

New Tax System Price Exploitation Code (Victoria) Bill

EXPLANATORY MEMORANDUM

General

The object of this Bill is to give effect in Victoria to Commonwealth legislation aimed at preventing price exploitation as a result of the introduction of the New Tax System.

The Commonwealth **A New Tax System (Trade Practices Amendment) Bill 1999** ("the Commonwealth Bill") inserts a new Part VB into the **Trade Practices Act 1974** of the Commonwealth ("the TPA"). The Commonwealth Bill also inserts a new Part into the Schedule to the TPA, known as "the Schedule version of Part VB". The Schedule version of Part VB is modified to refer to conduct by "persons" rather than "corporations".

The Commonwealth Bill will be complemented by legislation to be enacted in each State and Territory pursuant to an agreement made at the Premiers' Conference held in Canberra on 9 April 1999. The aim of the State and Territory legislation is to apply the provisions of Part VB of the TPA to those persons and activities that do not or may not fall within the legislative power of the Commonwealth Parliament (for example, business activities of individuals or partnerships).

The State and Territory legislation does this by applying, throughout Australia, the "New Tax System Price Exploitation Code" ("the Code"). The Code consists of the Schedule version of Part VB and the other provisions described in clause 4(1) of the proposed Act.

Clause Notes

PART 1—PRELIMINARY

- Clause 1 sets out the purpose of the proposed Act.
- Clause 2 provides for the commencement of the proposed Act. Part 1 will commence upon Royal Assent. The remainder of the Bill will come into operation on a day to be proclaimed, but not before the commencement of the Commonwealth Bill. The Commonwealth Bill comes into operation on the day after each

of the following proposed Commonwealth Acts receives Royal Assent:

- the A New Tax System (Goods and Services Tax) Act 1999;
- the A New Tax System (Goods and Services Tax Imposition—Excise) Act 1999;
- the A New Tax System (Goods and Services Tax Imposition—Customs) Act 1999;
- the A New Tax System (Goods and Services Tax Imposition—General) Act 1999; and
- the A New Tax System (Goods and Services Tax Administration) Act 1999.

Clause 3 contains interpretative provisions for the proposed Act. Clause 3(1) contains a list of definitions. These are as follows:

"application law", this is the same as in proposed s. 150L of the TPA, to be inserted by the Commonwealth Bill;

"Commission", this is the same as in s. 4 of the TPA;

"instrument", this is the same as in s. 3 of the Competition Policy Reform (Victoria) Act 1995 ("the CPRVA");

"jurisdiction", means a State, which includes a Territory;

"law", this is the same as in s. 3 of the CPRVA;

"modifications", this is the same as in s. 3 of the CPRVA;

"month", this is the same as in s. 3 of the CPRVA;

"New Tax System Price Exploitation Code" this is the same as in proposed Part XI AA of the TPA, to be inserted by the Commonwealth Bill;

"New Tax System Price Exploitation Code text", is the text described in clause 4 of the proposed Act;

"officer", this is the same as in proposed Part XI AA of the TPA, to be inserted by the Commonwealth Bill;

"participating jurisdiction", is a jurisdiction that applies the Code;

"Schedule version of Part IV", this is the same as in proposed s. 150L of the TPA, to be inserted by the Commonwealth Bill;

"State", includes a Territory;

"Territory", means the Australian Capital Territory and the Northern Territory of Australia;

"this jurisdiction", in this Bill means Victoria. However, this will differ in other jurisdictions;

"Trade Practices Act", means the **Trade Practices Act 1974** of the Commonwealth.

Clause 3(2) provides that expressions used in this Bill have the same meaning as in the TPA. Clause 3(3) provides that references to a Commonwealth Act include the Act as in force from time to time, and any Act that may replace the Commonwealth Act.

PART 2—THE NEW TAX SYSTEM PRICE EXPLOITATION CODE

Clause 4 defines the New Tax System Price Exploitation Code text that will be applied as the Code. The text consists of:

- (a) the Schedule version of Part VB;
- (b) the remaining provisions of the TPA (with some exceptions), so far as they would relate to the Schedule version of Part VB if it were substituted for Part VB;
- (c) relevant regulations made under the TPA; and
- (d) the guidelines to be published by the Australian Competition and Consumer Commission ("ACCC") under proposed section 75AV of the TPA.

The provisions referred to in paragraphs (b), (c) and (d) above are to be modified as required to fit in with the Schedule version of Part VB, and in particular, so that references to "corporations" are to include references to persons other than corporations.

Clause 5 is the principle operative clause of the Bill. It applies the Code as a law of Victoria.

Clause 6 sets out a scheme for the future modification of the Code text by Commonwealth legislation. The scheme provides that there is to be at least a two month gap between the modification of the text

by the Commonwealth Act or Regulation, and the application of the modifications under clause 5. The modification is deemed to occur on the date the Commonwealth Act receives Royal Assent or the Regulation is notified in the Commonwealth of Australia Gazette. The two month period can be shortened by Order in Council. Alternatively an Order in Council can provide that a modification is not to apply at all in the State.

- Clause 7 provides, for the purposes of uniformity, that the Acts Interpretation Act 1901 of the Commonwealth applies to the interpretation of the Code instead of the **Interpretation of Legislation Act 1984**.
- Clause 8 sets out the classes of persons to whom the Code applies as a law of Victoria.
- Clause 9 makes it clear that, subject to clause 8, the Code operates extra-territorially.

PART 3—CITING THE NEW TAX SYSTEM PRICE EXPLOITATION CODES

- Clause 10 provides for citation of the Code, applying as a law of Victoria.
- Clause 11 provides that a reference to the Code in any instrument is to be construed as a reference to the Codes of any or all participating jurisdictions, except where the contrary intention appears in the instrument or the context otherwise requires.
- Clause 12 provides that, where a law of a participating jurisdiction other than Victoria applies the Code text as a law of the jurisdiction, the Code of that jurisdiction is the Code text, applying as a law of that jurisdiction.

PART 4—APPLICATION OF THE NEW TAX SYSTEM PRICE EXPLOITATION CODES TO THE CROWN

- Clause 13 provides that this Act binds the Crown in right of Victoria and each other State and Territory, so far as the legislative power of the Victorian Parliament permits. In line with section 2B(1) of the TPA, the Act binds the Crown only so far as the Crown carries on a business, either directly, or by an authority.

- Clause 14 provides that the applications laws of other participating jurisdictions bind the Crown in right of Victoria so far as the Crown carries on a business, either directly, or by an authority.
- Clause 15 identifies, for the purposes of clauses 14 and 15, certain activities that do not constitute carrying on a business. This is not an exhaustive list of non-business activities.
- Clause 16 provides that nothing in this Act, or an application law of any other participating jurisdiction, renders the Crown liable to a pecuniary penalty or to be prosecuted for an offence. This protection does not extend to an authority of any jurisdiction.
- Clause 17 makes it clear that where, by virtue of this Part, a law of another participating jurisdiction binds the Crown in right of Victoria, that law overrides any prerogative right or privilege of the Crown (eg. in relation to the payment of debts).

**PART 5—NATIONAL ADMINISTRATION AND
ENFORCEMENT OF NEW TAX SYSTEM PRICE
EXPLOITATION CODES**

Division 1—Preliminary

- Clause 18 states that the provisions of this Part are aimed at promoting the uniform administration of the Codes of the participating jurisdictions, as if they were a single Commonwealth Act.

Division 2—Conferral of functions

- Clause 19 confers upon Commonwealth officers and authorities (including the ACCC) the powers and functions that are conferred upon them under the Code of this jurisdiction.
- Clause 20 provides that the ACCC may do acts in Victoria in the performance or exercise of any function or power conferred on it under the Code of another participating jurisdiction.

Division 3—Jurisdiction of Courts

- Clause 21 confers jurisdiction in all civil and criminal matters arising under the Code upon the Federal Court of Australia.

Clause 22 provides that Victorian courts do not have jurisdiction to hear the matters described in clause 21.

Clause 23 provides that nothing in this Part affects any law of Victoria relating to cross-vesting of jurisdiction.

Division 4—Offences

Clause 24 states that the provisions of this Division are aimed at furthering the object of this Part by providing that an offence against the Code of this and other participating jurisdictions is to be treated as if it was an offence against a law of the Commonwealth.

Clause 25 applies Commonwealth laws as laws of Victoria to offences against the Code of this jurisdiction. An offence against the Code of this jurisdiction is taken to be an offence against a law of the Commonwealth and not a law of Victoria.

Clause 26 applies Commonwealth laws as laws of Victoria to offences against the Code of other participating jurisdictions. An offence against the Code of another jurisdiction is taken to be an offence against a law of the Commonwealth and not a law of that jurisdiction.

Clause 27 provides that a Commonwealth law that applies because of clauses 25 or 26, and which confers functions or powers on a Commonwealth officer or authority in relation to an offence against the TPA, confers the same function or power in relation to an offence against the corresponding provision of the Code of this or another participating jurisdiction.

Clause 28 provides that where a function or power is conferred on a Commonwealth officer or authority under this Division, that function or power may not be performed or exercised by an officer or authority of this jurisdiction.

Division 5—Administrative law

Clause 29 identifies the Commonwealth administrative laws to be applied under this Division.

Clause 30 applies the Commonwealth administrative laws as laws of Victoria to matters arising under the Code of this jurisdiction. A matter arising under the Code of this jurisdiction is taken to be

a matter arising under a law of the Commonwealth and not a law of Victoria.

- Clause 31 applies the Commonwealth laws as laws of Victoria to matters arising under the Code of other participating jurisdictions. A matter arising under the Code of another jurisdiction is taken to be a matter arising under a law of the Commonwealth and not a law of that jurisdiction.
- Clause 32 provides that a Commonwealth law that applies because of clauses 30 or 31, and which confers functions or powers on a Commonwealth officer or authority, confers the same function or power in relation to a matter arising under the Code of this or another participating jurisdiction.
- Clause 33 provides that where a function or power is conferred on a Commonwealth officer or authority under this Division, that function or power may not be performed or exercised by an officer or authority of this jurisdiction.

PART 6—MISCELLANEOUS

- Clause 34 provides that a person who has been punished for an offence against the TPA or an application law of another participating jurisdiction is not liable to be punished under the Code of this jurisdiction for the same offence.
- Clause 35 ensures that things given or done for the purposes of the Code of this jurisdiction are not invalid simply because they are also given or done for the purposes of the TPA or the Code of another participating jurisdiction.
- Clause 36 provides that a reference in a Commonwealth law that is applied under sections 25, 26, 30 or 31, to a provision of another Commonwealth law, is to be construed as if the provision referred to was also applied under the relevant section.
- Clause 37 provides that all fees, taxes, penalties, fines and other moneys payable under the Code of this jurisdiction are to be paid to the Commonwealth. This does not apply to any amount that a court orders to be refunded to another person.

Clause 38 alters or varies section 85 of the **Constitution Act 1975** to the extent necessary to limit the jurisdiction of the Supreme Court in accordance with Division 3 of Part 5 of this Bill.

Clause 39 authorises the Governor in Council to make regulations for the purposes of the Act.

PART 7—CONSEQUENTIAL AMENDMENT

Clause 40 is a consequential amendment. Under the Commonwealth Bill, the Schedule version of Part IV of the TPA (which forms the basis of the Competition Code) will become Part 1 of the Schedule to the TPA, while the Schedule version of Part VB of the TPA will become Part 2 of the Schedule.