

Commonwealth Places (Mirror Taxes Administration) Bill 1998

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Western Australia

LEGISLATIVE ASSEMBLY

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

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.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Commonwealth Places (Mirror Taxes Administration) Act 1998*.

2. Commencement

- (1) Subject to subsection (2), this Act comes into operation on the day on which it receives the Royal Assent.
- (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.

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.

3. Definitions

- (1) In this Act, unless the contrary intention appears —

“**applied law**” means the provisions of a State taxing law that apply in relation to a Commonwealth place in accordance with the Commonwealth Act;

“**Commonwealth Act**” means the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth;

“**Commonwealth place**” means a place in the State acquired by the Commonwealth for public purposes;

“**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;

5 **“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;

10 **“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;

“modifications” includes additions, omissions and substitutions;

15 **“proceedings”** means any proceedings, whether civil or criminal and whether original or appellate;

“State authority” means any of the following —

- 20
- (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;
 - (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);

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“State law” means —

- (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),

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

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

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

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.

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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

- 5 (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.
- 10 (2) The Governor may arrange with the Governor-General for the
variation or revocation of an arrangement made under this
section.

6. Exercise of powers etc. by State authorities

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

7. Modified operation of State taxing laws

- 20 (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 —
- (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 —
- (i) the State taxing law; and
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- 5 (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.
- (2) Regulations may prescribe particular modifications that are to
have effect under subsection (1).
- (3) Modifications prescribed under subsection (2) —
- 10 (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
saving nature.

Part 3 — Proceedings

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

If —

- 5 (a) proceedings have been commenced in a court under a law as an applied law; and
- (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,

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

9. Objection not allowable on ground of duplicate proceedings

15 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.

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.
- 20 (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 —
- 25 (a) the proceedings in relation to which the appeal was brought had been brought under the State taxing law; and

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- (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

- 5 (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 authorized person about any of the following matters relating to land is evidence of the matters
10 stated in the certificate —
 - (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;
 - 15 (b) the existence and ownership of a right in respect of the land, on a date or during a period specified in the certificate.
- (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.
- 20 (3) In this section —

“authorized person” means a person who is a delegate, in respect of any power or function, under section 139 of the *Lands Acquisition Act 1989* of the Commonwealth.

Part 4 — Validation and saving

12. Validation of things purportedly done under an applied law

If —

- 5
- (a) something purports to have been done under 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 then that thing is to be regarded as having been done under the State taxing law.

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

- 15
- (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.
 - (2) The State taxing law to which the applied law corresponded immediately before that time —
 - 20 (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.
 - (3) The following things are not affected —
 - 25 (a) any right, privilege, obligation or liability acquired, accrued or incurred under the applied law;
 - (b) any penalty, forfeiture or punishment incurred in respect of an offence against the applied law;

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- (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).
 - 5 (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.
 - (5) An investigation, legal proceeding or remedy referred to in
10 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**
- 15 (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 —
 - 20 (a) the previous operation of the State taxing law before that time;
 - (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;
 - 25 (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.

- (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

5 (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.

 (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
10 excluded by section 52(i) of the Commonwealth Constitution,

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

16. Regulations

15 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.

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