



# **Commonwealth Places (Mirror Taxes) Act 1998**

**No. 24, 1998**





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**An Act to provide for the application of State  
taxing laws in relation to Commonwealth places,  
and for related purposes**



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**An Act to provide for the application of State  
taxing laws in relation to Commonwealth places,  
and for related purposes**

*[Assented to 17 April 1998]*

The Parliament of Australia enacts:

## **Part 1—Preliminary**

### **1 Short title**

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

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## 2 Commencement

This Act commences on the day on which it receives the Royal Assent.

## 3 Definitions

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 this Act.

***authority***, in relation to a State, 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;
- (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).

***Commonwealth place*** means a place referred to in paragraph 52(i) of the Constitution, other than the seat of government.

***corresponding applied law***, in relation to a State taxing law, means an applied law that corresponds to the State taxing law.

***corresponding State taxing law***, in relation to an applied law, means the State taxing law to which the applied law corresponds.

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

***in relation to***, when used in relation to a Commonwealth place, means in, or in relation to, the Commonwealth place.

***modifications*** includes additions, omissions and substitutions.



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

***scheduled law***, in relation to a State, means a law that is specified in Schedule 1 in relation to the State, but does not include any part of such a law that is prescribed by the regulations for the purposes of this definition.

***State law***, in relation to a State, 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);

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***, in relation to a State, means the following, as in force from time to time:

- (a) a scheduled law of the State;
- (b) a State law that imposes tax and is prescribed by the regulations for the purposes of this paragraph;
- (c) any other State law of the State, to the extent that it is relevant to the operation of a law covered by paragraph (a) or (b).

#### **4 Scope of this Act**

This Act has effect only to the extent that it is an exercise of the legislative powers of the Parliament under the following provisions of the Constitution:

- (a) paragraph 52(i);
- (b) section 73;
- (c) paragraph 77(iii);
- (d) paragraph 51(xxxix), so far as it relates to paragraph 52(i), section 73 or paragraph 77(iii).

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**5 This Act binds the Crown**

This Act binds the Crown in each of its capacities, but does not make the Crown liable to be prosecuted for an offence.

## **Part 2—Application of State taxing laws as applied laws in relation to Commonwealth places**

### **6 State taxing laws to have effect as applied laws**

- (1) In this section:

*excluded provisions*, in relation to a State taxing law, means provisions of that law to the extent that they are excluded by paragraph 52(i) of the Constitution.

- (2) Subject to this Act, the excluded provisions of a State taxing law, as in force at any time before or after the commencement of this Act, apply, or are taken to have applied, according to their tenor, at that time, in relation to each place in the State that is or was a Commonwealth place at that time.
- (3) Subsection (2) does not extend to the provisions of a State taxing law in so far as it is not within the authority of the Parliament to make those provisions applicable in relation to a Commonwealth place.
- (4) An applied law has effect subject to any modifications under section 8.
- (5) Except as provided by modifications under section 8, nothing in this Act has the effect of creating an office, body, court or other tribunal.
- (6) This section does not have effect in relation to a State unless an arrangement is in operation under section 9 in relation to the State.

### **7 Operative date for applied laws**

- (1) An applied law does not have effect in relation to an amount that would (apart from this subsection) have become due for payment before 6 October 1997 under the applied law.

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- (2) In determining whether an amount is or was payable under an applied law, it must be assumed that all obligations of any relevant person that arose before 6 October 1997 have been fully and promptly complied with.
- (3) An applied law does not have effect in relation to an amount that would (apart from this subsection) have become due for payment as stamp duty on an instrument made before 6 October 1997.
- (4) In determining whether an amount is or was payable under an applied law relating to stamp duty, it must be assumed that:
  - (a) all relevant instruments made before 6 October 1997 were lodged for assessment of stamp duty; and
  - (b) the stamp duty (if any) on those instruments was assessed and paid.

**8 Modification of applied laws**

- (1) The regulations may prescribe modifications of any applied law.
- (2) The Treasurer of a State may, by notice in writing, prescribe modifications of the applied laws of the State, other than modifications for the purpose of overcoming a difficulty that arises from the requirements of the Constitution.
- (3) A notice under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) Modifications may be made under this section only to the extent that they are necessary or convenient:
  - (a) for the purpose of enabling the effective operation of an applied law as a law of the Commonwealth; or
  - (b) for the purpose of enabling an applied law to operate so that the combined tax liability of a taxpayer under:
    - (i) the applied law; and
    - (ii) the corresponding State taxing law;is as nearly as possible the same as the taxpayer's liability would be under the corresponding State taxing law alone if

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the Commonwealth places in the State were not Commonwealth places.

- (5) Modifications under this section:
  - (a) may be expressed to take effect from a date that is earlier than the date on which the modifications are notified in the *Gazette*; and
  - (b) may deal with the circumstances in which the modifications apply, and with matters of a transitional or saving nature.
- (6) To the extent of any inconsistency, modifications under subsection (1) prevail over modifications under subsection (2).

## 9 Arrangements with States

- (1) The Governor-General may make an arrangement with the Governor of a State 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 an authority of the State under the applied laws of the State.
- (2) Where such an arrangement is in force, the power, duty or function may or must, as the case may be, be exercised or performed accordingly.
- (3) The Governor-General may arrange with the Governor of a State for the variation or revocation of an arrangement made under this section in relation to the State.
- (4) An arrangement, variation or revocation under this section must be made by instrument in writing, a copy of which must be published in the *Gazette*.

## 10 Jurisdiction of courts

- (1) Within the limits of their several jurisdictions, the courts of a State are invested with federal jurisdiction in all matters arising under an applied law as having, or as having had, effect in relation to a Commonwealth place. For this purpose, *limits* means limits of any

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kind, whether as to subject matter or otherwise, but does not include any limitation that exists by reason of a place being a Commonwealth place.

- (2) The jurisdiction conferred by subsection (1) in relation to matters arising under an applied law is to be exercised in accordance with the applied law.
- (3) Among other things, modifications under section 8 may modify an applied law so that the applied law, as modified, makes provision for and in relation to investing a court of a State with federal jurisdiction, whether within the limits of its jurisdiction or otherwise.
- (4) The jurisdiction with which courts are invested by subsection (1) or by modifications under section 8, is invested subject to the restriction in subsection (5) of this section, but not subject to any other conditions or restrictions.
- (5) If a State law prohibits any appeal from such a court, then an appeal does not lie to the High Court from a decision of that court unless the High Court grants special leave to appeal.
- (6) Nothing in this Act affects the operation of section 38 of the *Judiciary Act 1903*.
- (7) Unless the High Court gives special leave to appeal, an appeal does not lie to the High Court from a judgment, decree, order or sentence of:
  - (a) a Justice of the High Court; or
  - (b) a federal court other than the High Court; or
  - (c) a court of a State or Territory;if any ground relied upon in support of the appeal involves a question as to the operation or interpretation of section 52 of the Constitution in relation to a place (not being the seat of government).

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## 11 Procedure in proceedings under applied law

- (1) Subject to this Act:
  - (a) any proceedings under an applied law (*core proceedings*) must be instituted and conducted in the same manner as though they were proceedings under the corresponding State taxing law; and
  - (b) any other proceedings in relation to the core proceedings (including declining to proceed further in a prosecution) must also be taken as though the core proceedings were proceedings under the corresponding State taxing law.
- (2) The trial on indictment of an offence against an applied law must be by jury.

## 12 Continuation of proceedings where place found to be a Commonwealth place

If proceedings have been commenced under a State taxing law and the court is satisfied that:

- (a) the State taxing law is excluded by paragraph 52(i) of the Constitution; and
- (b) an applied law corresponds to the State taxing law;

then the proceedings must be continued as though they had been commenced under the applied law.

## 13 Objection not allowable on ground of duplicate proceedings

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

## 14 Proceedings on certain appeals

- (1) This section applies to an appeal from a judgment, decree, order or sentence of a court of a State or Territory in proceedings under a

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State taxing law, except where the appeal is an appeal to the High Court.

- (2) If the court is satisfied that:
- (a) the State taxing law is excluded by paragraph 52(i) of the Constitution; and
  - (b) an applied law corresponds to the State taxing law;
- then the court must deal with the appeal as though:
- (c) the proceedings in relation to which the appeal was brought had been brought under the applied law; and
  - (d) the judgment, decree, order or sentence had been given or made in proceedings brought under the applied law.

**15 Grant of pardon, remission etc.**

- (1) If a person is convicted under an applied law of a State, then an authority of the State may exercise or perform the same powers and functions in relation to the convicted person as the authority would have been empowered to exercise or perform under the State laws of the State if the offence had been committed in the State but not in relation to a Commonwealth place.
- (2) Nothing in this section affects any power or function of the Governor-General.

**16 Certificates about ownership of land**

- (1) In proceedings under an applied law (or purporting to be under an applied law), 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:
  - (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.



(2) A document that purports to be a certificate referred to in subsection (1) is taken to be such a certificate, and to have been duly given, unless the contrary is proved.

(3) In this section:

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

### **17 Extinguishment of causes of action**

If:

- (a) an act or omission gives, or gave, to a person a cause of action under an applied law and also gives, or gave, to the person a cause of action under the corresponding State taxing law; and
- (b) the cause of action under the corresponding State taxing law has been extinguished;

then the cause of action under the applied law is also extinguished.

### **18 Validation of things purportedly done under a State taxing law**

If:

- (a) something purports to have been done in relation to a Commonwealth place under a State taxing law; and
- (b) the State taxing law is excluded by paragraph 52(i) of the Constitution; and
- (c) an applied law corresponded to the State taxing law;

then that thing is taken to have been done under the applied law.

### **19 Instruments referring to State taxing laws**

(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:

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- (a) the instrument or writing contains a reference to a State taxing law; and
  - (b) the State taxing law is excluded by paragraph 52(i) of the Constitution; and
  - (c) an applied law corresponds to the State taxing law;
- the reference has effect as if it were a reference to the applied law.

**20 Other Commonwealth laws not to apply in relation to applied laws**

- (1) Subject to this Act, no Commonwealth law (other than an applied law) applies in relation to:
  - (a) any applied law; or
  - (b) anything done under an applied law.
- (2) Subsection (1) has effect subject to any modifications prescribed by the regulations.
- (3) To the extent that:
  - (a) a Commonwealth law applies to a State taxing law, or to things done under a State taxing law; and
  - (b) there is a corresponding applied law;the Commonwealth law also applies to the applied law and to things done under the corresponding applied law.
- (4) If:
  - (a) a law of the Commonwealth (other than an applied law) contains a reference to a State taxing law; and
  - (b) an applied law corresponds to the State taxing law;then the reference is taken to include a reference to the applied law.

**21 Commonwealth laws providing exemptions from Commonwealth taxes**

- (1) This section applies to a provision (the *exempting provision*) of a Commonwealth law (other than an applied law) that is expressed to
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exempt a person or body from taxes or charges, or specified taxes or charges, under a law of the Commonwealth.

- (2) Unless it expressly provides otherwise, the exempting provision is not to be treated as applying to taxes or charges under an applied law.

## **22 Saving provision for applied law where 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.
- (2) The following things are not affected:
- (a) the previous operation of the applied law before that time;
  - (b) any right, privilege, obligation or liability acquired, accrued or incurred under the applied law;
  - (c) any penalty, forfeiture or punishment incurred in respect of an offence against the applied law;
  - (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 paragraph (2)(c) may be imposed as if the applied law had not ceased to have effect.
- (4) An investigation, legal proceeding or remedy referred to in paragraph (2)(d) may be instituted, continued or enforced as if the applied law had not ceased to have effect.
- (5) This section is not intended to affect the operation of a State law.

## **23 Money paid or received under applied law**

- (1) Notwithstanding anything in the terms of an applied law, there must be credited to the Consolidated Revenue Fund all amounts

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received under an applied law that are required by section 81 of the Constitution to be so credited.

- (2) The Commonwealth is liable to pay to a State amounts equal to amounts that are credited to the Consolidated Revenue Fund as mentioned in subsection (1) in relation to an applied law of the State.
- (3) Amounts payable by the Commonwealth under subsection (2) are to be reduced by amounts paid by the Commonwealth under any applied law of the State concerned. For this purpose, ***amounts paid by the Commonwealth*** does not include amounts paid by way of tax.
- (4) The Consolidated Revenue Fund is appropriated for the purpose of:
  - (a) payments under this section; and
  - (b) payments by the Commonwealth under an applied law.
- (5) The *Financial Management and Accountability Act 1997* does not apply to amounts received under an applied law.

## Part 3—Miscellaneous

### 24 Saving provision for State taxing law where place becomes a Commonwealth place

- (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;
  - (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;
  - (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 paragraph (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 paragraph (2)(d) may be instituted, continued or enforced as if the State taxing law had not ceased to have effect.
- (5) This section is not intended to affect the operation of any State taxing law.

### 25 Regulations

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or

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- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Subsection 48(2) of the *Acts Interpretation Act 1901* does not apply to regulations made under this Act.

## Schedule 1—Scheduled State taxing laws

Note: See section 3.

### 1 New South Wales

Each of the following laws of New South Wales is a *scheduled law*:

- (a) *Debits Tax Act 1990*;
- (b) *Duties Act 1997*;
- (c) *Pay-roll Tax Act 1971*;
- (d) *Stamp Duties Act 1920*.

### 2 Victoria

Each of the following laws of Victoria is a *scheduled law*:

- (a) *Debits Tax Act 1990*;
- (b) *Financial Institutions Duty Act 1982*;
- (c) *Pay-roll Tax Act 1971*;
- (d) *Stamps Act 1958*.

### 3 Queensland

Each of the following laws of Queensland is a *scheduled law*:

- (a) *Debits Tax Act 1990*;
- (b) *Pay-roll Tax Act 1971*;
- (c) *Stamp Act 1894*.

### 4 Western Australia

Each of the following laws of Western Australia is a *scheduled law*:

- (a) *Debits Tax Act 1990*;
- (b) *Debits Tax Assessment Act 1990*;
- (c) *Financial Institutions Duty Act 1983*;

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- (d) *Pay-roll Tax Act 1971*;
- (e) *Pay-roll Tax Assessment Act 1971*;
- (f) *Stamp Act 1921*.

**5 South Australia**

Each of the following laws of South Australia is a *scheduled law*:

- (a) *Debits Tax Act 1994*;
- (b) *Financial Institutions Duty Act 1983*;
- (c) *Pay-roll Tax Act 1971*;
- (d) *Stamp Duties Act 1923*.

**6 Tasmania**

Each of the following laws of Tasmania is a *scheduled law*:

- (a) *Financial Institutions Duty Act 1986*;
- (b) *Pay-roll Tax Act 1971*;
- (c) *Stamp Duties Act 1931*.

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[*Minister's second reading speech made in—  
House of Representatives on 5 March 1998  
Senate on 23 March 1998*]

(15/98)



