

Western Australia

## **Taxation (Reciprocal Powers) Act 1989**

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As at 01 Jul 2003

Version 01-b0-03

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## Taxation (Reciprocal Powers) Act 1989

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Western Australia

## **Taxation (Reciprocal Powers) Act 1989**

**An Act to make provision for the reciprocal enforcement of taxation laws and for connected purposes.**

## Part 1 — Preliminary

### 1. Short title

This Act may be cited as the *Taxation (Reciprocal Powers) Act 1989*<sup>1</sup>.

### 2. Commencement

This Act shall come into operation on such day as is fixed by proclamation<sup>1</sup>.

### 3. Interpretation

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

“**authorised officer**” means the Commissioner, a corresponding Commissioner and any person authorised for the relevant purpose by the Commissioner or a corresponding Commissioner;

“**books**” includes any register or other record of information, any document and any accounts or financial records (within the meaning of the *Corporations Act 2001* of the Commonwealth) however compiled, recorded or stored;

“**Commissioner**” means the Commissioner of State Revenue;

“**corresponding Commissioner**” in relation to a State Taxation Act, means the holder of an office declared under subsection (2) to be a corresponding office in relation to the office of Commissioner under that Act;

“**corresponding law**” means a law of the Commonwealth or of another State declared under subsection (4) to be a corresponding law for the purposes of this Act;

“**recognized revenue law**” means a law of the Commonwealth or another State declared under subsection (2) to be a recognized revenue law for the purposes of this Act;

“**relevant goods**” means goods to which a recognized revenue law applies;

**“State”** includes the Northern Territory and the Australian Capital Territory;

**“State Taxation Act”** means —

- (a) the *Financial Institutions Duty Act 1983*; or
  - (b) the *Fuel Suppliers Licensing Act 1997*.
- (2) The Governor may, by order published in the *Gazette*, declare —
- (a) a law of the Commonwealth or of a State (other than Western Australia) that provides for the levying and collection of a tax, fee, duty or other impost, to be a recognized revenue law for the purposes of this Act;
  - (ab) a law of the Commonwealth or of a State (other than Western Australia) that provides for the payment of a subsidy in relation to any goods to be a recognized revenue law for the purposes of this Act;
  - (b) an office under a recognized revenue law to be a corresponding office for the purposes of this Act in relation to the office of Commissioner under a State Taxation Act.
- (3) An order under subsection (2) may not be made unless the Commonwealth or the State concerned, as the case may be, has made provision by law to confer on the Commissioner powers similar to those conferred on corresponding Commissioners by this Act.
- (4) If satisfied that a law of the Commonwealth or a State (other than Western Australia) corresponds to this Act, the Governor may, by order published in the *Gazette*, declare that law to be a corresponding law for the purposes of this Act.

*[Section 3 amended by No. 57 of 1990 s. 47; No. 56 of 1997 s. 54; No. 22 of 1998 s. 4(2); No. 53 of 1999 s. 39; No. 10 of 2001 s. 190; No. 45 of 2002 s. 24.]*

## **Part 2 — Investigations**

### **4. Investigations by corresponding Commissioners**

- (1) If the Commissioner has given approval in writing to a proposed investigation by a corresponding Commissioner into a matter arising under a recognized revenue law, the corresponding Commissioner may, while the approval is in force and subject to and in accordance with any condition attached to that approval, exercise, or authorise in writing a person to exercise, any power conferred by section 6, 7, or 8.
- (2) The Commissioner may, in writing given to the corresponding Commissioner, revoke an approval given under subsection (1) or revoke or vary any condition attached to such an approval.

### **5. Investigations on behalf of corresponding Commissioners**

- (1) If, in relation to a matter arising under a recognized revenue law, a corresponding Commissioner requests in writing the Commissioner to exercise on behalf of the corresponding Commissioner any power conferred by section 6, 7, or 8, the Commissioner, or a person authorised in writing for the purpose by the Commissioner, may exercise that power on behalf of that corresponding Commissioner.
- (2) A power referred to in subsection (1) is exercisable —
  - (a) subject to and in accordance with any condition attached by the Commissioner; and
  - (b) except where inconsistent with any condition attached under paragraph (a), subject to and in accordance with any condition specified by the corresponding Commissioner either when making the request under subsection (1) or subsequently.
- (3) The Commissioner may, in writing given to the corresponding Commissioner, revoke or vary any condition previously attached by the Commissioner under subsection (2)(a).



**6. Investigation powers**

- (1) Powers that may be exercised under sections 4 and 5 are —
- (a) power to have full and free access at all reasonable times to all premises (subject to subsection (2)) for the purpose of ascertaining whether a recognized revenue law is being or has been contravened;
  - (b) power to inspect all books kept on those premises and power to require any person whom the authorised officer concerned reasonably believes to have custody or control of those books to produce them for inspection;
  - (c) without limiting paragraph (b), power to inspect and power to require a person to produce for inspection any books in the custody or under the control of the person, being books that relate, or which the authorised officer concerned reasonably believes relate, to the question of whether or not a recognized revenue law is being or has been contravened;
  - (d) if any books inspected, produced or required to be produced in accordance with paragraph (b) or (c) —
    - (i) are not in writing;
    - (ii) are not written in the English language; or
    - (iii) are not decipherable on sight,power to require the person who has custody or control of those books to produce a statement in the English language and decipherable on sight setting out the contents of those books;
  - (e) power to make and take away copies of the whole or any part of a book inspected or produced in accordance with paragraph (b) or (c) or a statement produced in accordance with paragraph (d);

- (f) power to require a person to answer any question relating to —
    - (i) any books inspected, produced or required to be produced in accordance with paragraph (b) or (c);
    - (ii) any statement produced in accordance with paragraph (d);
    - (iii) the carrying on by any person of a business involving distributing, transporting, selling or purchasing relevant goods; or
    - (iv) financial transactions relating to a person who is or has been carrying on a business of a kind referred to in subparagraph (iii);
  - (g) in order to make copies of books or of parts of books which may be inspected in accordance with paragraph (b) or (c) or any statements which are produced in accordance with paragraph (d), power to take away and retain, for such period as may be reasonably necessary, any such books or statements; or
  - (h) if the authorised officer concerned reasonably believes that any such books or statements are evidence of an offence arising under a recognized revenue law, power to take away and retain those records or statements until proceedings for the offence have been disposed of.
- (2) Subsection (1)(a) does not empower an authorised officer to enter a part of premises that is used for residential purposes without either the consent of the occupier of that part or a search warrant.
- (3) When taking away any book or statement under this section, an authorised officer must tender an appropriate receipt to the person from whom it is taken.
- (4) Except as provided by subsection (6), a person is not excused from answering a question under subsection (1)(f) on the ground

that the answer might tend to incriminate the person or to make the person liable to a penalty.

- (5) An answer given by a person in response to a question referred to in subsection (4) is not admissible against the person in any criminal proceedings brought against the person in a Western Australian court, except proceedings for an offence under section 13 or 14.
- (6) A person who would not, but for this subsection, be excused from answering a question put to the person under subsection (1)(f) in connection with a matter arising under a recognized revenue law is so excused unless that law provides that the answer is not admissible in criminal proceedings brought against the person by or on behalf of the Commonwealth or of that State or an authority of the Commonwealth or that State.
- (7) If —
- (a) an answer to a question referred to in subsection (1)(f); or
  - (b) any information whatever,

is given to an authorised officer by an officer of a corporation which is carrying on or has carried on an activity to which a recognized revenue law applies, the answer or information is, for the purposes of any legal proceedings against the corporation under this Act, binding on and admissible in evidence against the corporation, unless it is proved that the answer or information was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

- (8) The provisions of subsection (7) are in addition to any enactment or rule of law relating to the binding effect and admissibility in evidence of statements made by an officer of a corporation.

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**7. Search warrants**

- (1) If a justice is satisfied by a complaint on oath made by an authorised officer that there is reasonable ground for suspecting that there are on particular premises that are used for residential purposes —
- (a) books that relate to the question of whether or not a recognized revenue law is being or has been contravened; or
  - (b) relevant goods that are relevant to the assessment or collection of a licence fee relating to relevant goods,
- the justice may issue a search warrant in the prescribed form authorising an authorised person to enter and search the premises or a part of the premises specified in the warrant.
- (2) A person authorised under subsection (1) who enters premises or a part of premises in accordance with a search warrant issued under that subsection may —
- (a) search the premises or part of the premises;
  - (b) exercise any of the powers conferred on an authorised officer by section 6(1)(b) to (h); and
  - (c) if the person finds on the premises books of a kind referred to in subsection (1)(a), seize those books.
- (3) Section 6(3) to (7) applies when a person authorised under subsection (1) has entered premises in accordance with a search warrant issued under that subsection in the same way as it applies when an authorised officer has entered premises in accordance with section 6(1).

**8. Power to obtain information and evidence**

- (1) An authorised officer who has authority under section 4 or 5 to exercise the power conferred by this section, may, subject to any condition that may be applicable under section 4 or 5, by notice in writing require a person —
- (a) to furnish the authorised officer with such information as the authorised officer requires; or

- (b) to attend and give evidence before the authorised officer, for the purpose of inquiring into or ascertaining the person's or any other person's liability or entitlement under the recognized revenue law and may require the person to produce all books in the person's possession or under the person's control relating to that liability or entitlement.
- (2) The authorised officer may require the information or evidence to be given on oath or affirmation, and either orally or in writing, or to be given by statutory declaration, and for that purpose the authorised officer may administer an oath or take an affirmation.
- (3) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

### **Part 3 — Disclosure of information**

#### **9. Disclosure of information to Commonwealth and State officers**

- (1) The Commissioner and any person authorised by the Commissioner may communicate any information respecting the affairs of a person disclosed or obtained under this Act or a State Taxation Act to any of the following —
  - (a) the Commissioner, Second Commissioner or a Deputy Commissioner under any law of the Commonwealth relating to taxation or to any person authorised by such a Commissioner, Second Commissioner or Deputy Commissioner;
  - (b) the Commissioner or any other officer of any State administering any law of the State relating to taxation or to any person authorised by such a Commissioner or other officer.
- (2) If the Commissioner, or any person authorised by the Commissioner, consents to the communication by a person mentioned in subsection (1)(a) or (b) of information disclosed to or obtained by the person under this Act, the person and any person designated by the person, may communicate the information —
  - (a) to any other person so mentioned; or
  - (b) to any person to whom, or for any purpose that, the person is permitted under a law of the Commonwealth or the State concerned, to communicate information obtained under or in connection with the administration or execution of that law.
- (3) Except as provided by this section or by a State Taxation Act, a person shall not disclose information or publish any book or part of a book obtained by that or another person under this Act unless the disclosure or publication is made —

- (a) with the consent of, and in accordance with any conditions imposed by, the person from whom the information or book was so obtained;
  - (b) in connection with the administration or execution of —
    - (i) this Act; or
    - (ii) a law of the Commonwealth or of a State providing for the levying and collection of a tax, fee, duty or other impost;
- or
- (c) for the purpose of any legal proceedings arising out of any such Act or law or of a report of any such proceedings.

Penalty: \$10 000.

**10. Information obtained under a corresponding law**

A person shall not disclose information or publish any book or part of a book obtained by that or another person under a corresponding law for the purposes of a State Taxation Act unless the disclosure or publication is made —

- (a) as authorised under that corresponding law;
- (b) in connection with the administration or execution of that State Taxation Act; or
- (c) for the purposes of any legal proceedings arising out of this section or of that State Taxation Act or of a report of any such proceedings.

Penalty: \$10 000.

## Part 4 — Miscellaneous

### 11. Certification of copies by corresponding Commissioner

- (1) If the corresponding Commissioner concerned has certified a copy of an original book, or part of an original book, lodged with, or kept or issued by, that Commissioner or some other corresponding Commissioner under a recognized revenue law to be a true copy, a document purporting to be such a copy is, subject to subsection (2), receivable in all judicial proceedings in Western Australia relating to a matter arising under a State Taxation Act as evidence as if the document were the original book.
- (2) Subsection (1) does not apply in relation to a document purporting to be certified under that subsection if —
  - (a) in the case of proceedings for an offence, evidence is adduced that the document is not a true copy; or
  - (b) in any other case, it is proved on a balance of probabilities that the document is not a true copy.
- (3) If —
  - (a) in accordance with a recognized revenue law, a copy is made of an original book or of a part of such a book;
  - (b) in accordance with a power or duty under that law, the corresponding Commissioner concerned or another corresponding Commissioner has certified the copy to be a true copy of the original book or part of the original book; and
  - (c) that corresponding Commissioner has certified a copy of the primary copy or of a part of that copy to be a true copy,

a document purporting to be a copy certified under this subsection to be a primary copy of an original book or of part of such a book is, subject to subsection (4), receivable in all judicial proceedings in Western Australia relating to a matter



arising under a State Taxation Act as evidence as if the copy so certified were the original book.

- (4) Subsection (3) does not apply in relation to a copy purporting to be certified under that subsection if —
- (a) in proceedings for an offence, evidence is adduced that —
    - (i) the copy is not a true copy of the primary copy or copy concerned; or
    - (ii) the primary copy is not a true copy of the original book or part of the original book concerned;

or

  - (b) in any other proceedings, it is proved on a balance of probabilities that —
    - (i) the copy is not a true copy of the primary copy or part of the primary copy concerned; or
    - (ii) the primary copy is not a true copy of the original book or part of the original book concerned.

**12. Certification of copies by the Commissioner**

On being requested to do so by a corresponding Commissioner, the Commissioner may —

- (a) certify a copy of a book, or part of a book, lodged with or kept or issued by the Commissioner under a State Taxation Act; and
- (b) supply that copy to that corresponding Commissioner for use in legal proceedings brought under or for the purposes of enforcing a recognized revenue law or a corresponding law.

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**13. Obstruction etc. of authorised officer**

- (1) A person shall not —
- (a) hinder or obstruct an authorised officer, or any person assisting an authorised officer, in the exercise of any of the powers conferred by section 6, 7 or 8; or
  - (b) fail or refuse to comply with a requirement made under section 6 or 8.

Penalty: \$1 000.

- (2) A person is not guilty of an offence under subsection (1) —
- (a) unless —
    - (i) it is established by the prosecutor that the authorised officer concerned identified himself or herself as such an officer at the relevant time;
    - (ii) where the offence arises under subsection (1)(a), it is established by the prosecutor that the person was informed by the authorised officer concerned, or otherwise knew, that that officer was empowered to exercise the particular power concerned; or
    - (iii) where the offence arises under subsection (1)(b), it is established by the prosecutor that the authorised officer concerned warned the person that a failure or refusal to comply with the requirement was an offence;
- or
- (b) if, where the offence arises under subsection (1)(b) in relation to a failure or refusal to comply with a requirement to answer a question, the person satisfies the court that the person did not know, and could not with reasonable diligence have ascertained, the answer to the question.

*[Section 13 amended by No. 78 of 1995 s. 147.]*

**14. False or misleading statements**

- (1) A person shall not give an answer, whether orally or in writing, to a question put to that person by an authorised officer under this Act that is false or misleading in a material particular.
- (2) A person shall not, in providing information in accordance with this Act, make any statement or representation that is false or misleading in a material particular.
- (3) A person is not guilty of an offence under subsection (1) or (2) if the person satisfies the court that, when the answer, statement or representation was made, the person believed on reasonable grounds that it was neither false nor misleading.  
Penalty: \$5 000 or imprisonment for 12 months, or both.

**15. Regulations**

The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[16. Repealed by No. 56 of 1997 s. 55.]*

*[Schedule 1 repealed by No. 56 of 1997 s. 55.]*

**Notes**

<sup>1</sup> This is a compilation of the *Taxation (Reciprocal Powers) Act 1989* and includes the amendments made by the other written laws referred to in the following table<sup>4,5</sup>.

**Compilation table**

| <b>Short title</b>  | <b>Number and year</b> | <b>Assent</b> | <b>Commencement</b>   |
|---|------------------------|---------------|---|
| <i>Taxation (Reciprocal Powers) Act 1989</i>  | 18 of 1989             | 1 Dec 1989    | 5 Oct 1990 (see s. 2 and <i>Gazette</i> 5 Oct 1990 p. 5122)   |
| <i>Debits Tax Assessment Act 1990 s. 47</i>   | 57 of 1990             | 17 Dec 1990   | 1 Jan 1991 (see s. 2(1) and (2) and also the <i>Debits Tax Termination Act 1990 s. 2</i> of the Cwlth)      |
| <i>Sentencing (Consequential Provisions) Act 1995 s. 147</i>  | 78 of 1995             | 16 Jan 1996   | 4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)  |
| <i>Acts Amendment (Franchise Fees) Act 1997 Pt. 6</i>   | 56 of 1997             | 12 Dec 1997   | 31 Jan 1998 (see s. 2 and <i>Gazette</i> 30 Jan 1998 p. 577)  |
| <i>Revenue Laws Amendment (Assessment) Act 1998 s. 4(2)</i>   | 22 of 1998             | 30 Jun 1998   | 21 Jul 1998 (see s. 2 and <i>Gazette</i> 21 Jul 1998 p. 3826)   |
| <i>Financial Relations Agreement (Consequential Provisions) Act 1999 s. 39</i>  | 53 of 1999             | 13 Dec 1999   | 1 Jul 2000 (see s. 2(3))  |
| <i>Corporations (Consequential Amendments) Act 2001 Pt. 50</i>  | 10 of 2001             | 28 Jun 2001   | 15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and Cwlth <i>Gazette</i> 13 Jul 2001 No. S285) |
| <b>Reprint of the <i>Taxation (Reciprocal Powers) Act 1989</i> as at 12 October 2001</b> (includes amendments listed above) |                        |               |   |
| <i>Taxation Administration (Consequential Provisions) Act 2002 s. 24<sup>6</sup></i>  | 45 of 2002             | 20 Mar 2003   | 1 Jul 2003 (see s. 2 and <i>Gazette</i> 27 Jun 2003 p. 2383)  |

<sup>2</sup> Footnote note longer applicable.

<sup>3</sup> Footnote note longer applicable.

<sup>4</sup> Under the *Commonwealth Places (Mirror Taxes Administration) Act 1999* s. 7 this Act is to be read and construed with any modifications referred to in subsection (1) of that section and, in particular, with the modifications set out in the *Commonwealth Places (Mirror Taxes Administration) Regulations 2002*. Pt. 1 and Pt. 8 Div. 1 of those regulations read as follows:

“

## Part 1 — Preliminary

### 1. Citation

These regulations may be cited as the *Commonwealth Places (Mirror Taxes Administration) Regulations 2002*.

### 2. Commencement

- (1) These regulations do not have effect unless an arrangement is in operation under section 5 of the Act.
- (2) When such an arrangement is in operation, these regulations and the modifications they prescribe are deemed to have taken effect on 6 October 1997.
- (3) If a State taxing law was repealed before these regulations take effect then, despite the repeal, when these regulations are deemed under subsection (2) to have taken effect, the repealed law is deemed to have been modified, in accordance with these regulations, on 6 October 1997.

### 3. Modification of State taxing laws

- (1) In its operation as an applied WA law, the Act is modified by omitting section 7.
- (2) For the purposes of section 7(2) of the Act, each State taxing law is taken to be modified to the extent necessary to give effect to subregulation (3).
- (3) If —
  - (a) a State taxing law applies, or could apply, to any extent, to or in relation to an event, state of affairs or transaction, and the corresponding applied law also applies, or could apply, to any extent, to or in relation to the same event, state of affairs or transaction;
  - (b) a person is required or permitted, or could be required or permitted, to take an action under both the State taxing law and the corresponding applied law in relation to the event, state of affairs or transaction;
  - (c) the person has taken the action in accordance with the corresponding applied law; and

- (d) the Commissioner has enough information about the event, state of affairs or transaction to carry out his or her functions in relation to it under the State taxing law or the corresponding applied law or both, as the case requires,
- then —
- (e) the person is not required to take the action under the State taxing law; and
  - (f) the Commissioner may carry out his or her functions in relation to the event, state of affairs or transaction as if the person had taken whatever action is required or permitted under the State taxing law in relation to the event, state of affairs or transaction.
- (4) The particular modifications set out in these regulations of certain State taxing laws have effect for the purposes of section 7(2) of the Act.

## **Part 8 — Reciprocal powers**

### **Division 1 — The *Taxation (Reciprocal Powers) Act 1989***

**73. Modification of the *Taxation (Reciprocal Powers) Act 1989***

This Division sets out modifications of the *Taxation (Reciprocal Powers) Act 1989*\*.

[\* Reprinted as at 12 October 2001.]

**74. Section 2A inserted**

After section 2 the following section is inserted —

“

**2A. Application of Act in non-Commonwealth places**

- (1) In this Act —
  - (a) a reference to this Act is to be read as a reference to this Act in its application as a law of Western Australia; and
  - (b) a reference to a State Taxation Act is to be read as a reference to that Act in its application as a law of Western Australia.
- (2) This Act is to be read with the applied Taxation (Reciprocal Powers) Act as a single body of law.

”.

75. Section 3 modified

- (1) Section 3(1) is modified by inserting the following definitions in their appropriate alphabetical positions —

“

“**applied interstate law**” means a law of another State in its application as a law of the Commonwealth in or in relation to Commonwealth places in that State in accordance with the Commonwealth Mirror Taxes Act;

“**applied Taxation (Reciprocal Powers) Act**” means the *Taxation (Reciprocal Powers) Act 1989* of Western Australia in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;

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

“**Commonwealth place**” means a Commonwealth place to which the applied Taxation (Reciprocal Powers) Act applies, or is taken to have applied, under the Commonwealth Mirror Taxes Act;

”.

- (2) Section 3(1) is modified by deleting the definition of “corresponding law” and inserting instead —

“

“**corresponding law**” means —

- (a) a law declared under subsection (4) to be a corresponding law for the purposes of this Act; or
- (b) an applied interstate law that corresponds to a law referred to in paragraph (a);

”.

- (3) Section 3(1) is modified by deleting the definition of “recognized revenue law” and inserting instead —

“

“**recognised revenue law**” means —

- (a) a law of the Commonwealth or another State declared under subsection (2) to be a recognised revenue law for the purposes of this Act; or

- (b) an applied interstate law that corresponds to a law referred to in paragraph (a).

”.

- (4) After section 3(2) the following subsection is inserted —

“

- (2a) An office under an applied interstate law of a State is taken to be a corresponding office for the purposes of this Act if the applied interstate law corresponds to a law of that State that has been declared under subsection (2) to be a recognised revenue law.

”.

**76. Section 9 modified**

Section 9(1)(b) is deleted and the following paragraphs are inserted instead —

“

- (b) the Commissioner or any other officer of a State administering a law of the State relating to taxation or a law of the Commonwealth that is a recognised revenue law;
- (c) a person authorised by a Commissioner or other officer referred to in paragraph (b).

”.

”.

<sup>5</sup> Under the *Commonwealth Places (Mirror Taxes Administration) Act 1999* s. 8(2) of the Commonwealth, this Act is to be read and construed with any modifications referred to in subsection (1) of that section and, in particular, with the modifications set out in the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2002*. Pt. 1 and Pt. 8 Div. 1 of that notice read as follows:

“

**Part 1 — Preliminary**

**1. Citation**

This notice may be cited as the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2002*.

**2. Commencement**

- (1) This notice does not have effect unless an arrangement is in operation under section 9 of the Commonwealth Places Mirror Taxes Act in relation to Western Australia.



- (2) When such an arrangement is in operation, this notice and the modifications it prescribes are deemed to have taken effect on 6 October 1997.
- (3) If an applied WA law was repealed before this notice takes effect then, despite the repeal, when this notice is deemed under subsection (2) to have taken effect, the repealed law is deemed to have been modified on 6 October 1997 as set out in this notice.

**3. Definitions**

In this notice —

“**applied WA law**” means the provisions of a State taxing law of Western Australia that apply or are taken to have applied in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;

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

“**WA taxing law**” means a State taxing law of Western Australia.

**4. Modification of applied WA laws**

- (1) For the purposes of section 8 of the Commonwealth Mirror Taxes Act, each applied WA law is taken to be modified to the extent necessary to give effect to subregulation (2).
- (2) If —
  - (a) an applied WA law applies, or could apply, to any extent, to or in relation to an event, state of affairs or transaction, and the corresponding State taxing law also applies, or could apply, to any extent, to or in relation to the same event, state of affairs or transaction;
  - (b) a person is required or permitted, or could be required or permitted, to take an action under both the applied WA law and the corresponding State taxing law in relation to the event, state of affairs or transaction;
  - (c) the person has taken the action in accordance with the corresponding State taxing law; and
  - (d) the Commissioner has enough information about the event, state of affairs or transaction to carry out his or her functions in relation to it under the applied WA law or the corresponding State taxing law or both, as the case requires,

then —

- (e) the person is not required to take the action under the applied WA law; and

- (f) the Commissioner may carry out his or her functions in relation to the event, state of affairs or transaction as if the person had taken whatever action is required or permitted under the applied WA law in relation to the event, state of affairs or transaction.
- (3) The particular modifications set out in this notice of certain applied WA laws have effect for the purposes of section 8 of the Commonwealth Mirror Taxes Act.

## **Part 8 — Reciprocal powers**

### **Division 1 — The applied *Taxation (Reciprocal Powers) Act 1989***

#### **109. Modification of the applied Act**

This Division sets out modifications of the *Taxation (Reciprocal Powers) Act 1989\** of Western Australia.

[\* Reprinted 12 October 2001.]

#### **110. Section 2A inserted**

After section 2 the following section is inserted —

“

#### **2A. Application of Act in Commonwealth places**

- (1) In this Act, unless the contrary intention appears —
  - (a) a reference to this Act is to be read as a reference to this Act in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;
  - (b) a reference to the regulations is to be read as a reference to the regulations in their application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act;
  - (c) a reference to a State Taxation Act that is a State taxing law within the meaning of the Commonwealth Mirror Taxes Act is to be read as a reference to that Act in its application as a law of the Commonwealth in or in relation to Commonwealth places in Western Australia in accordance with the Commonwealth Mirror Taxes Act; and

- (d) a reference to a law of another State is to be read as including a reference to a law of another State in its application (if any) to Commonwealth places in that State in accordance with the Commonwealth Mirror Taxes Act.
- (2) This Act is to be read with the corresponding Taxation (Reciprocal Powers) Act as a single body of law.
- (3) In addition to being modified as prescribed by the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2002*, this Act is deemed to be further modified to any extent that is necessary or convenient to enable this Act to operate effectively as a law of the Commonwealth.

”.

**111. Section 3 modified**

- (1) Section 3(1) is modified by inserting the following definitions in their appropriate alphabetical positions —

“

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

“**Commonwealth place**” means a Commonwealth place in or in relation to which this Act applies or is taken to have applied under section 6 of the Commonwealth Mirror Taxes Act;

“**corresponding Taxation (Reciprocal Powers) Act**” means the *Taxation (Reciprocal Powers) Act 1989* of Western Australia in its application as a law of Western Australia;

”.

- (2) Section 3(1) is modified in the definition of “Commissioner” by deleting all the words after “office of” and inserting instead —

“ Commissioner of State Revenue of Western Australia ”.

- (3) After section 3(2) the following subsection is inserted —

“

- (2a) An office that is declared to be a corresponding office for the purposes of section 3(2)(b) of the corresponding Taxation (Reciprocal Powers) Act is taken to have been declared to be a corresponding office for the purposes of this Act.

”.

”.

<sup>6</sup> The *Taxation Administration (Consequential Provisions) Act 2002* s. 3 and 4 and Pt. 4 read as follows:

“

**3. Relationship with other Acts**

The *Taxation Administration Act 2003* is to be read with this Act as if they formed a single Act.

**4. Meaning of terms used in this Act**

The Glossary at the end of the *Taxation Administration Act 2003* defines or affects the meaning of some of the words and expressions used in this Act and also affects the operation of other provisions.

**Part 4 — Transitional provisions**

**Division 1 — Interpretation**

**33. Definitions**

In this Part —

“**commencement day**” means the day on which the *Taxation Administration Act 2003* comes into operation;

“**old Act**” means —

- (a) an Act repealed by section 5;
- (b) the old Stamp Act; or
- (c) section 41 of the *Metropolitan Region Town Planning Scheme Act 1959* as in force immediately before the commencement day;

“**old Stamp Act**” means the *Stamp Act 1921* as in force immediately before the commencement day;

“**substantive provisions**”, in relation to an old Act, means the provisions of the old Act other than those dealing with matters dealt with in the *Taxation Administration Act 2003*.

**Division 2 — General transitional provisions**

**34. General transitional arrangements**

- (1) Section 37(1) of the *Interpretation Act 1984*, except paragraphs (a) and (b), does not apply in relation to the repeal of an old Act.
- (2) The repeal of an old Act does not, unless the contrary intention appears —
  - (a) affect any right, interest, title, power or privilege created, acquired, accrued, established or exercisable or any status or capacity existing prior to the repeal;

- (b) affect any duty, obligation, liability, or burden of proof imposed, created, or incurred prior to the repeal;
  - (c) subject to section 11 of *The Criminal Code* and section 10 of the *Sentencing Act 1995*, affect any penalty or forfeiture incurred or liable to be incurred in respect of an offence committed against the old Act; or
  - (d) affect any investigation, legal proceeding or remedy in respect of any such right, interest, title, power, privilege, status, capacity, duty, obligation, liability, burden of proof, penalty or forfeiture.
- (3) Subject to subsections (4) and (5) —
- (a) a right, interest, title, power, privilege, duty, obligation, liability or burden of proof referred to in subsection (2)(a) or (b) may be exercised or enforced;
  - (b) a penalty or forfeiture referred to in subsection (2)(c) may be imposed and enforced; and
  - (c) an investigation, legal proceeding or remedy referred to in subsection (2)(d) may be instituted, continued, or enforced,
- as if the substantive provisions of the relevant old Act —
- (d) had not been repealed;
  - (e) were a taxation Act for the purposes of the *Taxation Administration Act 2003*; and
  - (f) had been amended to make any modifications necessary for this section to have effect.
- (4) If an objection, appeal or other legal proceeding (the “**action**”) was instituted under an old Act and was not finally determined before the commencement day —
- (a) the action may be continued;
  - (b) any requirement to pay interest on an amount of tax determined in the action to have been overpaid applies and may be enforced;
  - (c) any penalty may be imposed and enforced; and
  - (d) any decision, order or determination made in the action has effect, and may be enforced,
- as if this Act and the taxation Acts had not commenced.
- (5) If the time limited by an old Act for doing anything is longer than the time limited by a taxation Act for doing the equivalent thing under that Act, then in relation to a matter to which subsection (3) applies, the time limited under the old Act applies in relation to the doing of the thing under the taxation Act.

- (6) If the time limited by an old Act for commencing proceedings in relation to an offence under that Act is shorter than the 5 year period limited by section 111 of the *Taxation Administration Act 2003*, then despite section 111, proceedings in relation to an offence under the old Act (including an offence under a provision of the old Act that is continued in force under this Part) cannot be commenced after the expiry of the shorter period provided for by the old Act.
- (7) In this section a reference, in relation to the *Stamp Act 1921*, to the repeal of the old Act is a reference to the amendment of the Act by the *Stamp Amendment Act 2003*.

**35. Commissioner not to increase tax liability**

Despite Part 3 Division 1 of the *Taxation Administration Act 2003*, the Commissioner must not make a reassessment that increases the amount of tax a person is liable to pay in relation to anything that happened before the commencement day if the reassessment could not have been made under the relevant old Act.

**36. Delegations**

A delegation made under an old Act and in force immediately before the commencement day continues in force on and after that day as a delegation made under section 10 of the *Taxation Administration Act 2003*.

**Division 3 — Debits tax**

**37. Certificates of exemption from tax (*Debits Tax Assessment Act 1990*, s. 11)**

- (1) A certificate issued under section 11 of the *Debits Tax Assessment Act 1990* and in force immediately before the commencement day continues in force on and after that day as a certificate issued under section 10 of the *Debits Tax Assessment Act 2002*.
- (2) Where section 13(1) of the *Debits Tax Assessment Act 2002* applies in relation to a certificate issued under section 11 of the *Debits Tax Assessment Act 1990* the Commissioner cannot make a reassessment of the amount of debits tax payable on a debit for the purpose of giving effect to that section more than 3 years after —
- (a) if the financial institution has recovered the amount of the debits tax paid on the debit from the customer — the date on which that amount was recovered; or
  - (b) otherwise — the date on which the debits tax on the debits was paid.

**Division 4 — Land tax**

**38. Exemptions for certain home unit owners (*Land Tax Assessment Act 1976*, s. 19)**

If the amount of land tax payable on land for the financial year commencing on 1 July 2001 was assessed under section 19 of the *Land Tax Assessment Act 1976*, then on and after the commencement day section 16 of the *Land Tax Assessment Act 2002* applies in relation to that land as if that assessment had been made under section 16.

**39. Inner city residential property rebate (*Land Tax Assessment Act 1976*, s. 23AB)**

A notice given by the Commissioner under section 23AB(7) of the *Land Tax Assessment Act 1976* and in force immediately before the commencement day continues in force on and after that day as a notice under section 28(4) of the *Land Tax Assessment Act 2002*.

**40. Land tax relief Acts**

Despite —

- (a) the repeal of the *Land Tax Assessment Act 1976* and *Land Tax Act 1976*; and
- (b) the amendment of section 41 of the *Metropolitan Region Town Planning Scheme Act 1959*,

on and after the commencement day the *Land Tax Relief Act 1991* and *Land Tax Relief Act 1992* apply as if the substantive provisions of the Acts mentioned in paragraphs (a) and (b) —

- (c) had not been repealed;
- (d) were a taxation Act for the purposes of the *Taxation Administration Act 2003*; and
- (e) had been amended to make any modifications necessary for this section to have effect.

**Division 5 — Pay-roll tax**

**41. Treatment of certain contributions (*Pay-roll Tax Assessment Act 1971*, Sch. 2 cl. 5)**

Despite the repeal of the *Pay-roll Tax Assessment Act 1971*, Schedule 2 clause 5 of that Act continues to apply on and after the commencement day in relation to contributions wholly or partly in respect of services performed or rendered before 1 July 1997 as if that Act had not been repealed.

**42. Reassessments and refunds (*Pay-roll Tax Assessment Act 1971*, s. 19)**

Despite sections 16(3), 20(3) and 22(4) of the *Pay-roll Tax Assessment Act 2002* and section 16(1)(a) of the *Taxation Administration Act 2003*, the Commissioner is not required to make a reassessment of the amount of pay-roll tax payable by an employer in respect of wages paid or payable before the commencement day unless an application for a reassessment is made within 2 years after the tax was paid.

**Division 6 — Stamp duty**

**43. Adhesive stamps (*Stamp Act 1921*, s. 15, 21 and 23)**

- (1) Despite its repeal by the *Stamp Amendment Act 2003*, section 15 of the old Stamp Act continues in force for 12 months after the commencement day in relation to adhesive stamps that were affixed on instruments before that day.
- (2) Despite their repeal by the *Stamp Amendment Act 2003*, sections 21 and 23 of the old Stamp Act continue in force for 3 months after the commencement day in relation to adhesive stamps that were affixed on instruments before that day.
- (3) If adhesive stamps affixed to an instrument have been cancelled in accordance with the old Stamp Act (including the provisions of the old Stamp Act continued in force by subsections (1) and (2)) the instrument is taken to have been endorsed in accordance with section 17C of the *Stamp Act 1921*.

**44. Printing of “Stamp Duty Paid” on cheques (*Stamp Act 1921*, s. 52)**

- (1) An authorisation of a financial institution granted under section 52 of the old Stamp Act and in force immediately before the commencement day continues in force on and after that day as a special tax arrangement made under the *Taxation Administration Act 2003*.
- (2) Any requirement that applied, immediately before the commencement day, to a person to whom an authorisation continued by subsection (1) had been granted (whether imposed by the old Stamp Act or as a condition to which the authorisation was subject), continues as a condition to which the special tax arrangement referred to in subsection (1) is subject.

**45. First home owners — reassessment (*Stamp Act 1921*, s. 75AG)**

Despite section 17(1) of the *Taxation Administration Act 2003*, if property that included a dwellinghouse was conveyed or



transferred before the commencement day, an application for a reassessment of the duty payable on the conveyance or transfer on the basis that a rebate under section 75AG of the old Stamp Act should have been, but was not, allowed cannot be made more than 12 months after the date of the original assessment.

**46. Reassessment of duty on grant or transfer of vehicle licences  
(Stamp Act 1921, s. 76C(18) and (19), 76CA(3a) and 76CB(9))**

- (1) This section applies in relation to a grant or transfer of a licence that occurred before the commencement day.
- (2) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the grant or transfer of a licence on the basis that the duty should not have been paid because —
  - (a) in the case of a grant — no vehicle licence fee was payable under the *Road Traffic Act 1974* in respect of the licence; or
  - (b) in the case of a transfer — had the transferee applied for the licence on the date of the transfer no vehicle licence fee would have been payable under the *Road Traffic Act 1974*,

cannot be made more than 15 months after the licence was granted or transferred.

- (3) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty paid on the transfer of a licence on the basis that the duty should have been, but was not, charged in accordance with item 6 of the Second Schedule to the old Stamp Act because the transfer did not pass a beneficial interest, cannot be made more than 12 months after the licence was transferred.
- (4) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the grant or transfer of a licence on the basis that the duty should have been, but was not, assessed on the net market value of the vehicle (as defined in section 76CB of the old Stamp Act), cannot be made more than 12 months after the licence was granted or transferred.

**47. Alternative to stamping individual insurance policies  
(Stamp Act 1921, s. 95A)**

- (1) A permission granted under section 95A of the old Stamp Act and in force immediately before the commencement day continues in force on and after that day as a special tax arrangement made under the *Taxation Administration Act 2003*.

- (2) Any requirement that applied, immediately before the commencement day, to a person to whom a permission continued by subsection (1) had been granted (whether imposed by the old Stamp Act or as a condition to which the permission was subject), continues as a condition to which the special tax arrangement referred to in subsection (1) is subject.

**48. Workers' compensation insurance (*Stamp Act 1921*, s. 97 and item 16 of the Second Schedule)**

- (1) Despite section 17(1) of the *Taxation Administration Act 2003*, an application for a reassessment of the duty payable on the issue or renewal of a policy of insurance that occurred before the commencement day on the basis that the duty was assessed under item 16(1)(a)(i) of the Second Schedule to the old Stamp Act but should have been assessed under item 16(1)(a)(ii), cannot be made more than 2 years after the beginning of the insurance policy's cover period.
- (2) Despite the amendment of Schedule 2 item 16(1)(a) of the *Stamp Act 1921*, on and for 12 months after the commencement day —
- (a) the reference in Schedule 2 item 16(1)(a)(i)(A) to the *Pay-roll Tax Assessment Act 2002* includes a reference to the *Pay-roll Tax Assessment Act 1971*; and
  - (b) the reference in Schedule 2 item 16(1)(a)(i)(B) to section 39 or 40 of the *Pay-roll Tax Assessment Act 2002* includes a reference to section 10 of the *Pay-roll Tax Assessment Act 1971*.

**49. Payment of duty by returns (*Stamp Act 1921*, s. 112V)**

- (1) A permission granted under section 112V of the old Stamp Act and in force immediately before the commencement day continues in force on and after that day as a special tax arrangement under the *Taxation Administration Act 2003*.
- (2) Any requirement that applied, immediately before the commencement day, to a person to whom a permission continued by subsection (1) had been granted (whether imposed by the old Stamp Act or as a condition to which the permission was subject), continues as a condition to which the special tax arrangement referred to in subsection (1) is subject.

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