

2002

THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

TAXATION (GOVERNMENT BUSINESS ENTERPRISES) BILL 2002

EXPLANATORY STATEMENT

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## **Outline of the Bill**

The purpose of the Taxation (Government Business Enterprises) Bill 2002 is twofold. The Bill provides for the implementation of the national tax equivalent regime and secondly provides for the application of Territory taxes to ACT Government agencies.

Part 2 gives effect to an intergovernmental agreement which imposes the liability to pay Commonwealth income tax equivalents on nominated Government entities.

Part 3 imposes a liability on nominated ACT Government entities to pay Territory taxes. In general these Government entities are required to be subject to the same Territory tax regime as their private sector counterparts.

The legislation works through the Executive use of regulations to determine which Territory entities are to be subject to income tax equivalents and/or Territory taxes.

The Bill also includes a schedule to cover a number of consequential amendments to the enabling legislation of a number of ACT Government entities with regard to their liability to pay Commonwealth income tax equivalents. All Territory entities required to pay income tax equivalents or Territory taxes are to have their enabling legislation amended so that the Taxation (Government Business Enterprises) Bill 2002 specifies through regulations which of these entities are to pay income tax equivalents and/or Territory taxes.

## **Explanation of the Bill**

### **Part 1 - Preliminary**

Clause 1 states the name of the legislation.

Clause 2 specifies the commencement date of the legislation. For Parts 2 and 3 the commencement date is 1 July 2002. While this is retrospective, the application of the legislation to the ACT Government entities has already been operating from this date, and in most cases, for some time before this date.

Clause 3 specifies that the legislation contains a dictionary found at the end of this part of the legislation.

Clause 4 deals with notes found in the legislation and provides that a note in the legislation is for explanatory purposes and is not part of the Act.

## **Part 2 – Payment of Commonwealth income tax equivalent**

Clause 5 explains the purpose of Part 2 which is a fundamental principle of the Act. The requirement to pay Commonwealth income tax equivalents is based on a Memorandum of Understanding between the Commonwealth, all the States, the ACT, and the Northern Territory and the Commonwealth Commissioner for Taxation. It arises from the ACT's participation in the National Competition Policy Agreements.

Clause 6 provides that a Territory entity prescribed under the regulations must comply with the taxation laws listed in the Memorandum of Understanding, schedule 2 subject to the modifications of the application of those laws made by the Memorandum and the manual which has been developed for the administration of the national tax equivalent regime.

Clause 7 provides that the Executive, in making regulations about taxing Territory entities, have regard to the principle of competitive neutrality for the establishment of the national tax equivalent regime. The principle of competitive neutrality provides that government businesses should not enjoy any net competitive advantage over the private sector simply because of their public ownership.

Clause 8 requires that a prescribed Territory entity provide information to the Minister about its compliance with its obligations under the national tax equivalent regime or a copy of any return or other document the entity has been given to the Commissioner of Taxation in compliance, or purported compliance, with its obligations under Part 2.

## **Part 3 – Payment of taxes and charges generally**

Clause 9 states that a Territory entity as prescribed under the regulations is not exempt from liability for any tax, fee or charge under Territory law.

Clause 10 provides that the Minister may direct a Territory entity to pay any tax or any fee or charge payable under a Territory law. The Minister's direction is a notifiable instrument.

## **Part 4 – Miscellaneous**

Clause 11 provides a regulation-making power for the Executive for the Act.

Clause 12 states that schedule 1 contains a list of consequential amendments to various relevant Acts arising from enactment of this Act.

## **Schedule 1 – Consequential amendments (see clause 12)**

### Part 1.1

Omits section 35 of the *ACTION Authority Act 2001* which requires ACTION Authority to pay tax as if the authority was a Territory owned corporation.

### Part 1.2

Omits section 30A of the *Cultural Facilities Corporation Act 1997* which requires the Cultural Facilities Corporation to be liable to pay Commonwealth income tax equivalents.

### Part 1.3

Omits sections 35 and 35A of the *Gungahlin Development Authority Act 1996* which requires the Authority to pay Commonwealth tax equivalents and Territory taxes.

### Part 1.4

Omits section 32 of the *Hotel School Act 1996* which requires the Hotel School to pay Territory taxes.

### Part 1.5

Amends section 34 of the *Insurance Authority Act 2000* by deleting the requirement to pay tax as if it were a Territory owned corporation under the *Territory Owned Corporations Act 1990*.

### Part 1.6

Amends the *Kingston Foreshore Development Authority Act 1999* by deleting sections 34 to 37 dealing with the liability of the Authority to pay Commonwealth tax equivalents. In omitting these sections Section 27 is amended to define only 'a business plan' and section 27A is also omitted.

### Part 1.7

Omits section 27 of the *National Exhibition Centre Trust Act 1976* which imposed a liability on the Trust to pay Territory taxes.

### Part 1.8

Amends subsection 9(1)(h) and (i) of the *Payroll Tax Act 1987* by substituting a new basis to determine which wages paid by an entity prescribed by the *Taxation (Government Business Enterprises) Act 2002* are to be subject to the *Payroll Tax Act 1987*.

Amends subsection 9(2) by substituting the requirement that a nomination under subsection 9(1)(h)(i) is a disallowable instrument.

Thus in effect, an entity whose wages are not paid or payable from a bank account maintained under the *Financial Management Act 1996* or is not funded solely by money appropriated from the public money of the Territory is liable to pay payroll tax.

### Part 1.9

Amends section 36 of the *Stadiums Authority Act 2000* by omitting the requirement to pay taxes as if it were a Territory owned corporation.

#### Part 1.10

Amends a number of provisions to Part 5 of the *Territory Owned Corporations Act 1990* by deleting the following sections 28A, section 29, sections 30 to 30L as they deal with the requirement to pay with income tax equivalents and wholesale tax equivalents.

The liability of territory entities to pay income tax equivalents is now covered in this legislation. The liability to pay wholesale tax equivalents is no longer applicable as the wholesale tax no longer exists.

Part 5 of the *Territory Owned Corporations Act 1990* is retitled “Territory Taxes” as matters dealing with income tax equivalents and wholesale tax equivalents are to be omitted.