

# EXPOSURE DRAFT

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Inserts for  
**Tax Laws Amendment (2016 Measures  
No. 1) Bill 2016: Commissioner’s  
remedial power**

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Schedule CRP	The day after this Act receives the Royal Assent.	

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## Schedule CRP—Commissioner’s remedial power

### *Income Tax Assessment Act 1997*

#### **1 Subsection 995-1(1)**

Insert:

*Finance Department* means the Department administered by the \*Finance Minister.

*Finance Secretary* means the Secretary of the \*Finance Department.

### *Taxation Administration Act 1953*

#### **2 After Part 5-5 in Schedule 1**

Insert:

## **Part 5-10—Commissioner’s remedial power**

### **Division 370—Commissioner’s remedial power**

#### **Table of Subdivisions**

Guide to Division 370

370-A Commissioner’s remedial power

#### **Guide to Division 370**

##### **370-1 What this Division is about**

The Commissioner may determine a modification of the operation of a provision of a taxation law. The modification must not be inconsistent with the purpose or object of the provision.

Furthermore:

- (a) the Commissioner must consider the modification to be reasonable; and

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(b) the Department, or the Finance Department, must advise that any impact of the modification on the Commonwealth budget would be negligible.

Example: After a provision of a taxation law is enacted, it is found that, because of developments in the practices of businesses or the Commissioner, the provision imposes disproportionate compliance costs on taxpayers. The Commissioner might, under this Division, be able to modify the operation of the provision to give timely relief.

An entity must not apply a modification if it would produce a less favourable result for the entity.

## Subdivision 370-A—Commissioner’s remedial power

### Table of sections

370-5	Commissioner’s remedial power
370-10	Purpose or object
370-15	Commencement and sunseting of determinations

### 370-5 Commissioner’s remedial power

- (1) The Commissioner may, by legislative instrument, determine a modification of the operation of a provision of a \*taxation law if:
  - (a) the modification is not inconsistent with the purpose or object of the provision; and
  - (b) the Commissioner considers the modification to be reasonable, having regard to:
    - (i) the purpose or object of the provision; and
    - (ii) whether the cost of complying with the provision is disproportionate to that purpose or object; and
  - (c) any of the following persons advises the Commissioner that any impact of the modification on the Commonwealth budget would be negligible:
    - (i) the Secretary of the Department, or an APS employee in the Department who is authorised by the Secretary for the purposes of this paragraph;
    - (ii) the \*Finance Secretary, or an APS employee in the \*Finance Department who is authorised by the Finance Secretary for the purposes of this paragraph.

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- 1 (2) If the Commissioner determines a modification of the operation of  
2 a provision of a \*taxation law under subsection (1), the provision  
3 operates with the modification.

4 *Scope of determination*

- 5 (3) A modification applies generally, unless the determination states  
6 that the modification only applies:  
7 (a) to a specified class of entities; or  
8 (b) in specified circumstances.
- 9 (4) An entity (the *first entity*) must treat a modification as:  
10 (a) not applying to the first entity; and  
11 (b) not applying to any other entity;  
12 if the modification would produce a less favourable result for the  
13 first entity.
- 14 (5) If the Commissioner determines a modification of the operation of  
15 a provision of a \*taxation law, the modification (as applied by  
16 subsection (2)) does not affect a right or liability under an order  
17 (including any judgment, conviction or sentence) made by a court  
18 before the commencement of the determination.

19 **370-10 Purpose or object**

20 In applying paragraph 370-5(1)(a) or subparagraph 370-5(1)(b)(i):

- 21 (a) consideration may be given to any material (including  
22 material not forming part of the provision of the \*taxation  
23 law) that would assist in ascertaining the purpose or object of  
24 the provision; and  
25 (b) without limiting paragraph (a) of this section, consideration  
26 must be given to any documents that may be considered  
27 under subsection 15AB(2) of the *Acts Interpretation Act*  
28 *1901* (and that subsection as applied by section 13 of the  
29 *Legislation Act 2003*) in relation to the provision.

30 Example: An explanatory memorandum, second reading speech or report of  
31 a parliamentary committee.

32 **370-15 Commencement and sunseting of determinations**

- 33 (1) A determination made under section 370-5 must not commence  
34 before the first day it is no longer liable to be disallowed, or to be
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taken to have been disallowed, under section 42 of the *Legislation Act 2003*.

- (2) Subsection 50(1) (about sunseting) of the *Legislation Act 2003* applies to a determination made under section 370-5 in this Schedule as if a reference in that subsection to the tenth anniversary of the registration of the determination were a reference to the fifth anniversary of that registration.