

**SOUTH AUSTRALIA**



**STATE TAXATION OFFICE**

**General**

**Circular No. 156**

**ACCESS TO DOCUMENTS HELD BY SOLICITORS  
AND  
LEGAL PROFESSIONAL PRIVILEGE**

**GUIDELINES**

These guidelines are issued by the State Taxation Office of South Australia following consultation with interested parties including the Law Society of South Australia. The guidelines relate to how the parties deal with documents etc., which are sought by the Commissioner of State Taxation or an authorised officer, pursuant to their powers of access and which are held at the premises of Solicitors or Barristers, and which may attract a claim of legal professional privilege.

The contribution made by the Law Council of Australia and the Commissioner of Taxation (Commonwealth), in consenting to the adaptation of parts of similar guidelines agreed between them, which relate to the application of legal professional privilege, is acknowledged.

**INTRODUCTION**

- 1 The Commissioner or an authorised officer is empowered under various State Taxation Acts to enter premises and require production, inspect, take extracts from or make copies of documents etc., relevant to the assessment of duty.
- 2 Any person who hinders or fails to afford assistance to the Commissioner or an authorised officer exercising powers under the various Acts may be guilty of an offence.
- 3 The following Acts and provisions relate to the Commissioner's and authorised officer's powers of access. Detailed extracts of the relevant provisions are attached.
  - *Taxation Administration Act 1996* — Sections 70 to 75 which apply to the following legislation:

*Stamp Duties Act 1923*

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*Payroll Tax Act 1971*

*Land Tax Act 1936*

*Financial Institutions Duty Act 1983*

*Debits Tax Act 1994*

- *Taxation (Reciprocal Powers) Act 1989* — Sections 5, 7, 8 and 9
- *Tobacco Products Regulation Act 1997* - Sections 65 to 68
- *Petroleum Products Regulation Act 1995* - Sections 64 to 68

- 4 These guidelines are intended to apply to the relevant provisions of all state taxation legislation operative at the relevant time. The guidelines assume that powers will be exercised in accordance with the provision(s) of a relevant Act and are intended to address procedural requirements and issues arising from claims of legal professional privilege.
- 5 Difficulties may be experienced where an authorised officer (hereinafter referred to as a “state taxation officer”) wishes to inspect documents etc. held in the office of a solicitor or barrister (hereinafter referred to as “legal advisers”), which may be the subject of a claim of legal professional privilege.
- 6 In the cases of, F.C.T. & Ors. v Citibank Ltd. 89 ATC 4268 and Allen Allen & Hemsley v D.F.C. of T. & Ors. 89 ATC 4295, the Full Federal Court held that the doctrine of legal professional privilege applied to restrict the powers of the Federal Commissioner of Taxation under Section 263 of the *Income Tax Assessment Act 1936*. The Court also held that the (Commonwealth) taxation officer was obliged to ensure that Citibank, and in particular its staff, had, in the circumstances, adequate opportunity to make claims of privilege on behalf of its clients.
- 7 It is recognised that a legal adviser has an obligation to a client or former client not to permit access to privileged documents unless the client has waived the privilege and that difficulties may arise in certain circumstances in determining the proper application of the law.
- 8 It is recognised that the Commissioner or state taxation officer has a right to access all documents that are not subject to a claim of privilege. *The Commissioner’s or state taxation officer’s right of access to documents etc. is limited only by the requirement that the power must be exercised in good faith and in the proper exercise of their powers under the relevant state taxation laws* (See Murphy J in F.C. of T v ANZ Banking Group Ltd (1979) 79 ATC 4039 at 4057).
- 9 Therefore, it is considered appropriate that a procedure should be recognised for dealing with documents which may be subject to a claim of legal professional privilege.
- 10 The Commissioner and state taxation officers will follow the guidelines when seeking access to documents held at legal advisers' premises and where legal professional privilege is claimed.
- 11 The aim of these guidelines is to:

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- ensure that an opportunity exists at all times for a proper claim of legal professional privilege to be made in respect of privileged documents etc.;
- ensure that while claims are made and determined, the integrity of the documents etc. are assured;
- minimise both the frequency and volume of disputes;
- resolve any disputes as quickly as possible and with minimal disruption to all parties; and,
- assist state taxation officers in obtaining access to documents etc. which are not the subject of privilege claims.

### LEGAL PROFESSIONAL PRIVILEGE

- 12 Legal professional privilege attaches to confidential communications passing between a client and his/her legal adviser, if the communications were made for the *sole purpose* of:
  - enabling the client to obtain, or the legal adviser to give, legal advice; or,
  - litigation that is actually taking place or was in the contemplation of the client at the relevant time.
- 13 Legal professional privilege also attaches to confidential communications passing between the legal adviser or client and third parties if made for the *sole purpose* of litigation which is actually taking place or is in contemplation at the time.
- 14 The communication will be privileged only where the legal adviser was acting in that capacity and the relationship of legal adviser and client existed: Cross on Evidence 3rd Australian Ed at p635.
- 15 The privilege does not apply to communications made:
  - before the client contemplated obtaining, or the legal adviser contemplated giving, legal advice; or
  - in connection with the commission of a fraud, crime or other illegal purpose.
- 16 Legal professional privilege does not extend:
  - to protect things lodged with a legal adviser simply for the purpose of obtaining immunity from production: F.C. of T. v ANZ Bank Group Ltd. 79 ATC 4039 and Baker v Campbell 1983 ALR 385; or
  - to physical objects, eg., cash or bullion contained in a safety deposit box: Baker v Campbell, supra.

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- 17 The privilege is the privilege of the client, not that of the legal adviser and may be waived by the client only.
- 18 Only documents representing legal advice or created or brought into existence for the sole purpose either of submission to legal advisers for advice or use in actual or contemplated legal proceedings, fall within the privilege.
- 19 In *Trade Practices Commission v Sterling* (1978) 36 FLR 244 at 245, 246 *Lockhart J* described a number of classes of documents which attracted legal professional privilege. *His Honour made it clear that legal professional privilege was not limited to these types of documents.* The purpose of setting them out was to give guidance to those making an assessment as to whether legal professional privilege applied. Those classes of communications and documents are as follows:
  - (i) any communication between a party and his/her professional legal adviser if it is confidential and made to or by the professional adviser in his/her professional capacity and with a view to obtaining or giving legal advice or assistance, notwithstanding that the communication is made through agents of the party and the solicitor or agent of either of them;
  - (ii) any document prepared with a view to its being used as a communication of this class, although not in fact so used;
  - (iii) communications between the various legal advisers of the client, for example between the solicitor and his/her partner or city agent with a view to the client obtaining legal advice or assistance;
  - (iv) notes, memoranda, minutes or other documents made by the client or officers of the client or the legal adviser of the client, of communications which are themselves privileged, or containing a record of those communications, or relating to information sought by the client's legal adviser to enable him/her to advise the client or to conduct litigation on behalf of the client;
  - (v) communications and documents passing between the party's solicitor and a third party if they are made or prepared when litigation is anticipated or commenced, for the purposes of the litigation, with a view to obtaining advice as to it or evidence to be used in it or information which may result in the obtaining of such evidence;
  - (vi) communications passing between the party and a third party (who is not the agent of the solicitor to receive the communication from the party) if they are made with reference to litigation either anticipated or commenced, and at the request or suggestion of the party's solicitor; or, even without any such request or suggestion, they are made for the purpose of being put before the solicitor with the object of obtaining advice or enabling him/her to prosecute or defend an action; and

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- (vii) knowledge, information or belief of the client derived from privileged communications made by his/her solicitor or his/her agent.

20 Examples of privileged communications or documents include:

- (i) a detailed bill of costs or memorandum of fees but only if it discloses the nature of the advice sought or given (Packer v DFCT 84 ATC 4666);
- (ii) advice and opinions of a legal adviser (Brewer v Castles (No. 3) (1984) 52 ALR 581);
- (iii) a solicitor's notes of a conference with officers of a client company (Macedonia Pty. Ltd. v FCT (1987) 18 ATR 929);
- (iv) copies of privileged documents generally will also be privileged (Vardas v South British Insurance Co. Ltd. [1984] 2 NSWLR 652);
- (v) drafts or copies of documents created for the purpose of submitting a report to or seeking the advice of a solicitor (Brambles Holdings v Trade Practices Commission (No. 3) (1981) 58 FLR 452);
- (vi) briefs and copies of solicitors' briefs to counsel;
- (vii) formal or informal written communication by the client to his/her legal adviser or vice versa; and,
- (viii) solicitor's diary notes including Counsel's advice.

These are merely examples and are subject to the requirements detailed in paragraph 19.

21 In circumstances where legal advice is given by an “in-house” legal adviser the privilege should only apply to advice given by such persons who are listed on a roll of legal practitioners and hold a current practising certificate in a State/Territory of Australia or work under the supervision of such a person. Ultimately, any doubt as to whether or not a person is a legal adviser, subject to these guidelines, is a matter which may be decided by a Court. (Waterford v Commonwealth of Australia (1987) 163 CLR 54; D.F.C. of T. v Citibank 88 ATC 4941; Alfred Crompton Amusement Machines Ltd v Customs & Excise Commissioners (1972) 2QB 102 at p.129; and A-G (NT) v Kearney (1985) 158 CLR 500).

## DOCUMENTS NOT COVERED BY PRIVILEGE

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22 The following list details some categories of communication which would not, in the absence of unusual circumstances, attract privilege:

- (i) documents which constitute or evidence transactions; eg., contracts, conveyances, declarations of trust, offers or receipts, even if they are delivered to a solicitor or counsel for advice or use in litigation Baker v Campbell, per Murphy J. at page 409 supra; also accounting, financial or banking records, invoices, company minutes, etc;
- (ii) documents which would otherwise satisfy the requirements of privilege but which were not intended to be confidential when made; Lloyd v Mostyn 152 ER 558 and Baker v Campbell, supra;
- (iii) documents or communications made for, or involving the participation in, a fraud or an illegal purpose. Murphy J., in Baker v Campbell, supra, said: "It is not available if a client seeks legal advice in order to facilitate the commission of crime or fraud or civil offence (whether the adviser knows or does not know of the unlawful purpose)";
- (iv) a solicitor's trust account records; Packer and Ors v Deputy Federal Commissioner of Taxation 84 ATC 4666 and Allen Allen & Hemsley v D.F.C. of T. (1988) 81 ALR 614, 626;
- (v) documents brought into existence for more than one purpose. If the existence of the document can be explained, in part only, by a purpose other than submission to a legal adviser for advice or for use in legal proceedings, then it will not be privileged;
- (vi) fax books recording faxes sent, to the extent that they do not disclose the actual advice Sharp v DFCT 88 ATC 4165, 4184;
- (vii) a written communication directing a solicitor to send money to a third party, Allen Allen & Hemsley v DFCT supra; and
- (viii) a list of clients or associates.

23 Where a state taxation officer has requested access to documents etc. held by a taxpayer and the taxpayer claims privilege, the taxpayer will be given the opportunity to contact his/her legal adviser to seek advice. Should the legal adviser choose to attend the taxpayer's premises in order to provide advice and/or guidance to the taxpayer, then the state taxation officer will allow reasonable time for the legal adviser to do so before proceeding to deal with any material the subject of privilege, in accordance with guidelines.

## GUIDELINES

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- 24 These guidelines proceed on the assumption that the state taxation officer seeking access to documents has been properly authorised by the Commissioner.
- 25 State taxation officers are expected to demonstrate courtesy, integrity, fairness and impartiality during access to legal advisers' premises and will not draw attention to the proceedings at hand.
- 26 The intent of these guidelines is that a state taxation officer will not inspect, copy or remove any document etc. to which access is being sought and which is held by a legal adviser, until the legal adviser has been given the opportunity to claim legal professional privilege on behalf of his/her client. Where a claim is made, but is disputed by the state taxation officer, the state taxation officer will not inspect any document the subject of the claim until either:
  - (i) the claim is abandoned or waived; or
  - (ii) the claim is dismissed by a court.
- 27 When seeking access to documents held at the premises of a legal adviser, state taxation officers will:
  - (i) identify themselves by name, advise that he/she is an authorised officer of the State Taxation Office and produce his/her authority (the authority should always be retained by the state taxation officer and not be surrendered to another person);
  - (ii) advise of the Act and specify the legislative powers under which enquiries are being made;
  - (iii) if the legal adviser, their partner(s), principal(s) or employee(s) are suspected of involvement in the commission of an offence the state taxation officer should say so;
  - (iv) in the case where a search warrant is to be executed, read aloud the contents of the warrant to the legal adviser or delegate and provide a copy of the warrant;
  - (v) indicate the types of documents or other information to which access is sought;
  - (vi) seek the assistance of the legal adviser in facilitating access; and,
  - (vii) give to the legal adviser a copy of these guidelines.

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- 28 If no partner, principal or legal adviser authorised by a partner or principal is in attendance at the premises then, if practicable, relevant documents or that part of the premises where they are held or believed to be held should be sealed and access by all persons deferred for a reasonable period to enable a partner, principal or an authorised legal adviser to attend. If sealing that part of the premises is impracticable, then the state taxation officer, in an appropriate case, may simply await the arrival of one of the above mentioned persons.
- 29 If a reasonable time elapses without the attendance of either a partner, principal or legal adviser authorised by a partner or principal, then the state taxation officer, in the presence of the legal adviser claiming privilege, may proceed to deal with the documents subject to the claim of privilege, in accordance with these guidelines.
- 30 A reasonable time will be allowed to enable the legal adviser to consult with the client(s) and/or to obtain legal advice.
- 31 Having informed the client(s) of the position and/or having obtained legal advice, the legal adviser should assist the state taxation officer by locating all documents which the state taxation officer wishes to access.
- 32 If the state taxation officer requires access to the office computer or other data recording system, the legal adviser should assist, if necessary, by explaining the system to the state taxation officer.
- 33 The procedures set out below should then be followed:
- (i) in respect of all documents identified by the legal adviser and/or identified by the state taxation officer in discussions with the legal adviser as potentially within the access request, the state taxation officer shall before proceeding to inspect, copy or remove the documents etc, ask the legal adviser if he/she wishes to claim legal professional privilege on behalf of the client in respect of any of the documents;
  - (ii) where a claim of privilege is made on behalf of the clients(s) the legal adviser should contact the client(s) to seek instructions as to whether the claim should be maintained; and
  - (iii) in respect of those documents etc. which are subject to a claim of legal professional privilege, the legal adviser and state taxation officer should proceed in accordance with the guidelines set out below. In respect of the remaining documents, the state taxation officer may then proceed to inspect and if required, copy the documents or otherwise exercise statutory powers in relation to those documents. Further, in respect of the execution of a search warrant, the state taxation officer may remove documents.



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- 34 A list of the documents in respect of which the legal adviser asserts legal professional privilege should be prepared by either the legal adviser, in the presence of the state taxation officer or by the state taxation officer acting on information from the legal adviser. The list will contain the following details:
- (i) the type of document(s), eg., letter, memorandum, opinion, statement of claim, advice, file note;
  - (ii) the nature of the document(s) contents, eg., a takeover, lease, financial arrangement, etc.;
  - (iii) the number of pages in each document;
  - (iv) the date each document was prepared or executed. If the document is not dated, then a note should be made to that effect;
  - (v) The author and addressee of the document, including who signed such (if known);
  - (vi) a physical description of each document, eg., typed or handwritten;
  - (vii) whether the document is an original, duplicate, photocopy, facsimile or carbon copy;
  - (viii) the grounds upon which legal professional privilege is claimed in respect of each document, at least in general terms; and
  - (ix) the person in whose name the privilege claim is made.
- 35 The details provided pursuant to paragraph 34 should not result in the disclosure of privileged information. The disclosure of the information in no way waives the privilege claimed.
- 36 The document should also be designated by number or letter affixed to the document to enable accurate identification. Where possible the number or letter should not interfere with the document's originality.
- 37 At any point during the preparation of the list, the state taxation officer may accept a claim for privilege over a document and leave the document concerned with the taxpayer's legal representative.
- 38 The list should then be endorsed to the effect that having regard to the claim of legal professional privilege made by the legal adviser on behalf of his/her client(s), State Taxation Office access has been sought but has not been obtained in respect of the listed documents and those documents have been sealed in an envelope(s) or container(s) (as referred to in paragraph 39).

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- 39 The endorsed list should then be signed and dated by the state taxation officer and legal adviser. The original list should be held by the state taxation officer. Two copies of the endorsed list should be made, one to be held by the legal adviser and the other copy attached to the envelope(s) or container(s).
- 40 All documents in respect of which privilege has been claimed should be placed by the legal adviser or his/her delegate, in the presence of the state taxation officer, into the envelope(s) or container (s) which should then be closed. Seals should be affixed across accessible areas of the envelope(s) or container(s). The legal adviser and state taxation officer should then sign their names, together with the date, across each seal.
- 41 The legal adviser should be permitted to take copies of any of the documents etc. before they are placed in the envelope(s) or container(s). Copies should be made by the legal adviser if he/she intends to show the documents to the client or to seek legal advice.
- 42 The state taxation officer and legal adviser or their delegates shall deliver the envelope(s) or container(s), together with a copy of the list detailing the contents of such, into the possession of the Registrar of the Supreme Court (Registrar), pending resolution of the disputed claim. If for geographical or other practical reasons the documents can not be delivered to the Registrar of the Supreme Court, then they are to be delivered to the Clerk of the nearest Magistrates Court (Clerk), pending resolution of the dispute and/or transfer to the Registrar of the Court in which the dispute process is to be heard.
- 43 If within five (5) clear working days (or such time as is agreed to by the parties in writing) of the delivery of the documents into the possession of the Registrar or Clerk, the legal adviser has informed the relevant state taxation officer or the State Taxation Office legal adviser (Crown Solicitor), that instructions to institute proceedings forthwith to establish the privilege claimed have been received from the client, then no further action will be taken by the state taxation officer in relation to obtaining the subject documents until:
- (i) a further period of two (2) clear working days (or such time as is agreed to by the parties in writing) elapses without proceedings having been instituted; or
  - (ii) the proceedings to establish privilege have failed; or
  - (iii) an agreement has been reached between the legal adviser and state taxation officer, in writing, as to the disclosure of some or all of the subject documents.
- 44 Within five (5) clear working days of claiming privilege, the legal adviser will review the privilege claim in consultation with the client and as soon as practicable thereafter advise the state taxation officer whether the claim will be waived or abandoned in respect of any of the documents and if so, which documents. Any documents, records or other

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information which are no longer the subject of a claim will be made available to the state taxation officer.

- 45 Where proceedings to establish the privilege claimed have been instituted, arrangements shall be made to deliver the documents held by the Registrar or Clerk into the possession of the Registrar of the Court in which proceedings have commenced. The documents are to be held by the Registrar pending an order by the Court.
- 46 Where proceedings to establish the claim of privilege have not been instituted within five (5) clear working days (or such further time as may be agreed to between the parties) of the delivery of the documents into the possession of the Registrar or Clerk, or where an agreement has been reached between the legal adviser and state taxation officer as to the disclosure of some or all of the documents, then the legal adviser and state taxation officer, or their delegates, shall attend upon the Registrar and request him/her, by written consent signed by both parties, to release into the possession of the state taxation officer all the documents or only those documents which have been agreed.
- 47 The Commissioner recognises the duty that a legal adviser owes to his/her client. However, the Commissioner expects that the legal adviser will assert a claim for privilege only for documents which are, or may be, the subject of such a claim.
- 48 The Commissioner also recognises that a legal adviser who strictly complies with the guidelines and does not make a specious or false claim, will not be hindering or obstructing a state taxation officer in the performance of his/her duties.
- 49 It should be noted that a person may face prosecution under State Taxation legislation for hindering or obstructing a state taxation officer in the performance of his/her duties.
- 50 These guidelines relate to access of the Commissioner of State Taxation, or an authorised officer, to documents at the premises of solicitors and barristers. Documents which may attract a claim of legal professional privilege may be held by a client or other party. If the client or other party raises a claim of legal professional privilege in relation to documents to which access is sought, then State Taxation officers will allow a reasonable opportunity to the client or other party to obtain advice and the attendance of a legal adviser. If the legal adviser attends forthwith at the premises at which access is sought, these guidelines will be followed.

### **REVIEW**

- 51 These guidelines will be monitored and reviewed from time to time, to ensure currency of the contents and that the required outcomes are being attained.

### **ATTACHMENTS**

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Provisions relating to powers of access.

**FURTHER INFORMATION?**

***Location***

State Taxation Office  
State Administration Centre  
200 Victoria Square East  
ADELAIDE SA 5000

***Postal***

Commissioner of State Taxation  
State Taxation Office  
Box 2149 GPO  
ADELAIDE SA 5001

***Telephone***

(08) 8226 3768

***Facsimile***

(08) 8226 3834

***Website***

<http://www.treasury.sa.gov.au/tax.html>

12 August 1997

COMMISSIONER OF STATE TAXATION

**ATTACHMENT — PROVISIONS RELATING TO POWERS OF ACCESS.**

**Taxation Administration Act 1996 - Sections 70 to 75**

***Power to require information, instruments or records or attendance for examination***

**70.** (1) *The Commissioner may, for a purpose related to the administration or enforcement of a taxation law, by written notice served on a person, require the person—*

- (a) *to provide to the Commissioner (either orally or in writing) information that is described in the notice; or*
- (b) *to attend and give evidence before the Commissioner or an authorised officer; or*
- (c) *to produce to the Commissioner an instrument or record in the person's custody or control that is described in the notice.*

(2) *The Commissioner must, if the requirement is made of a person to determine that person's tax liability, indicate in the notice that the requirement is made for that purpose, but the Commissioner is not otherwise required to identify a person in relation to whom any information, evidence, instrument or record is required under this section.*

(3) *The Commissioner may require that information or evidence be provided or given under this section on oath, or in the form of, or verified by, a statutory declaration.*

(4) *If a person, without reasonable excuse, refuses or fails—*

- (a) *to comply with the requirements of a notice under this section within the period specified in the notice or any further period allowed by the Commissioner; or*
- (b) *to comply with any other requirement of the Commissioner as to the giving of evidence or the manner in which information or evidence is to be provided or given under this section,*

*the person is guilty of an offence.*

*Maximum penalty: \$10 000.*

(5) *A requirement under this section is a non-reviewable decision.*

***Powers of entry and inspection***

**71.** (1) *An authorised officer may, for a purpose related to the administration or enforcement of a taxation law—*

- (a) *enter and remain on premises; and*

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- (b) *require any person on the premises to answer questions or otherwise furnish information; and*
- (c) *require any person on the premises to produce any instrument or record in the person's custody or control (including a written record that reproduces in an understandable form information stored by computer, microfilm or other means or process); and*
- (d) *require the owner or occupier of the premises to provide the authorised officer with such assistance and facilities as is or are reasonably necessary to enable the authorised officer to exercise powers under this Part; and*
- (e) *seize and remove any instrument or record on behalf of the Commissioner.*

(2) *Entry may be made at any reasonable time.*

(3) *An authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise any powers under this section, produce the officer's identity card for the inspection of the person.*

### **Search warrant**

**72.** (1) *If a magistrate is satisfied, on the application of the Commissioner (which must be supported by an affidavit or other sworn evidence), that there is a reasonable ground for suspecting that an instrument or record relevant to the assessment or payment of tax may be found in certain premises, the magistrate may issue a warrant authorising an authorised officer together with any assistants named or described in the warrant—*

- (a) *to enter those premises (using such force as is necessary for the purpose); and*
- (b) *to search the premises and to break open and search anything in the premises in which an instrument or record may be stored or concealed; and*
- (c) *to seize and remove, on behalf of the Commissioner, any instrument or record that appears to be relevant to the assessment or payment of tax.*

(2) *The powers conferred by this section are in addition to, and not in derogation of, any other powers conferred by law.*

### **Use and inspection of instruments or records produced or seized**

**73.** (1) *This section applies to an instrument or record that has been produced to the Commissioner or seized and removed by an authorised officer.*

(2) *An instrument or record to which this section applies may be retained for the purpose of enabling the instrument or record to be inspected and enabling copies of, or extracts or notes from, the instrument or record to be made or taken by or on behalf of the Commissioner.*

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(3) *However, if the instrument or record is liable to tax or is required by the Commissioner as evidence for the purposes of legal proceedings, the instrument or record may be retained until the tax is paid or the proceedings are finally determined.*

(4) *The Commissioner must permit a person who would be entitled to inspect the instrument or record if it were not in the possession of the Commissioner to inspect the instrument or record at any reasonable time.*

(5) *Nothing in this section prejudices a lien a person has on the instrument or record.*

(6) *A decision under subsection (2) or (3) is a non-reviewable decision.*

### **Self-incrimination**

**74.** (1) *A person is not excused from answering a question, providing information or producing an instrument or record, when required to do so under this Act, on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.*

(2) *However, if the person objects to answering the question, providing the information or producing the instrument or record on that ground, the answer, information, instrument or record is not admissible against the person in any criminal proceedings other than—*

- (a) *proceedings for an offence with respect to false or misleading statements, information or records; or*
- (b) *proceedings for an offence in the nature of perjury.*

### **Hindering or obstructing authorised officers, etc.**

**75.** (1) *A person who—*

- (a) *hinders or obstructs an authorised officer in the exercise of a power under this Division; or*
- (b) *without reasonable excuse, refuses or fails to comply with a requirement of an authorised officer under this Division,*

*is guilty of an offence.*

*Maximum penalty: \$10 000.*

(2) *A person is not guilty of an offence under this section arising from the entry of an authorised officer onto premises unless it is established that, at the material time, the authorised officer—*

- (a) *identified himself or herself as an authorised officer; and*

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- (b) *warned the person that a refusal or failure to comply with the requirement constituted an offence.*

### **Taxation (Reciprocal Powers) Act 1989 - Sections 5 to 9**

#### ***Investigatory powers in relation to records***

5. (1) *For the purpose of undertaking an investigation the South Australian Commissioner may—*

- (a) *at any reasonable time enter premises in which the Commissioner has reason to believe records relevant to the enforcement of the corresponding law are kept and for that purpose the Commissioner may direct a person in charge of a vehicle to stop the vehicle or to move it to a place nominated by the Commissioner;*
- (b) *require any person on the premises to produce records kept on the premises to the Commissioner for inspection and copying and, where the premises are comprised of a vehicle, require the person in charge of the vehicle to produce records carried in the vehicle for that purpose;*
- (c) *require any person (by notice in writing) to produce records to the Commissioner for inspection and copying;*
- (d) *remove and retain records produced under paragraph (b), and retain records produced under paragraph (c), for inspection and copying;*
- (e) *if any record referred to in paragraphs (b) or (c) is not in English—require any person to produce for the Commissioner a written statement of the contents of the record in English.*

(2) *Records taken by the Commissioner under this section must not be taken out of South Australia without the written permission of the owner of the records.*

(3) *A person who would have been entitled to inspect a record if it had not been taken by the Commissioner under this section is entitled to inspect it while it is in the Commissioner's possession.*

(4) *Nothing done under this section prejudices a lien on a record.*

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#### ***Investigatory powers that may be exercised pursuant to a warrant***



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7. (1) *When undertaking an investigation the following powers may be exercised by the South Australian Commissioner pursuant to a warrant—*

- (a) *the forcible entry of premises;*
- (b) *the searching of premises for records or goods (including the forcible opening of any container or place in which records or goods might be kept or concealed).*

(2) *A justice may issue a warrant authorising the Commissioner to use force to enter premises or to conduct a search on premises if satisfied by an affidavit or other sworn evidence that reasonable grounds for issuing the warrant exist.*

(3) *If the Commissioner has reason to suspect that urgent action is required in order to prevent destruction of evidence of an offence against a corresponding law, the Commissioner may exercise powers under subsection (1) without a warrant.*

### **General investigatory powers**

8. (1) *For the purposes of undertaking an investigation the South Australian Commissioner may—*

- (a) *require any person (by notice in writing) to appear before the Commissioner at a place in South Australia to answer questions;*
- (b) *require any person (by notice in writing) to furnish the Commissioner with such information as the Commissioner requires.*

(2) *The Commissioner may require the evidence or information to be given on oath or affirmation (administered by the Commissioner) or to be verified by statutory declaration.*

(3) *A person appearing before the Commissioner pursuant to subsection (1) is entitled to be paid by the Commissioner an allowance equivalent to allowances payable to witnesses in local courts.*

### **General provisions relating to investigations**

9. (1) *A person undertaking an investigation under delegation must, if requested to do so, produce to a person in relation to whom he or she proposes to exercise any of the powers under this Act—*

- (a) *a certificate signed by the corresponding Commissioner stating that the investigator is entitled to exercise those powers and a certificate signed by the South Australian Commissioner stating that those powers have been delegated to the corresponding Commissioner by the South Australian Commissioner; or*
- (b) *a certificate signed by the South Australian Commissioner stating that the investigator is entitled to exercise those powers.*

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(2) *A person who—*

- (a) *hinders the South Australian Commissioner in the exercise of powers under this Act; or*
- (b) *fails without reasonable excuse to comply with a requirement made or direction given by the Commissioner under this Act; or*
- (c) *fails to answer a question put by the Commissioner to the best of his or her knowledge, information or belief,*

*is guilty of an offence.*

*Penalty: Division 4 fine.*

(3) *Subject to subsection (4), a person may not decline on the grounds of self-incrimination to answer a question put by the Commissioner under this Act.*

(4) *A person may decline to answer such a question if the answer could be used against him or her in a criminal prosecution under the corresponding law or any other law in force in the same jurisdiction as the corresponding law.*

(5) *The answer to such a question will not be admissible in criminal proceedings in this State except in proceedings for an offence against this section.*

### **Tobacco Products Regulation Act 1997 - Sections 64 to 69**

#### **Identification of authorised officers**

**64.** (1) An authorised officer, other than a member of the police force, must be issued with an identity card—

- (a) containing the person's name and a photograph of the person; and
- (b) stating that the person is an authorised officer for the purposes of this Act.

(2) Where the powers of an authorised officer have been limited by conditions under this Part, the identity card issued to the authorised officer must contain a statement of the limitation on the officer's powers.

(3) An authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise any powers under this Act, produce for the inspection of the person—

- (a) in the case of an authorised officer who is a member of the police force and is not in uniform—his or her certificate of authority; or

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- (b) in the case of an authorised officer who is not a member of the police force—his or her identity card.

### **Power to require information or records or attendance for examination**

**65.** (1) The Minister or the Commissioner may, for a purpose related to the administration or enforcement of this Act, by written notice served on a person, require the person—

- (a) to provide to the Minister or the Commissioner (either orally or in writing) information that is described in the notice; or
- (b) to attend and give evidence before the Minister or the Commissioner or an authorised officer; or
- (c) to produce to the Minister or the Commissioner a record in the person's custody or control that is described in the notice.

(2) The Minister or the Commissioner may require that evidence be given under this section on oath.

(3) If a person, without reasonable excuse, refuses or fails—

- (a) to comply with the requirements of a notice under this section within the period specified in the notice or any further period allowed by the Minister or the Commissioner; or
- (b) to comply with any other requirement of the Minister or the Commissioner as to the giving of evidence or the manner in which information or evidence is to be provided or given under this section,

the person is guilty of an offence.

Maximum penalty: \$20 000.

### **Powers of authorised officers**

**66.** (1) Subject to this Part—

- (a) an authorised officer may enter and remain on premises and inspect the premises and any part of or thing in or on the premises as reasonably required in connection with the administration or enforcement of this Act;
- (b) with the authority of a warrant issued under this Part or in circumstances in which the authorised officer reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on premises;
- (c) require a person to produce a record, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process, as reasonably required with the administration or enforcement of this Act;

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- (d) examine, copy or take extracts from a record or require a person to provide a copy of a record, as reasonably required in connection with the administration or enforcement of this Act;
- (e) examine and test ventilation and air conditioning equipment in an enclosed public dining or cafe area;
- (f) take photographs, films, audio, video or other recordings as reasonably required in connection with the administration or enforcement of this Act;
- (g) seize and retain tobacco products or records if the authorised officer reasonably suspects that an offence against this Act has been committed in relation to the products or records or that the products or records may afford evidence of an offence against this Act;
- (h) if the authorised officer reasonably suspects that a person has sold or purchased tobacco products or otherwise engaged in tobacco merchandising in contravention of this Act, seize and retain all tobacco products on or adjacent to premises that the authorised officer reasonably suspects are being used by the person for tobacco merchandising;
- (i) require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, an offence against this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;
- (j) require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration or enforcement of this Act to answer questions in relation to those matters;
- (k) require a person holding or claiming to hold a licence to produce it for inspection;
- (l) give directions reasonably required in connection with the exercise of a power conferred by this subsection or otherwise in connection with the administration and enforcement of this Act.

(2) A magistrate may issue a warrant for the purposes of subsection (1) if satisfied that the warrant is reasonably required for the administration or enforcement of this Act.

(3) In the exercise of powers under this Act an authorised officer may be assisted by such persons as he or she considers necessary in the circumstances.

### **Offence to hinder, etc., authorised officers**

**67.** A person who—

- (a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by this Act; or

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- (b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
- (c) refuses or fails to comply with a requirement or direction of an authorised officer under this Part; or
- (d) when required by an authorised officer under this Part to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or
- (e) falsely represents, by words or conduct, that he or she is an authorised officer,

is guilty of an offence.

Maximum penalty: \$20 000.

### **Self-incrimination**

**68.** (1) It is not an excuse for a person to refuse or fail to answer a question or to produce or provide a record or information as required under this Part on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

(2) If compliance by a person with a requirement to answer a question or to produce or provide a record or information might tend to incriminate the person or make the person liable to a penalty, then—

- (a) in the case of a person who is required to produce or provide a record or information—the fact of production or provision of the record or the information (as distinct from the contents of the record or the information); or
- (b) in any other case—the answer given in compliance with the requirement,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings under this Act).

### **Powers in relation to seized tobacco products**

**69.** (1) If tobacco products are seized under this Part, the following provisions apply:

- (a) the Commissioner may, if satisfied that it is necessary to do so to avoid loss due to the deterioration of the products, determine that the products are forfeited to the Crown and sell the products by public tender;
- (b) apart from paragraph (a), the products will be forfeited to the Crown if a court convicts a person of an offence against this Act in relation to the products, unless the court determines that the circumstances of the offence were trifling;

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- (c) subject to this section, the owner of the products will be entitled to recover the products or, if the products have been forfeited by determination of the Commissioner or have deteriorated, will be entitled to be paid compensation by the Crown in respect of the products—
- (i) if a prosecution for an offence against this Act in relation to the products has been commenced but—
    - (A) the defendant is acquitted; or
    - (B) the prosecution is withdrawn or lapses; or
    - (C) the court hearing the proceedings determines that the circumstances of the offence were trifling; or
  - (ii) if—
    - (A) a prosecution for an offence against this Act in relation to the products has not been commenced within three months of the date of seizure; and
    - (B) the District Court determines, on application by the owner, that the justice of the case requires that the products be returned or that compensation be paid;
- (d) at the end of the period of three years from the date of seizure—
- (i) if the products have not been forfeited or returned to the owner, they are forfeited to the Crown; and
  - (ii) in any case, the owner will not have any right to recover the products or be paid compensation in respect of the products (other than a right that has already arisen or been determined under paragraph (c));
- (e) if the products are forfeited otherwise than under paragraph (a), the Commissioner may sell the products by public tender;
- (f) any compensation payable under this section in respect of the products will be in an amount equal to the consideration paid by the owner of the products when he or she purchased them or, where the owner is the manufacturer of the products, their value (determined in accordance with section 16 for the purpose of assessing licence fees) as at the date of seizure;
- (g) the owner of the products has no right to recover the products or be paid compensation in respect of the products apart from under this section.

(2) If tobacco products, when seized under this Part, are on or adjacent to premises that are being used for tobacco merchandising by a person who has sold or purchased tobacco products or otherwise engaged in tobacco merchandising in contravention of this Act, any such contravention by the person is, for the purposes of subsection (1), to be taken to be an offence against this Act in relation to the products so seized.

### **Petroleum Products Regulation Act 1995 - Section 44 and 45**

#### ***Powers of authorised officers***

**44.** (1) *Subject to this Part, an authorised officer may—*

- (a) *enter and remain on premises and inspect premises for any reasonable purpose connected with the administration or enforcement of this Act;*
- (b) *with the authority of a warrant issued under this Part or in circumstances in which the authorised officer reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on premises;*
- (c) *give directions with respect to the stopping or movement of a vehicle as reasonably required in connection with the administration or enforcement of this Act;*
- (d) *require a person to produce a record, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process, as reasonably required in connection with the administration or enforcement of this Act;*
- (e) *examine, copy or take extracts from a record, or require a person to provide a copy of a record, as reasonably required in connection with the administration or enforcement of this Act;*
- (f) *remove and retain a record for so long as is reasonably necessary for the purpose of making a copy of the record;*
- (g) *take photographs, films, audio, video or other recordings as reasonably required in connection with the administration or enforcement of this Act;*
- (h) *examine or test any plant or other thing for the purpose of determining whether a provision of this Act is being or has been complied with, or cause or require it to be so examined or tested, or seize it or require its production for such examination or testing;*
- (i) *take samples of a substance or thing from premises for analysis as reasonably required in connection with the administration or enforcement of this Act;*

- (j) *require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;*
- (k) *require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration or enforcement of this Act to answer questions in relation to those matters;*
- (l) *require a person holding or required to hold a licence or permit to produce it for inspection;*
- (m) *give directions reasonably required in connection with the exercise of a power conferred by this subsection or otherwise in connection with the administration or enforcement of this Act.*

(2) *A magistrate may issue a warrant for the purposes of subsection (1) if satisfied that the warrant is reasonably required for the administration or enforcement of this Act.*

(3) *In the exercise of powers under this Act an authorised officer may be assisted by such persons as he or she considers necessary in the circumstances.*

(4) *An authorised officer may require an occupier of any place or a person apparently in charge of any plant, equipment, vehicle or other thing to give to the authorised officer or a person assisting the authorised officer such assistance as is reasonably required by the authorised officer for the effective exercise of powers conferred by this Act.*

#### ***Offence to hinder, etc., authorised officers***

**45.** *A person who—*

- (a) *hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by this Act; or*
- (b) *uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or*
- (c) *refuses or fails to comply with a requirement or direction of an authorised officer under this Part; or*
- (d) *when required by an authorised officer under this Part to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or*
- (e) *falsely represents, by words or conduct, that he or she is an authorised officer,*



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*is guilty of an offence.*

*Maximum penalty: \$5 000.*