**EXPLANATORY STATEMENT**

**Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Amendment Notice 2020**

**EMPOWERING PROVISION**

Subsection 8(2) of the *Commonwealth Places (Mirror Taxes)* *Act* *1998*.

**PURPOSE**

Under section 52(i) of the Constitution, the Commonwealth has exclusive power to legislate in respect of places acquired by the Commonwealth for public purposes (Commonwealth places). In 1996, the High Court determined this means state tax laws cannot operate in Commonwealth places within a state.[[1]](#footnote-1)

The *Commonwealth Places (Mirror Taxes) Act 1998* (the Commonwealth Act) ensures state tax laws apply to businesses operating in Commonwealth places within Western Australia. The Commonwealth Act applies state tax laws which normally would not apply in Commonwealth places as Commonwealth applied laws.

Section 8(2) of the Commonwealth Act allows an applied law to be modified if there is a corresponding state tax law. This ensures the laws operate correctly when a taxpayer has a liability under both an applied law and its corresponding state tax law.

These modifications may be prescribed in the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007* (the Commonwealth Notice).

Clauses 31 and 32 of the Commonwealth Notice modify the applied *Pay-roll Tax Assessment Act 2002* (Applied PTA Act) by inserting sections 16A and 20A. Under these sections, any reference to ‘WA taxable wages’ in the Applied PTA Act includes any WA taxable wages under the *Pay-roll Tax Assessment Act 2002* (WA) (PTA Act). This ensures tax is calculated correctly for employers who pay wages in both Western Australia and Commonwealth places within the State.

These sections refer to Part 2 Divisions 2 and 3 of the Applied PTA Act and PTA Act, which calculate payroll tax liability for employers and groups of employers. On 6 April 2020, the *Pay-roll Tax Assessment Amendment (Thresholds) Act 2020* (WA) inserted Part 2 Division 6 into the PTA Act. The division contains specific rules to calculate payroll tax for the 2019-20 financial year taking into account the mid-year taxable threshold increase on 1 January 2020 from $850,000 to $950,000.

The attached instrument inserts clause 32A into the Commonwealth Notice to modify the Applied PTA Act by inserting section 23N. Section 23N deems that for both the Applied PTA Act and the PTA Act, references to Part 2 Divisions 2 and 3 are taken to include a reference to Part 2 Division 6. This ensures tax is calculated correctly for employers and groups of employers paying wages in Western Australia and Commonwealth places in the State for the 2019-20 financial year.

The *Commonwealth Places (Mirror Taxes Administration) Act 1999* (WA) allows a state tax law to be modified by the State Minister for Finance if there is a corresponding Commonwealth applied law. On 23 October 2020, corresponding modifications were made to the PTA Act by the *Finance Regulations Amendment Regulations 2020* (WA).

**CONSULTATION**

Section 17 of the *Legislation Act 2003* requires the rule-maker to be satisfied that any consultation that is considered appropriate and reasonably practicable to undertake, has been undertaken.

Consultation was not considered necessary for this Amendment Notice as the amendments are minor in nature and do not impact the existing policy of the mirror taxes regime.

In these circumstances it is considered that the requirements of section 17 of the *Legislation Act 2003* have been met.

**RETROSPECTIVITY**

Although the instrument comes into operation on the day after the day it is registered under the *Legislation Act 2003,* the modification to the Applied PTA Act prescribed in clause 6 of the instrument has effect from 1 July 2019.

Under subsection 12(2) of the *Legislation Act 2003*, a provision of a legislative instrument is of no effect if it takes effect before registration and disadvantages or imposes liabilities on a person other than the Commonwealth. Retrospective commencement of the instrument does not contravene this rule because the modifications do not disadvantage taxpayers or impose any obligations or liabilities that did not already exist under the Commonwealth Notice and Applied PTA Act.

**DOCUMENTS INCORPORATED BY REFERENCE**

None.

**REGULATION IMPACT STATEMENT**

The Office of Best Practice Regulation was consulted by the Western Australian Department of Finance about this instrument and indicated that a Regulation Impact Statement was not required (OBPR ID: 43144).

**HUMAN RIGHTS STATEMENT**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

This legislative instrument is compatible with the human rights and freedoms recognised or declared by the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

*Human rights implications*

The legislative instrument does not engage any of the applicable rights or freedoms.

*Overview*

Under section 6 of the *Commonwealth Places (Mirror Taxes) Act 1998*, the provisions of state tax laws that would be excluded from applying to Commonwealth places by section 52(i) of the Constitution are taken to apply as applied laws of the Commonwealth. Under section 8 of the Act, the State Treasurer may prescribe modifications to those applied laws by legislative instrument.

This instrument amends the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007* to reflect recent changes to the Western Australian payroll tax laws. The instrument amends the notice to ensure the applied laws function correctly following these changes, but does not alter the substantive effect of the notice or any applied laws.

*Conclusion*

The attached instrument is compatible with human rights.

Western Australian Treasurer

Rule-Maker

Attachment A

**FURTHER EXPLANATION OF PROVISIONS**

Clause 1

This clause provides that the name of the instrument is the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Amendment Notice 2020*.

Clause 2

This clause provides that the instrument commences on the day after the day it is registered under the *Legislation Act 2003*.

Clause 3

This clause provides that the instrument amends the *Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007*.

Clause 4

This clause provides that the date of effect for the modification to the applied PTA Act in Clause 32A is 1 July 2019. This aligns the modification with the commencement date of the amendments to the *Pay-roll Tax Assessment Act 2002* (WA) made by the *Pay-roll Tax Assessment Amendment (Thresholds) Act 2020* (WA).

Section 8(5)(a) of the *Commonwealth Places (Mirror Taxes) Act 1998* provides that modifications may take effect from a date earlier than the date of their registration.

Clause 5

This clause corrects minor errors in inserted section 20A in clause 32.

Clause 6

This clause inserts clause 32A into the Commonwealth Notice to modify the Applied PTA Act by inserting section 23N. Section 23N deems that for both the Applied PTA Act and the
PTA Act, references to Part 2 Divisions 2 and 3 are taken to include a reference to Part 2 Division 6.

Sections 16A and 20A of the Applied PTA Act refer to Part 2 Divisions 2 and 3 of the
PTA Act, which set out how payroll tax is calculated in a financial year. The *Pay-roll Tax Assessment Amendment (Thresholds) Act 2020* (WA) inserted Part 2 Division 6 into the
PTA Act to calculate payroll tax for the 2019-20 financial year taking into account the change to the taxable threshold that occurred on 1 January 2020.

This modification inserts the reference to Part 2 Division 6 to ensure tax is calculated correctly for employers paying wages in Western Australia and Commonwealth places in the State for the 2019-20 financial year.

1. *Allders International Pty Ltd v Commissioner of State Revenue (Victoria)* (1996) 186 CLR 630. [↑](#footnote-ref-1)