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## Public Ruling General:

### **SUBPOENAS, WARRANTS AND NOTICES TO PRODUCE DIRECTED TO THE COMMISSIONER**

*A Public Ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a Public Ruling, the change in the law overrides the Public Ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.*

## What this Ruling is about

1. From time to time, subpoenas, warrants and other legal process and notices are served on the Commissioner to gain access to information obtained by the Commissioner and revenue officers in the course of administering revenue laws.
2. This Public Ruling explains the Commissioner's obligations under the revenue laws in relation to those requests and demands for information.
3. In this Public Ruling, 'revenue laws' refers to the *Taxation Administration Act 2001* (TAA), the *Payroll Tax Act 1971* (PRTA), the *Land Tax Act 2010* (LTA), the *Debits Tax Act 1990*<sup>1</sup>, the *Fuel Subsidy Act 1997* (FSA), the *First Home Owner Grant Act 2000* (FHOGA), the *Duties Act 2001* (DA), the *Stamp Act 1894* (SA) and the *Community Ambulance Cover Act 2003* (CACA).

## Ruling and explanation

4. The disclosure of any information or documentation obtained by the Commissioner or revenue officers in connection with the administration or enforcement of the revenue laws is prohibited, except where expressly permitted by the secrecy provisions of the revenue laws.<sup>2</sup>

<sup>1</sup> By s.8 of the *Debits Tax Act 1990 (Qld)*, the *Debits Tax Administration Act 1982 (Cwlth)* (DTAA) applied as law in Queensland subject to the modifications set out in Schedule 2 of the Queensland Act. The *Debits Tax Act 1990 (Qld)* was repealed by the *Debits Tax Repeal Act 2005*, effective from 1 July 2005.

<sup>2</sup> Section 111 TAA, s.7 DTAA, s.141 FSA and s.68 FHOGA

5. Unless the revenue laws expressly permit the disclosure of this information by the Commissioner or a revenue officer, the disclosure is an offence. Circumstances in which disclosure of information is expressly permitted by the revenue laws include where:
- (a) it is made in connection with the administration or enforcement of a relevant revenue law<sup>3</sup>
  - (b) the person to whose affairs the information or document relates has consented to the disclosure<sup>4</sup>
  - (c) it is made in connection with the administration or enforcement of a recognised law under the TAA or another law about taxation revenue<sup>5</sup>
  - (d) the disclosure is made under the FHOGA in connection with the administration or enforcement of another jurisdiction's First Home Owner Grant legislation<sup>6</sup> or the *First Home Saver Accounts Act 2008* (Cwlth)<sup>7</sup>
  - (e) the disclosure is expressly permitted or required by another Act<sup>8</sup>
  - (f) it is made for the purpose of proceedings arising out of the relevant revenue law<sup>9</sup>
  - (g) the disclosure is made to a member of the Queensland Police Service or the Australian Federal Police for an investigation or proceeding about a particular offence or suspected offence, where the Commissioner becomes aware of the offence or suspected offence from information obtained or held by the Commissioner in the course of administering the revenue laws<sup>10</sup>
  - (h) the disclosure is to another department as specified in the relevant revenue laws: e.g.
    - (i) to the Treasurer or an officer of the department for developing or monitoring taxation policies and administering the *Financial Accountability Act 2009*, s.21<sup>11</sup>
    - (ii) the chief executive of a department or a local government for keeping a record relating to the ownership, sale or value of interests of property<sup>12</sup>
    - (iii) the chief executive of customs under the *Customs Administration Act 1985* (Cwlth) or a delegate of the chief executive<sup>13</sup>
  - (i) the Commissioner is satisfied that it is appropriate in the circumstances, the Commissioner may disclose other confidential information to any person or for any purpose.<sup>14</sup>

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<sup>3</sup> Section 111(2)(c) TAA, s.7(4)(b) DTAA, s.141(2)(a) FSA and s.68(3)(c) FHOGA

<sup>4</sup> Section 111(2)(a) TAA, s.141(2)(b) FSA and s.68(3)(a) FHOGA

<sup>5</sup> Section 111(2)(d) TAA, s.7(4)(c) DTAA, s.141(3)(a) FSA and s.68(3)(c)(ii) FHOGA

<sup>6</sup> Section 68(3)(c)(i) FHOGA

<sup>7</sup> Section 68(3)(c)(iii) FHOGA

<sup>8</sup> Section 111(2)(b) TAA and s.68(3)(b) FHOGA

<sup>9</sup> Section 111(2)(e) TAA, ss.7(3) and (4)(a) DTAA, s.141(2)(c) FSA and s.68(3)(d) FHOGA

<sup>10</sup> Section 111(3) TAA, s.141(4) FSA and s.68(4) FHOGA

<sup>11</sup> Section 111(2)(f) TAA

<sup>12</sup> Section 111(2)(g) TAA

<sup>13</sup> Section 141(3)(b) FSA

<sup>14</sup> Section 111(4) TAA

**Disclosure of information in legal proceedings**

6. The revenue laws contain specific provisions regarding the disclosure of information in court or Queensland Civil and Administrative Tribunal (QCAT) proceedings.<sup>15</sup>
7. These provisions provide that a revenue officer is not required to produce or communicate in court any information acquired by the revenue officer in the performance of his or her duties unless the disclosure is specifically permitted under the particular revenue laws. This exception is limited to cases where the disclosure is:
  - (a) required in a proceeding for the administration or enforcement of a revenue law<sup>16</sup> or
  - (b) necessary to give effect to the provisions of the revenue law.<sup>17</sup>
8. Where a revenue officer is requested to disclose certain information in the course of court or QCAT proceedings or examination by a liquidator, the revenue officer should inform the court that he or she is unable to disclose the information as disclosure would breach the secrecy provisions of the relevant revenue law. The revenue officer should then state that he or she is open to the direction of the court or QCAT, as the case may be, on the matter.

**Subpoenas**

9. Legal process such as subpoenas and writs of non-party discovery seeking access to information or documents obtained by the Commissioner do not override the secrecy provisions.<sup>18</sup> The Commissioner is therefore not required to comply with subpoenas requesting access to information or documents obtained under the revenue laws unless the case falls within the limited circumstances in which disclosure by the Commissioner is permitted.
10. Where a subpoena or writ is served on the Office, it should be referred to the relevant Director or Deputy Commissioner. If the disclosure sought by the subpoena or writ is prohibited by the revenue laws, the Office will attempt to obtain agreement from the issuing party that disclosure is excused by the secrecy provisions. However, if attendance in Court of the officer served is still required by the issuing party, the officer will attend Court and bring the relevant secrecy provision under the revenue laws to the attention of the Court. The Court will then decide if the Office is excused from complying with the process.

**Warrants**

11. A search warrant issued under the *Crimes Act 1914* (Cwlth) binds the Crown in right of a State and authorises the search of State government premises and the seizure of documents connected with the investigation of Commonwealth offences.<sup>19</sup> This obligation overrides the secrecy provisions of the revenue laws.
12. When a warrant is served, it is referred to the Commissioner. Legal advice should be obtained on the validity and scope of the warrant prior to disclosure.

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<sup>15</sup> Section 113 TAA, s.7(3) DTAA, s.141A FSA and s.68(5) FHOGA

<sup>16</sup> Section 113(2) TAA, s.7(4)(a) DTAA, s.141A(2) FSA and s.68(5) FHOGA

<sup>17</sup> Section 7(3) DTAA

<sup>18</sup> Section 113 TAA, s.7(3) DTAA, s.141A FSA and s.68(5) FHOGA

<sup>19</sup> *Jacobsen and Dibb v Rogers* (1994-1995) 182 CLR 572

13. The Commissioner must comply with the terms of a properly executed search warrant issued under s.3E of the *Crimes Act 1914* (Cwlth) by allowing access to any existing document or record which is within the scope of the warrant.

**Notices under the *Crime and Misconduct Act 2001***

14. In respect of a 'notice to produce' issued under the *Crime and Misconduct Act 2001* (Crime and Misconduct Act), the Commissioner must comply with the notice to produce, unless the Commissioner has a reasonable excuse<sup>20</sup> or the information or document is subject to privilege.<sup>21</sup>
15. Privilege is defined in the Crime and Misconduct Act to include a ground of confidentiality.<sup>22</sup> A ground of confidentiality means a ground recognised at law that giving an answer or disclosing information would be a breach of an oath taken or statutory or commercial obligation or restriction to maintain secrecy.<sup>23</sup>
16. Despite the availability of claim of privilege, the Commissioner does not, by complying with a notice to produce, contravene the secrecy provisions contained in the relevant revenue laws. The Commissioner can disclose the information if it is within his possession and does not have to rely on the exceptions to secrecy under the revenue laws.<sup>24</sup>
17. However, ss.74(6) and 74A(5) of the Crime and Misconduct Act do not compel disclosure and a claim of privilege can be made if the Commissioner chooses.
18. Any requests for information from the Crime and Misconduct Commission should be referred to the Commissioner for consideration. Legal advice should be obtained on the validity and scope of the notice.

**Referral of served documents**

19. Documents served must be delivered immediately to the relevant Director or, in their absence, Deputy Commissioner.

**Date of effect**

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20. This Public Ruling takes effect from the date of issue.

David Smith  
Commissioner of State Revenue  
Date of Issue 30 June 2010

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<sup>20</sup> Sections 74(5) and 74A(4) of the Crime and Misconduct Act

<sup>21</sup> Sections 74(7) and 74A(6) of the Crime and Misconduct Act

<sup>22</sup> Schedule 2 of the Crime and Misconduct Act

<sup>23</sup> Schedule 2 of the Crime and Misconduct Act

<sup>24</sup> Sections 74(6), 74A(5) and 343 of the Crime and Misconduct Act

## References

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Public Ruling	Issued	Dates of effect	
		From	To
GEN008.5	30 June 2010	30 June 2010	30 September 2018
GEN008.4	15 April 2010	15 April 2010	29 June 2010
GEN008.3	1 December 2009	1 December 2009	14 April 2010
GEN008.2	3 July 2009	30 June 2009	30 November 2009
GEN008.1	24 February 2009	24 February 2009	29 June 2009
Supersedes Practice Direction GN 6.6	22 January 2009	22 January 2009	23 February 2009