

COMMONWEALTH PLACES (MIRROR TAXES ADMINISTRATION) BILL 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives

To enact the *Commonwealth Places (Mirror Taxes Administration) Bill 1999* to ensure the proper operation of State taxing laws in relation to the corresponding Commonwealth applied laws and to facilitate State administration of the Commonwealth applied laws.

To amend the *Land Tax Act 1915* to increase the general rebate from 5% to 15%.

Reasons for the Bill

Following a High Court decision in *Allders International Pty Ltd v. Commissioner of State Revenue* (1996) 186 CLR 630 (“*Allders*”), which held that the imposition of stamp duty on a lease of an airport was a law with respect to a Commonwealth place and invalid under section 52(i) of the *Commonwealth Constitution*, the Commonwealth put in place safety net arrangements to ensure the continued application of taxation laws at Commonwealth places in each State equivalent to State taxing laws. It did this through enactment of the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth) which applies as Commonwealth law Queensland’s stamp duty, pay-roll tax and debits tax legislation.

Enactment of the *Commonwealth Places (Mirror Taxes Administration) Bill 1999* will provide the necessary legislative framework to support the administration and proper operation of the Commonwealth applied laws in Queensland. This legislation has been prepared substantially on a nationally consistent basis for all States.

The *Land Tax Act 1915* is also to be amended to increase the rebate available to all taxpayers from 5% to 15%, with effect for the 1999/00 and subsequent financial years.

Achievement of Objectives

Allders Arrangements

Although considering specifically the validity of lease duty, the High Court's *Allders* decision also cast doubt on the validity of all State taxes in relation to Commonwealth places. To address this uncertainty and to ensure that Commonwealth places did not become taxation havens, the Commonwealth announced its intention on 6 October 1997 to impose stamp duty, pay-roll tax, financial institutions duty (other than in Queensland) and debits tax on businesses operating at or in Commonwealth places. The Commonwealth also announced that, should it be necessary, other State taxation laws may subsequently be applied as Commonwealth laws with effect on and from 6 October 1997.

The *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth), which was enacted on 17 April 1998, applies as Commonwealth law at Commonwealth places in Queensland the *Stamp Act 1894*, *Pay-roll Tax Act 1971* and *Debits Tax Act 1990* to the extent to which those laws would be invalid by virtue of section 52(i) of the *Commonwealth Constitution*. The State legislation which is applied is referred to as a State taxing law and the Commonwealth taxation legislation is referred to as an applied law.

The applied laws for Queensland will commence on the making of an arrangement by the Governor and the Governor-General pursuant to section 9 of the Commonwealth Act and will then have retrospective effect to 6 October 1997.

A person's total taxation liability under these arrangements is intended to be the same as it would be if the Commonwealth places in Queensland were not Commonwealth places. Administrative arrangements are also intended to be seamless for taxpayers and the Office of State Revenue. For instance, taxpayers who have liabilities under the Commonwealth and State legislation will only be required to lodge one return with the Office of State Revenue and will not be required to separately identify and account for the Commonwealth and State liabilities. Similarly, it will not be necessary to separately identify whether liability has arisen under the State or

Commonwealth legislation, including where action is being taken to assess or reassess liability, recover outstanding tax or prosecute a person for failure to satisfy taxation obligations.

The *Commonwealth Places (Mirror Taxes Administration) Bill 1999* provides the necessary legislative framework to support the administration and operation of the applied laws in Queensland.

Amongst other things, the *Commonwealth Places (Mirror Taxes Administration) Bill 1999*:

- authorises the Governor to enter into the arrangement with the Governor-General, which is necessary for the applied laws to have effect in Queensland;
- provides the authorisation for State authorities to perform functions and exercise powers on behalf of the Commonwealth in administering the applied laws;
- ensures the operation of State taxing laws where a place ceases to be a Commonwealth place and the preservation of matters arising under a State taxing law where a place becomes a Commonwealth place; and
- validates certain actions purportedly taken under an applied law where that action should have been taken under a State taxing law.

There will be circumstances where amendment of the State taxing laws and the applied laws will be necessary to ensure that they operate together as intended. The amendments necessary to the State taxing laws will be separately legislatively effected.

Any amendments made to the State taxing laws are automatically reflected in the corresponding applied laws. However, there will be some cases where the Commonwealth applied laws will require specific modification to ensure their effective operation together with State taxing laws. The *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth) delegates to State Treasurers the power to amend the applied laws in specified circumstances by way of a notice prescribing the modifications and published in the Commonwealth Gazette.

Amendment of Land Tax Act 1915

To ensure that the increase in the general rebate available to all land taxpayers first has effect for the 1999/00 financial year, the amendments necessary to section 9AA of the *Land Tax Act 1915* are being effected in the *Commonwealth Places (Mirror Taxes Administration) Bill 1999*.

Alternatives to the Bill

The policy objectives require statutory amendment to give them ongoing effect.

Estimated Cost for Government Implementation

It is not expected that there will be any additional administrative costs.

Consistency with Fundamental Legislative Principles

Retrospective Operation

Although commencing on assent, clause 11 ensures the operation of State taxing laws and validates matters arising under the applied laws where a place ceases to be a Commonwealth place either before or after the commencement of the *Commonwealth Places (Mirror Taxes Administration) Bill 1999*. Similarly, clause 12 validates matters arising under a State taxing law where a place becomes a Commonwealth place either before or after the commencement of the *Commonwealth Places (Mirror Taxes Administration) Bill 1999*.

This reflects the fact that, between 6 October 1997 and the date of the arrangement between the Governor and the Governor-General, places may become or cease to be Commonwealth places. On the making of the arrangement, the applied laws have retrospective operation to 6 October 1997. Therefore, clauses 11 and 12 require retrospective application to ensure equity of treatment for all taxpayers regardless of where in the State they operate.

The intention to impose Commonwealth taxes in relation to Commonwealth places was well publicised by the Commonwealth at the time that the arrangements came into effect and taxpayers have, in the main, been acting on the basis that the arrangements apply by continuing to meet their taxation obligations as they did prior to the *Allders* decision. In the

absence of the retrospective operation of these clauses, taxpayers may either avoid their State taxation obligations where a Commonwealth place is sold or may not be bound by the previously applying legislation where a place ceases to be or becomes a Commonwealth place before enactment of the Bill. That would be inequitable and contrary to the policy basis underlying the *Allders* arrangements.

Consultation

Consultation has been undertaken with other State revenue offices in developing the *Commonwealth Places (Mirror Taxes Administration) Bill 1999*. As the intention of the Bill is to ensure the seamless operation of the *Allders* arrangements for taxpayers, such that taxpayers may continue to act as they did prior to the *Allders* decision, further consultation is not considered necessary.

NOTES ON PROVISIONS

Clause 1 cites the short title of the Act.

Clause 2 provides that definitions used in the Act are in the dictionary in the schedule.

Clause 3 specifies that this Act binds the State and, subject to the limitations on the legislative power of the State, the Commonwealth and the other States.

Clause 4 empowers the Governor to enter into an arrangement with the Governor-General in relation to the administration of applied laws, and to revoke or vary such an arrangement. This power reflects the similar power given to the Governor-General under section 9 of the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth). It is the making of the arrangement contemplated under this section which commences the operation of the applied laws for Queensland, with retrospective effect to 6 October 1997.

As section 9 of the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth) requires publication of a copy of the instrument effecting the arrangement in the Commonwealth Gazette, a similar provision was not considered necessary for the *Commonwealth Places (Mirror Taxes Administration) Bill 1999*.

Clause 5 provides for a State authority to exercise or perform any power, duty or function that the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth) requires or authorises it to exercise or perform, despite any State law.

Clause 6 provides for the continuation of proceedings commenced under an applied law where those proceedings should have been commenced under the corresponding State taxing law. This means that a proceeding does not have to be restarted or any steps taken in the proceedings retaken when the proceeding has been commenced under an applied law in the mistaken belief that the State taxing law was excluded by section 52(i) of the *Commonwealth Constitution*.

Clause 7 prevents an objection being made in 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 a proceeding under a State taxing law is not frustrated because a similar proceeding is also taken under the corresponding applied law e.g. if duplicate proceedings are instituted because the State authority is unsure of the correct jurisdiction and needs to establish the applicable law.

Clause 8 provides that, where there is an appeal from a judgment, decree, order or sentence of a court in proceedings under an applied law and the relevant law for the proceedings was a State taxing law, the court shall deal with the appeal as though the proceedings had been brought under the State taxing law and the judgment, decree, order or sentence was in relation to proceedings under the State taxing law.

Clause 9 is similar to section 16 of the *Commonwealth Places (Mirror Taxes) Act 1998* (Cwlth) and is designed to facilitate proof of the Commonwealth's interest in land.

Clause 10 validates things purported to have been done under an applied law which should have been done under the State taxing law. The provision will facilitate seamlessness in operation of the applied laws and State taxing laws by, for example, ensuring that, if a taxpayer pays tax under an applied law where that tax was payable under the State taxing law, the amount will

be taken to have been paid as State tax so that the taxpayer will not be entitled to a refund and there will be no requirement for a separate payment of State tax. It will also ensure that a document or return lodged under an applied law, where the relevant liability arises either under the applied law and the corresponding State taxing law or solely under the State taxing law, will be taken to have been properly lodged.

Clause 11 ensures that a State taxing law applies when the corresponding applied law ceases to have effect when a place ceases to be a Commonwealth place. The clause also preserves specified matters in relation to the applied law, including any right, privilege, obligation or liability acquired, accrued or incurred under the applied law. This provision has effect where a place ceases to be a Commonwealth place either before or after commencement of the *Commonwealth Places (Mirror Taxes Administration) Bill 1999*.

Clause 12 preserves specified matters in relation to a State taxing law, including the previous operation of the State taxing law and any right, privilege, obligation or liability acquired, accrued or incurred under the State taxing law, where that law ceases to apply in relation to a place where the place becomes a Commonwealth place. This provisions has effect where a place becomes a Commonwealth place either before or after commencement of the *Commonwealth Places (Mirror Taxes Administration) Bill 1999*.

Clause 13 provides for a reference to an applied law in an instrument or other writing to be read as a reference to the corresponding State taxing law where the applied law does not apply to the matter.

Clause 14 provides for the making of regulations by the Governor in Council.

Clause 15 provides that Part 6 amends the *Land Tax Act 1915*.

Clause 16 increases the rebate provided under section 9AA from 5% to 15%.

Clause 17 provides that the increase in the rebate provided under clause 16 first applies to land tax levied for the financial year commencing 1 July 1999.

Schedule provides a dictionary of terms used in the Act.