the business undertaking is in the Territory, the proportion of dutiable property situated in the Territory or related to the business undertaking carried on in the Territory is calculated in accordance with the following formula:

$$V \times \frac{(TS-IS)}{TS}$$

where –

V is the greater of the consideration for or the unencumbered value of all the property conveyed to the conveyee that would have been dutiable property had that property been wholly situated in the Territory or wholly related to the business undertaking carried on in the Territory;

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TS is the volume or gross value of goods supplied and services provided by the business undertaking to all its customers during the last 3 completed financial years; and

IS is the volume or gross value of goods supplied and services provided by the business undertaking to its interstate customers during the last 3 completed financial years.

"(3) Where the principal place of business of the business undertaking is outside the Territory, the proportion of dutiable property situated in the Territory or related to the business undertaking carried on in the Territory is calculated in accordance with the following formula:

$$V \times \frac{NTS}{TS}$$

where –

V is the greater of the consideration for or the unencumbered value of all the property conveyed to the conveyee that would have been dutiable property had that property been wholly situated in the Territory or wholly related to the business undertaking carried on in the Territory;

NTS is the volume or gross value of goods supplied and services provided by the business undertaking to its Territory customers during the last 3 completed financial years; and

TS is the volume or gross value of goods supplied and services provided by the business undertaking to all its customers during the last 3 completed financial years.

"(4) Despite subsections (2) and (3), the Commissioner may determine the proportion of dutiable property on another basis if satisfied that the other basis would be more appropriate in the particular circumstances.

"(5) In this section –

'dutiable property' means the dutiable property referred to in paragraph (b), (c), (d), (e), (f) and (g) of the definition of 'dutiable property' in section 4(1);

'interstate customer' means a customer who takes delivery of the goods or receives the services provided elsewhere in Australia than the Territory;

'principal place of business', in relation to a business undertaking, means –

- (a) the place where the head office of the business undertaking is located; or
- (b) the place from which overall control or management emanates;

'Territory customer' means a customer who takes delivery of the goods or receives the services provided in the Territory."

8. Duty accounted for by returns

Section 17A of the Principal Act is amended by omitting from subsection (10) "3 years" and substituting "5 years".

9. New section

The Principal Act is amended by inserting before section 38 in Division 6 of Part III the following:

"37. Definitions

"In this Division –

'Australian insurer' means an insurer that is –

- (a) a body corporate incorporated, or registered as a company, under a law of the Commonwealth or of a State or Territory of the Commonwealth; or
- (b) a body corporate that is registered as a foreign body, or as a foreign company, under a law of the Commonwealth or of a State or Territory of the Commonwealth;

'overseas insurer' means an insurer that is not an Australian insurer."

10. Repeal and substitution

Section 39 of the Principal Act is repealed and the following substituted:

"39. Australian insurers to be registered

"(1) An Australian insurer must not grant, issue or renew a policy of insurance in respect of which tax is imposed unless the insurer is registered under this Division.

Penalty: 50 penalty units.

"(2) Nothing in subsection (1) affects the liability of an Australian insurer for tax imposed in respect of a policy of insurance granted, issued or renewed in contravention of this section."

11. Registration

Section 41 of the Principal Act is amended by omitting subsection (1) and substituting the following:

"(1) An Australian insurer who grants, issues or renews, or intends to grant, issue or renew, a policy of insurance in respect of which tax is imposed may apply to the Commissioner in the approved form for registration in the Register kept under section 40."

12. Repeal and substitution

Section 44A of the Principal Act is repealed and the following substituted:

"44A. Insurance granted, issued or renewed by overseas insurer

"(1) A person who effects insurance in respect of –

- (a) property in the Territory; or
- (b) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within or partly within the Territory,

for which a policy of insurance is or is to be granted, issued or renewed (whether directly or indirectly) by an overseas insurer must, within 30 days after effecting the insurance, furnish to the Commissioner a return containing the approved particulars and in the approved form.

Penalty: 50 penalty units.

"(2) The tax in respect of insurance to which subsection (1) applies is payable on lodgement of the return referred to in subsection (1) or within such further time as allowed by the Commissioner.

"(3) The person who effects insurance to which this section applies and the overseas insurer who granted, issued or renewed the policy of insurance for that insurance are jointly and severally liable for the tax imposed in respect of the policy of insurance."

13. Repeal and substitution

Section 44B of the Principal Act is repealed and the following substituted:

"44B. Agents and brokers taken to be acting for insurer

"(1) For the purposes of this Division, an insurance agent or insurance broker who arranges for the grant, issue or renewal of a policy of insurance

(whether on behalf of the insurer or the person effecting the insurance) is to be taken to have granted, issued or renewed the policy on behalf of the insurer.

"(2) Subsection (1) applies in relation to an insurance agent or insurance broker (wherever the agent or broker carries on business) whether or not the agent or broker is acting in pursuance of a binder within the meaning of the *Insurance (Agents and Brokers) Act 1984* of the Commonwealth."

14. Instrument to be stamped or lodged for assessment

Section 52 of the Principal Act is amended by omitting from subsection (3) "30 days" and substituting "60 days".

15. New Division

Part III of the Principal Act is amended by inserting after Division 8AA the following:

"Division 8AAA – Changes in beneficiaries and trustees of discretionary trusts

"56BAA. Definitions

"In this Division –

'beneficiary', in relation to a discretionary trust, means a person in whom the trustee may determine to vest the whole or part of the trust property and includes a person in whom the whole or part of the trust property vests if the trustee does not make such a determination;

'change in control', in relation to a beneficiary, trustee or other body corporate, means a change in the person or the persons acting together who may (directly or indirectly) exercise, control the exercise of, or substantially influence the exercise of –

- (a) the majority of voting power at meetings of the directors of the beneficiary, trustee or other body corporate; or
- (b) more than 50% of the voting power attached to voting shares issued by the beneficiary, trustee or other body corporate;

'discretionary trust' means –

- (a) a trust under which the vesting of the whole or a part of the capital of the trust property, or the whole or a part of the income from that capital, or both –

- (i) is required to be determined by a person either in respect of the identity of the beneficiaries, or the quantum of interest to be taken, or both; or
 - (ii) will occur in the event that a discretion conferred under the trust is not exercised; or
 - (b) a trust declared by the Regulations to be a discretionary trust for the purposes of this Division,
- but does not include a trust that is –
- (c) solely a charitable trust; or
 - (d) declared by the Regulations not to be a discretionary trust for the purposes of this Division;

'family member', in relation to a beneficiary, means –

- (a) the spouse of the beneficiary;
- (b) a child or other remoter lineal descendant of the beneficiary;
- (c) an adopted child or a step child of the beneficiary;
- (d) a lineal descendant of an adopted child or stepchild of the beneficiary;
- (e) the spouse of –
 - (i) a child or other remoter lineal descendant of the beneficiary; or
 - (ii) an adopted child or a stepchild of the beneficiary; or
 - (iii) a lineal descendant of an adopted child or stepchild of the beneficiary;
- (f) a sibling of the beneficiary or the beneficiary's spouse; or
- (g) a lineal descendant of a sibling of the beneficiary or the beneficiary's spouse.

"56BAB. Imposition of duty on addition of beneficiaries under discretionary trust

"(1) Subject to this section, duty is payable where a beneficiary or class of beneficiaries is added to the existing beneficiaries or classes of beneficiaries under a discretionary trust as if –

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- (a) the addition were a conveyance of the dutiable property or marketable securities over which the discretionary trust is declared;
- (b) the trustees were the conveyees; and
- (c) the conveyance had occurred at the time of the addition.

"(2) The additional beneficiaries or the members of the additional class of beneficiaries and the trustees are jointly and severally liable for the duty imposed in respect of the addition.

"(3) Duty is not payable under subsection (1) –

- (a) if the existing beneficiaries and the additional beneficiary, or the members of the existing classes of beneficiaries and the members of the additional class of beneficiaries, are family members; or
- (b) if the addition is not a tax avoidance scheme or part of a tax avoidance scheme.

"(4) For the purposes of this section, the addition of a beneficiary or class of beneficiaries includes –

- (a) the addition of a beneficiary who is a natural person or a body corporate;
- (b) the addition of a class of beneficiaries the members of which are natural persons, bodies corporate or both;
- (c) the addition of a person or class of persons in whom the whole or part of the trust property vests if the trustee does not make a determination to vest that whole or part; and
- (d) the transfer or other disposition by a beneficiary of his or her beneficial interest under the trust.

"(5) Where the effect of an amendment or variation of the terms of a non-discretionary trust is to create a discretionary trust, this section applies in relation to the discretionary trust as if, at the time the amendment or variation was made –

- (a) there were beneficiaries or classes of beneficiaries already existing under the discretionary trust; and
- (b) the beneficiaries or classes of beneficiaries under the discretionary trust were added to the existing beneficiaries or classes of beneficiaries.

"56BAC. Imposition of duty where change in beneficiary and trustee under discretionary trust

"(1) Subject to this section –

- (a) where a change in control of a beneficiary under a discretionary trust and a change of or in control of a trustee of the discretionary trust occur within a 12-month period; and
- (b) the changes arise from one transaction or one series of transactions or substantially from one transaction or one series of transactions,

duty is payable as if –

- (c) there had been a conveyance of the dutiable property or marketable securities over which the trust is declared;
- (d) the trustees were the conveyees; and
- (e) the conveyance had occurred at the time of the later of the changes.

"(2) The beneficiary in which the change in control occurred and all the trustees are jointly and severally liable for the duty imposed in respect of the changes described in subsection (1).

"(3) Duty is not payable under subsection (1) if the changes described in subsection (1) are not a tax avoidance scheme or part of a tax avoidance scheme.

"(4) For the purposes of this section, a change of or in control of a trustee includes –

- (a) a change of or in control of the person who has the power to appoint and revoke the appointment of the trustee;
- (b) a variation in, or the transfer or other disposition of, that power; and
- (c) a change of or in control of a person who is in a position to influence (directly or indirectly) a determination by the trustee to vest the whole or part of the trust property.

"(5) Where duty is paid or payable under subsection (1) –

- (a) the instrument effecting or evidencing the changes referred to in subsection (1)(a) is to be stamped; or
- (b) if there are 2 or more instruments effecting or evidencing the changes – all or any of the instruments may be stamped and the duty is to be apportioned among the instruments as determined by the Commissioner."

16. Statement chargeable with duty

Section 56M of the Principal Act is amended by adding at the end the following:

"(3) Despite section 9, duty on a statement lodged under section 56K is due and payable by the person liable to pay it –

- (a) on the date specified in the notice of assessment of the duty as the date on which the duty is due and payable; or
- (b) if no date is specified or no notice is served – 30 days after the date on which the person is informed of the assessment."

17. Corporation to which this Division applies

Section 56N of the Principal Act is amended by adding at the end the following:

"(7) For the purpose of calculating the value of land under subsection (2)(b) –

- (a) all mining tenements and other rights and interests similar in nature to mining tenements that are held by the corporation, whether the tenements and other rights and interests are in the Territory or elsewhere, are to be included; and
- (b) all information about those tenements and other rights and interests that is held by the corporation, whether that information is in the Territory or elsewhere, is to be taken into account."

18. Registration

Section 73 of the Principal Act is amended by adding at the end the following:

"(5) For the purposes of this Division, a lender who becomes registered or ceases to be registered during a month is to be taken to be registered for the whole of that month."

19. Certain particulars to be recorded

Section 74 of the Principal Act is amended by omitting from subsection (2) "2 years" and substituting "5 years".

20. Commissioner may exempt lender

Section 78A of the Principal Act is amended by omitting subsection (1) and substituting the following:

- "(1) If, in the opinion of the Commissioner –
- (a) a lender will not receive more than a total amount of \$36 000 under one or more hiring arrangements in a financial year; or
 - (b) the quotient of the total amount a lender will receive under one or more hiring arrangements in the financial year in which the lender will commence or cease entering hiring arrangements divided by the number of months (including parts of months) in that financial year after the lender commences or before the lender ceases entering hiring arrangements will not exceed \$3 000,

the Commissioner may exempt the lender from all or specified provisions of this Division."

21. Automatic revocation of exemption

Section 78B of the Principal Act is amended by omitting subsection (1) and substituting the following:

"(1) An exemption under section 78A is, by force of this subsection, revoked if –

- (a) the lender receives more than a total amount of \$36 000 under one or more hiring arrangements in a financial year; or
- (b) the quotient of the total amount the lender receives under one or more hiring arrangements in the financial year in which the lender commences or ceases entering hiring arrangements divided by the number of months (including parts of months) in that financial year after the lender commences or before the lender ceases entering hiring arrangements exceeds \$3 000."

22. Tax remitted or refunded where receipts do not exceed \$36 000 per year or \$3 000 per month

Section 78C of the Principal Act is amended by omitting subsection (1) and substituting the following:

- "(1) Where –
- (a) the total amount received by a lender under one or more hiring arrangements in a financial year does not exceed \$36 000; or
 - (b) the quotient of the total amount a lender received under one or more hiring arrangements in the financial year in which the lender commenced or ceased entering hiring arrangements divided by the number of months (including parts of months) in that financial year

after the lender commenced or before the lender ceased entering hiring arrangements does not exceed \$3 000,

despite anything to the contrary in this Act, the Commissioner must refund or remit the amount of the tax paid or payable under this Division in respect of the hiring arrangements."

23. Application

Section 83A of the Principal Act is amended by inserting after subsection (1A) the following:

"(1B) For the purposes of subsection (1) –

- (a) the addition of a beneficiary or class of beneficiaries under a discretionary trust described in section 56BAB is to be taken to cause or result in a change in the beneficial ownership of all the dutiable property and marketable securities vested in the trustees; and
- (b) the changes in relation to a discretionary trust described in section 56BAC are to be taken to cause or result in a change in the beneficial ownership of all the dutiable property and marketable securities vested in the trustees and, for the purposes of section 83B, that change in beneficial ownership is to be taken to have occurred on the date on which the last of the changes described in section 56BAC occurred."

24. Payment of duty on statements in absence of dutiable instrument

Section 83B of the Principal Act is amended by omitting from subsection (3)(a) "2 months" and substituting "60 days".

25. Lodging of instruments for assessment

Section 85 of the Principal Act is amended by omitting from subsection (1) "30 days" and substituting "60 days".

26. New section

The Principal Act is amended by inserting after section 105A in Part 5 the following:

"105B. No judicial review of certain decisions

"(1) This section applies in relation to the following decisions of the Commissioner:

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- (a) under section 56BAB(3)(b) that the addition of a beneficiary or a class of beneficiaries under a discretionary trust described in section 56BAB is or is not a tax avoidance scheme or part of such a scheme;
- (b) under section 56BAC(3) that the changes in relation to a discretionary trust described in section 56BAC are or are not a tax avoidance scheme or part of such a scheme.

"(2) Except as provided by this Part and despite any other law of the Territory, including the common law –

- (a) no person or body is entitled to investigate, inquire into, review or otherwise call into question a decision referred to in subsection (1); and
- (b) no proceedings for an injunction, a declaration or for certiorari, prohibition or mandamus are to be brought, and no judgment or order granting an injunction, a declaration or certiorari, prohibition or mandamus is to be given or made, in relation to a decision referred to in subsection (1)."

27. Service documents

Section 124 of the Principal Act is amended –

- (a) by omitting subsection (1)(b) and substituting the following:

"(b) by prepaying and posting the notice or instrument as a letter addressed to that person at –

- (i) the person's last-known place of residence or last-known residential post office box;
- (ii) the person's last-known place of business or last-known business post office box; or
- (iii) if the person is carrying on business at 2 or more places or has 2 or more business post office boxes, at one of those places or boxes;"

- (b) by omitting subsection (2)(a) and substituting the following:

"(a) by prepaying and posting the notice or instrument as a letter to the company at –

- (i) the company's last-known place of business or last-known post office box; or

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- (ii) if the company is carrying on business at 2 or more places or has 2 or more post office boxes, at one of those places or boxes; or".

28. Books, accounts etc.

Section 126 of the Principal Act is amended –

- (a) by omitting from subsection (1) "Divisions 4" and substituting "Divisions 3B"; and
- (b) by omitting from subsection (1)(b) and (c) "3 years (and in the case of the *Financial Institutions Duty Act*, 5 years)" and substituting "5 years".

29. Transitional: Australian insurers

An Australian insurer who is registered under Division 6 of Part III of the Principal Act immediately before the commencement of this section is to be taken to be registered under Division 6 of Part III of the Principal Act as amended by this Act.

30. Amendment of Taxation (Administration) Regulations

Regulation 10 of the Taxation (Administration) Regulations is repealed.
