

Commonwealth Places (Mirror Taxes Administration) Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

In *Allders International Pty Ltd v Commissioner for State Revenue (Vict)* (1996) 186 CLR 630 the High Court declared that a lease of a shop at Tullamarine Airport was not subject to stamp duty imposed by a State because of section 52 (i) of the Commonwealth Constitution. Section 52 (i) provides that the Commonwealth has exclusive power to legislate with respect to all places acquired by the Commonwealth for public places (**Commonwealth places**). The effect of section 52 (i) is that any State law that can be characterised as a law with respect to a Commonwealth place is, to that extent, inapplicable in Commonwealth places. The decision has important ramifications for State revenue as other taxes imposed by States might similarly be inapplicable to the extent that they tax persons, property or things done in Commonwealth places. At the request of the States, the Commonwealth has enacted a package of Acts to give effect to a scheme to protect the revenue of the States. The *Commonwealth Places (Mirror Taxes) Act 1998 (the Commonwealth Act)* applies State stamp duties, payroll taxes, financial institutions duty and debits taxes in Commonwealth places as Commonwealth taxes to the extent to which they cannot apply as State taxes in Commonwealth places because of section 52 (i) (**the mirror taxes**). The mirror taxes will apply according to the State taxation legislation but subject to any modifications made in accordance with section 8 of the Commonwealth Act. A State will obtain the benefit of the Commonwealth Act only after an arrangement is entered into as referred to in section 9 of the Commonwealth Act between the Governor-General and the Governor of the State. Under the mirror tax scheme, State officers will generally administer the mirror taxes in Commonwealth places in the same manner in which the mirrored State taxes are administered. Amounts that have been or are collected in respect of Commonwealth places in the State after 6 October 1997 (the date on which the Commonwealth Government announced the scheme) will be credited to the Commonwealth but will be returned to the States.

The objects of this Bill are to enable the necessary arrangements to be entered into to give effect to the scheme and to make provision for the administration and operation of New South Wales laws which are applied as Commonwealth laws in relation to Commonwealth places under the Commonwealth Act.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act. The clause provides for the mirror taxes (**the applied laws**) to operate with effect from 6 October 1997 once arrangements are in place under section 9 of the Commonwealth Act and proposed section 5.

Clause 3 defines certain words and expressions used in the proposed Act, including **State taxing law**,

applied law and **State authority**. The State taxing laws are the *Debits Tax Act 1990*, the *Duties Act 1997*, the *Pay-roll Tax Act 1971* and the *Stamp Duties Act 1920*, any other State law that imposes a tax that is prescribed under the Commonwealth Act and any other State law (such as the *Taxation Administration Act 1996*) to the extent that it is relevant to the operation of one of those laws. An **applied law** is defined as the provisions of a State taxing law that apply in relation to a Commonwealth place in accordance with the Commonwealth Act. A **State authority** is defined as the Governor, a Minister, a member of the Executive Council, a court, a member of a court, a body created by or under the law of the State and an officer or employee of the State or of such a body.

Clause 4 provides for the proposed Act to bind the Crown.

Part 2 Administration and operation of State taxing laws as applied laws in relation to Commonwealth places

Clause 5 enables the Governor to enter into an arrangement with the Governor-General under section 9 of the Commonwealth Act in relation to the exercise or performance of a power, duty or function (not being one involving the exercise of judicial power) by a State authority under an applied law and for the variation or revocation of such an arrangement. State taxing laws will only have effect as applied under the Commonwealth Act while such an arrangement is in force.

Clause 6 provides for a State authority to exercise or perform any power, duty or function that the Commonwealth Act requires or authorises it to exercise or perform despite any State law.

Clause 7 requires a State taxing law to be read and construed with such modifications as are necessary or convenient for the purpose of enabling the effective operation of the State taxing law in conjunction with the corresponding applied law or to ensure that there is no change in the overall tax liability of a taxpayer who becomes liable to pay a Commonwealth mirror tax.

Part 3 Proceedings

Clause 8 requires proceedings commenced in a court under an applied law to be continued as if commenced under the corresponding State taxing law if the court is satisfied that the State taxing law is not excluded by section 52 (i) of the Commonwealth Constitution. This means that an action does not have to be restarted or any action taken redone when it has been commenced under an applied law under the mistaken belief that it related to a tax applying to a Commonwealth place.

Clause 9 prevents an objection to proceedings under a State taxing law merely on the ground that proceedings have been commenced or are pending under a corresponding applied law. It ensures that proceedings under a State taxing law that corresponds to an applied law are not frustrated because proceedings are also taken under the applied law (for example, if duplicate proceedings are instituted because the State taxing authority is unsure of the correct jurisdiction).

Clause 10 requires a court to deal with an appeal from a judgement, decree, order or sentence of court in proceedings under an applied law as though it was commenced under a State taxing law if the court is satisfied that the State taxing law is not excluded by section 52 (i) of the Commonwealth Constitution.

Clause 11 facilitates proof of interests in land when an issue arises in proceedings under a State taxing law as to whether a particular place is a Commonwealth place.

Part 4 Validation and saving

Clause 12 ensures that if an action is purportedly done under an applied law in relation to a place in the State that is not a Commonwealth place it will be taken to have been done under the State taxing law that corresponds to the applied law. The provision will, for example, validate the action of a State revenue authority that pursues as a single debt under an applied law a tax debt that relates partly to a business in a Commonwealth place and partly elsewhere in the State. It will ensure that if a taxpayer pays as Commonwealth mirror tax an amount which was properly due as State tax, the amount will be taken to have been paid as State tax so the taxpayer will not be entitled to a refund and the State revenue authority will not be required to pursue a separate payment of State tax.

Clause 13 is a savings provision to cover circumstances in which a place ceases to be a Commonwealth place. It has the effect that, in such circumstances, all rights, privileges, duties and

liabilities that were acquired or created while the place was a Commonwealth place continue. Penalties can be imposed as if the mirror tax had continued to have effect and investigations, legal proceedings or remedies may be instituted or enforced as if the applied law had not ceased to have effect.

Clause 14 is a savings provision similar to clause 13 to cover circumstances in which a place becomes a Commonwealth place.

Part 5 Miscellaneous

Clause 15 provides for references to an applied law in an instrument or other writing to be read as a reference to the corresponding State taxing law if the State taxing law is not excluded by section 52 (i) of the Commonwealth Constitution. This ensures the validity of such documents and negates the need for new documents to specify the State taxing laws.

Clause 16 provides for appropriation of the Consolidated Fund to meet the State's liabilities under the mirror tax scheme.

Clause 17 provides for the making of regulations.