



New South Wales

# 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

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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.



New South Wales

# Commonwealth Places (Mirror Taxes Administration) Bill 1998

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New South Wales

## **Commonwealth Places (Mirror Taxes Administration) Bill 1998**

No. , 1998

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### **A Bill for**

An Act to provide for the administration and operation of State taxing laws that are applied as Commonwealth laws in relation to Commonwealth places; and for related purposes.

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**The Legislature of New South Wales enacts:**

**Part 1 Preliminary**

**1 Name of Act**

This Act is the *Commonwealth Places (Mirror Taxes Administration) Act 1998*. 5

**2 Commencement**

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) When an arrangement has been made with the Commonwealth under section 5, section 7 is deemed to have come into operation on 6 October 1997. 10

**Note.** The operation of this Act and the Commonwealth Act will depend on the making of an arrangement under section 5 of this Act and section 9 of the Commonwealth Act. As soon as the arrangement is made, the State taxing laws are taken to have always applied in relation to Commonwealth places in the State, but not so as to impose any liability for tax for things that happened before 6 October 1997. 15

**3 Definitions**

- (1) In this Act:
- applied law* means the provisions of a State taxing law that apply in relation to a Commonwealth place in accordance with the Commonwealth Act. 20
- Commonwealth Act* means the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth.
- Commonwealth place* means a place in the State (not being the seat of Government) acquired by the Commonwealth for public purposes. 25
- Commonwealth Constitution* means the Constitution of the Commonwealth.
- corresponding applied law*, in relation to a State taxing law, means an applied law that corresponds to the State taxing law. 30



*excluded by section 52 (i) of the Commonwealth Constitution* means inapplicable by reason only of the operation of section 52 of the Commonwealth Constitution in relation to Commonwealth places.

*in relation to*, when used in relation to a Commonwealth place or a place that was a Commonwealth place, means in, or in relation to, the Commonwealth place or former Commonwealth place. 5

*modifications* includes additions, omissions and substitutions.

*proceedings* means any proceedings, whether civil or criminal and whether original or appellate. 10

*State authority* means any of the following:

- (a) the Governor, a Minister or a member of the Executive Council of the State,
- (b) a court of the State,
- (c) a person who holds office as a member of a court of the State, 15
- (d) a body created by or under the law of the State,
- (e) an officer or employee of the State, or of a body referred to in paragraph (d).

*State law* means: 20

- (a) any law in force in the State, whether written or unwritten, and
- (b) any instrument made or having effect under a law referred to in paragraph (a).

but does not include a law of the Commonwealth, whether written or unwritten, or an instrument made or having effect under such a law. 25

*State taxing law* means a State law that is a State taxing law within the meaning of the Commonwealth Act.

- (2) The note after section 2 does not form part of this Act. 30

#### 4 This Act binds the Crown

This Act binds the Crown in right of the State and, in so far as the legislative power of the State permits, in all its other capacities.

Clause 5	Commonwealth Places (Mirror Taxes Administration) Bill 1998
Part 2	Administration and operation of State taxing laws as applied laws in relation to Commonwealth places

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

### **5 Arrangements with Commonwealth**

- (1) The Governor may make an arrangement with the Governor-General of the Commonwealth in relation to the exercise or performance of a power, duty or function (not being a power, duty or function involving the exercise of judicial power) by a State authority under an applied law. 5
- (2) The Governor may arrange with the Governor-General for the variation or revocation of an arrangement made under this section. 10

### **6 Exercise of powers etc by State authorities**

Despite any State law, a State authority has any power, duty or function that the Commonwealth Act authorises or requires the authority to exercise or perform. 15

### **7 Modified operation of State taxing laws**

- (1) If, in relation to a State taxing law, there is a corresponding applied law, the State taxing law is to be read and construed with any modifications that are necessary or convenient: 20
- (a) for the purpose of enabling the effective operation of the State taxing law in conjunction with the corresponding applied law, or
- (b) for the purpose of enabling the State taxing law to operate so that a taxpayer has a combined liability under: 25
- (i) the State taxing law, and
- (ii) the corresponding applied law,
- that is as nearly as possible the same as the taxpayer's liability would be under the State taxing law alone if the Commonwealth places in the State were not Commonwealth places. 30

- (2) Regulations may prescribe particular modifications that are to have effect under subsection (1).
- (3) Modifications prescribed under subsection (2):
  - (a) may be expressed to take effect from a day that is earlier than the day on which the regulations are published in the Gazette (but not earlier than 6 October 1997), and
  - (b) may deal with the circumstances in which the modifications apply, and with matters of a transitional or savings nature.

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## **Part 3 Proceedings**

### **8 Continuation of proceedings if place found not to be a Commonwealth place**

If:

- (a) proceedings have been commenced in a court under a law as an applied law, and 5
- (b) the court is satisfied that the State taxing law that corresponds to that law is not excluded by section 52 (i) of the Commonwealth Constitution.

then the proceedings must be continued as though they had been commenced under the State taxing law. 10

### **9 Objection not allowable on ground of duplicate proceedings**

In any proceedings under a State taxing law, an objection must not be allowed merely on the ground that proceedings have been commenced, or are pending, under a corresponding applied law. 15

### **10 Proceedings on certain appeals**

- (1) This section applies to an appeal from a judgment, decree, order or sentence of a court in proceedings under a law as an applied law.
- (2) If the court is satisfied that the State taxing law that corresponds to that law is not excluded by section 52 (i) of the Commonwealth Constitution, then the court must deal with the appeal as though: 20
  - (a) the proceedings in relation to which the appeal was brought had been brought under the State taxing law, and 25
  - (b) the judgment, decree, order or sentence had been given or made in proceedings brought under the State taxing law.

### **11 Certificates about ownership of land**

- (1) In proceedings under a State taxing law (or purporting to be under a State taxing law) in which any question arises as to whether a place is a Commonwealth place, a certificate in writing given by an authorised person about any of the following matters relating to land is evidence of the matters stated in the certificate: 30

- (a) the ownership of the land, or of an estate or interest in the land, on a date or during a period specified in the certificate,
  - (b) the existence and ownership of a right in respect of the land, on a date or during a period specified in the certificate. 5
- (2) A document that purports to be a certificate referred to in subsection (1) is to be regarded as being such a certificate, and to have been duly given, unless the contrary is proved.
- (3) In this section: 10  
*authorised person* has the same meaning as it has in section 16 of the Commonwealth Act.

## **Part 4 Validation and saving**

### **12 Validation of things purportedly done under an applied law**

If:

- (a) something purports to have been done under a law as an applied law, and 5
- (b) the State taxing law that corresponds to that law is not excluded by section 52 (i) of the Commonwealth Constitution,

then that thing is to be regarded as having been done under the State taxing law. 10

### **13 Provisions as to operation of applied law and State taxing law if a place ceases to be a Commonwealth place**

- (1) This section applies if an applied law ceases, or ceased, to have effect in relation to a place at a particular time because the place ceases, or ceased, to be a Commonwealth place at that time. 15
- (2) The State taxing law to which the applied law corresponded immediately before that time:
  - (a) applies, or is to be regarded as having applied, in relation to that place from that time, and
  - (b) is to be read and construed as though it provided expressly that it was intended to apply in relation to that place from that time. 20
- (3) The following things are not affected:
  - (a) any right, privilege, obligation or liability acquired, accrued or incurred under the applied law, 25
  - (b) any penalty, forfeiture or punishment incurred in respect of an offence against the applied law,
  - (c) any investigation, legal proceeding or remedy in respect of any right, privilege, obligation, liability, penalty, forfeiture or punishment referred to in paragraph (a) or (b). 30
- (4) Any penalty, forfeiture or punishment referred to in subsection (3) (b) may be imposed as if the applied law had not ceased to have effect.



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- (5) An investigation, legal proceeding or remedy referred to in subsection (3) (c) may be instituted, continued or enforced as if the applied law had not ceased to have effect.

**14 Provisions as to operation of State taxing law if a place becomes a Commonwealth place** 5

- (1) This section applies if a State taxing law ceases, or ceased, to have effect in relation to a place at a particular time because the place becomes, or became, a Commonwealth place at that time.
- (2) The following things are not affected:
- (a) the previous operation of the State taxing law before that time. 10
  - (b) any right, privilege, obligation or liability acquired, accrued or incurred under the State taxing law,
  - (c) any penalty, forfeiture or punishment incurred in respect of an offence against the State taxing law, 15
  - (d) any investigation, legal proceeding or remedy in respect of any right, privilege, obligation, liability, penalty, forfeiture or punishment referred to in paragraph (b) or (c).
- (3) Any penalty, forfeiture or punishment referred to in subsection (2) (c) may be imposed as if the State taxing law had not ceased to have effect. 20
- (4) An investigation, legal proceeding or remedy referred to in subsection (2) (d) may be instituted, continued or enforced as if the State taxing law had not ceased to have effect.

## **Part 5 Miscellaneous**

### **15 Instruments referring to applied law**

- (1) This section applies to an instrument or other writing that relates to an act, matter or thing that has a connection with a Commonwealth place. 5
- (2) In so far as:
- (a) the instrument or writing contains a reference to a law as an applied law, and
  - (b) the State taxing law that corresponds to that law is not excluded by section 52 (i) of the Commonwealth Constitution. 10

the reference has effect as if it were a reference to the State taxing law.

### **16 Appropriation**

- Any liability of the State: 15
- (a) to pay money to the Commonwealth to enable it to comply with section 23 (1) of the Commonwealth Act, or
  - (b) under an arrangement with the Commonwealth under section 5,

is to be met out of the Consolidated Fund which is appropriated to the necessary extent. 20

### **17 Regulations**

The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed to give effect to the purposes of this Act. 25