

EXPLANATORY MEMORANDUM

**STATE ENTITIES (PAYMENTS)
BILL 1999**

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Overview of the Bill

The purpose of this Bill is to provide for the payment of GST equivalent amounts by State entities to the Australian Taxation Office, and for their participation in the administrative arrangements associated with the provisions of the GST legislation.

Clause 17 of the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations* states that:

"The Parties intend that the Commonwealth, States, Territories and local government and their statutory corporations and authorities will operate as if they were subject to the GST legislation.

They will be entitled to register, will pay GST or make voluntary or notional payments where necessary and will be entitled to claim input tax credits in the same way as non-Government organisations."

This agreement reflects the desirability of the public sector being subject to the GST on the same basis as the private sector, to avoid economically inefficient behaviour by governments (such as governments choosing to produce services themselves rather than outsource, simply to gain tax advantages).

It also reflects a desire to achieve a seamless GST system for State entities.

The Commonwealth's GST legislation includes a provision for the Commonwealth Finance Minister to give such directions as necessary to apply a notional GST to Commonwealth entities.

The Commonwealth's GST legislation does not apply where the GST would represent a Commonwealth tax on the property of the State (which is precluded by section 114 of the Constitution).

This Bill provides the legal authority for State entities to voluntarily comply with the Commonwealth's GST legislation where it would otherwise not apply.

For many State entities, GST input credits are likely to exceed any GST and voluntary GST payments they make.

At a broad level, this Bill:

- ensures that all State entities (including local governments) may operate as if the GST applied to them; and
- provides the Treasurer with authority, as necessary, to issue directions to State entities in this regard.

Clause Notes

Clause 1: **Short title**

Short title and citation.

Clause 2: **Definitions**

This clause sets out definitions used in the proposed Act.

Subclause (1) defines the following terms:

"Commissioner of Taxation" means the Commissioner of Taxation in the Australian Taxation Office, under authority of the *Commonwealth Taxation Administration Act 1953*.

"GST" has the meaning provided in the *Commonwealth A New Tax System (Goods and Services Tax) Act 1999*. It refers to the goods and services tax to be introduced from 1 July 2000 by the Commonwealth.

"State entity" is any entity of the State that is not liable for GST because of section 114 of the Constitution (which prevents the Commonwealth taxing the property of the State) and because of the exclusion in section 5 of the Commonwealth "GST Imposition Acts" (which provides that the GST does not apply where it would constitute a tax on the property of the State for the purposes of section 114 of the Constitution).

State entities as defined here include government departments, local governments, statutory corporations and authorities to the extent that they are exempt from GST because of section 114 of the Constitution.

"Treasurer" means the Treasurer of the State.

Subclause (2) sets out the full names of each of the Commonwealth's "GST Imposition Acts".

Clause 3: Voluntary GST equivalent payments

This clause provides each State entity with the authority to voluntarily pay notional GST, and to do things that would be necessary or expedient to do if it were liable to GST. In practice, these things would include complying with GST administrative processes including registration and lodgement of returns as if the entity were subject to the GST.

The notional GST that may be voluntarily paid is the amount that would have been payable but for section 114 of the Constitution and the exclusion in section 5 of the Commonwealth "GST Imposition Acts".

Clause 4: Directions to implement Financial Relations Agreement

This clause provides the Treasurer with authority to issue directions to a State entity concerning the payment of notional GST and related matters.

Subclause (1) allows the Treasurer to issue a direction to pay notional GST as authorised by clause 3, and to do anything else that is authorised by clause 3.

Subclause (2) allows the Treasurer to amend or revoke previous directions.

Subclause (3) allows directions to relate to things that happened before the direction was given. This subclause recognises that it may be some time before it is realised that a direction may be required.

Subclause (4) requires a State entity to comply with directions under this clause despite any other written law.