

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2011 No. 2**

#### **Issued by authority of the Assistant Treasurer**

*Commonwealth Places (Mirror Taxes) Act 1998*

*Commonwealth Places (Mirror Taxes) Amendment Regulations 2011 (No. 1)*

Subsection 25(1) of the *Commonwealth Places (Mirror Taxes) Act 1998* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Regulations update references to State tax legislation so that the relevant Queensland, South Australian and Tasmanian tax laws can operate in respect of Commonwealth places.

The Act provides a framework for the imposition of taxes, which mirror certain State taxes, on businesses operating in Commonwealth places in the States. Examples of Commonwealth places are Commonwealth airports and post offices. The revenue is collected by the States on behalf of the Commonwealth and appropriated back to the States. The Act was enacted in response to the High Court decision in *Allders International Pty Ltd v Commissioner of State Revenue (Victoria)* (1996) 186 CLR 630, in which the High Court held that the imposition of stamp duty on a lease covering part of a Commonwealth place was invalid because the Commonwealth has the exclusive power to make laws with respect to Commonwealth places (paragraph 52(i) of the *Commonwealth of Australia Constitution Act 1900*). The decision meant that other State taxes may similarly be invalid in relation to Commonwealth places.

The relevant State taxes are listed in Schedule 1 of the Act and may also be prescribed by the *Commonwealth Places (Mirror Taxes) Regulations 2000* (the Principal Regulations).

The State tax laws, which the Act and the Principal Regulations apply, have remained the same in substance. However, the references to certain State legislation have been updated to reflect recent revisions to that legislation.

The Regulations ensure the continued operation of the existing scheme and, therefore, should not increase compliance costs for taxpayers or administration costs for the States.

Taxpayers operating in Commonwealth places in the relevant States have not been consulted on the changes as the Regulations do not substantially alter existing arrangements. In such circumstances, paragraph 18(2)(a) of the

*Legislative Instruments Act 2003* provides an exception to the need for consultation with affected persons in the making of regulations.

Consultation has been undertaken with the Queensland, South Australian and Tasmanian Treasuries and State Revenue Offices in listing the State tax legislation.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Schedule 1 of the Regulations is taken to have commenced on 1 July 2008, Schedule 2 of the Regulations is taken to have commenced on 1 July 2009 and Schedule 3 of the Regulations is taken to have commenced on 30 June 2010.

The Regulations are retrospective, reflecting the date on which the State legislation was enacted. This ensures that the current version of the State legislation is applied under the Act. Subsection 25(2) of the Act provides an exemption to the prohibition on retrospective regulations in subsection 12(2) of the *Legislative Instruments Act 2003*.