

1999

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**A NEW TAX SYSTEM (COMMONWEALTH-STATE FINANCIAL ARRANGEMENTS)
BILL 1999**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and Requests for Amendments to be Moved on Behalf of the Government

(Circulated by authority of the Treasurer,
the Hon Peter Costello, MP)

22865

Table of Contents

Outline and Financial impacts 1

Chapters

1. Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations 3

2. Changing the GST rate and base 5

3. Transitional arrangements 7

4. Other Payments..... 8

Outline

These Government amendments will amend the *A New Tax System (Commonwealth-State Financial Arrangements) Bill 1999*. This Bill was introduced in the Senate on 31 March 1999.

Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations

The proposed amendments create a new part (Part 1A) of the Bill which adds a schedule (Schedule 2) comprising the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations* and also records the intention of the Commonwealth to comply with the Intergovernmental Agreement.

Changing the GST rate and base

The proposed amendments to Part 2 of the Bill add a definition of the “changes of an administrative nature” which are mentioned in clause 10 of the Bill and provide that Ministerial Determinations under the *A New Tax System (Goods and Services Tax) Act 1999* that affect the Goods and Services (GST) base will be made in accordance with a procedure agreed by the States and Territories.

Transitional arrangements

The proposed amendments to Schedule 1 of the Bill provide for the distribution of GST revenue grants in accordance with the principle of horizontal fiscal equalisation after 2001-02.

Other payments

The proposed additions to Part 3 of the Bill will provide the States and Territories with an entitlement to revenue replacement payments in 2000-01 which will be equal to the amount of business franchise fee safety net revenues (less administrative costs) collected after 30 June 2000 with respect to 1999-2000.

Financial impacts

Transitional Arrangements

The proposed amendments to the transitional arrangements involve a cost to the Commonwealth budget of around \$153 million in 2002-03 on the basis of the estimates at the time of the 9 April 1999 Premiers’ Conference. Of this amount \$147 million will benefit Queensland and \$6 million will benefit the Australian Capital Territory.

Other payments

The safety net arrangements added to Part 3 of the Bill will not affect the Commonwealth's budgetary position as revenue replacement payments return to the States and Territories amounts raised on their behalf (after allowing for administration costs).

1

Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations

Overview

1.1 The proposed amendments create a new part (Part 1A) of the Bill which adds a schedule (Schedule 2) comprising the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations* and also records the intention of the Commonwealth to comply with the Intergovernmental Agreement.

Summary of the amendment

Purpose of the amendment

1.2 To fulfil the Government's commitment in clause 4 of the Intergovernmental Agreement in relation to the acknowledgement of the Intergovernmental Agreement in the proposed legislation.

Date of effect

1.3 Clause 2 of the Bill provides that this Bill, once enacted, will commence when it has received royal assent or after the *A New Tax System (Goods and Services Tax) Act 1999*; the GST imposition Acts; and the *A New Tax System (Goods and Services Tax Administration) Act 1999* have commenced. The Intergovernmental Agreement will commence between the Commonwealth, the States and the Territories on 1 July 1999 unless otherwise agreed by the Parties.

Background to the amendment

1.4 At the 9 April 1999 Premiers' Conference, the Prime Minister and the Premiers and Chief Ministers of each State and Territory signed an *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations*. The Intergovernmental Agreement sets out the Commonwealth, State and Territory commitments with respect to new Commonwealth-State financial arrangements.

1.5 In clause 4 of the Intergovernmental Agreement the Commonwealth undertook to attach the Intergovernmental Agreement to the *A New Tax System (Commonwealth-State Financial Arrangements) Act 1999* and to use its best endeavours to ensure the Act will require compliance with the Intergovernmental Agreement. The States and Territories made the same undertaking in relation to their legislation.

Explanation of the legislation

1.6 Sub-clause 9A(1) provides that a copy of the Intergovernmental Agreement is attached to the Act.

1.7 Sub-clause 9A(2) records that it is the Commonwealth's intention to comply with, and give effect to, the Intergovernmental Agreement.

2

Changing the GST rate and base

Overview

2.1 The proposed amendments to Part 2 of the Bill add a definition of the “changes of an administrative nature” which are mentioned in clause 10 of the Bill and provide that Ministerial Determinations under the *A New Tax System (Goods and Services Tax) Act 1999* that affect the GST base will be made in accordance with a procedure agreed by the States and Territories.

Summary of the amendment

Purpose of the amendment

2.2 To provide greater clarity about the provisions in the Bill which deal with changes to the GST rate and base, consistent with the Intergovernmental Agreement.

Date of effect

2.3 Clause 2 of the Bill provides that this Bill, once enacted, will commence when it has received royal assent or after the *A New Tax System (Goods and Services Tax) Act 1999*; the GST imposition Acts; and the *A New Tax System (Goods and Services Tax Administration) Act 1999* have commenced, whichever is later.

Background to the amendment

2.4 The proposed amendments to Part 2 of the Bill clarify that the ‘lock-in’ mechanism in relation to the GST rate and base extends to proposals to vary the GST base by way of Ministerial determinations under the *A New Tax System (Goods and Services Tax) Act 1999*. Clause 34 of the Intergovernmental Agreement states that Ministerial Determinations under the *A New Tax System (Goods and Services Tax) Act 1999* will require the unanimous agreement of the Ministerial Council and that the Ministerial Council is to develop practical arrangements to ensure the timely consideration of proposed Ministerial determinations.

2.5 Clause 10 of the Bill provides for the Commonwealth to make changes to the GST base during the first year of the GST if the changes are, among other things, of an administrative nature. Subsequently, changes to the GST of an administrative nature will require the approval of a majority of the Commonwealth and the States and Territories. The amendments to Part 2 of the Bill define “changes of an administrative nature” in accordance with the definition included in the Intergovernmental Agreement.

Explanation of the amendment

2.6 Clause 10 of the Bill states that the GST base is not to be changed unless each State and Territory agrees to the change. Sub-clause 10(1A) adds to this requirement by providing that a variation of the GST base by way of a Ministerial Determination under the *A New Tax System (Goods and Services Tax) Act 1999* will be required to be made in accordance with a procedure to which all the States and Territories have agreed.

2.7 Clause 11(2) adds that, for the purpose of sub-clause 10(2) and 10(3) of the Bill, changes of an administrative nature are defined as changes involving legislation necessary to:

- (a) maintain the integrity of the GST base; or
- (b) prevent tax avoidance.

3

Transitional arrangements

Overview

3.1 The proposed amendments to Schedule 1 of the Bill provide for the distribution of GST revenue grants in accordance with the principle of horizontal fiscal equalisation after 2001-02.

Summary of the amendment

Purpose of the amendment

3.2 To reflect the terms of the Intergovernmental Agreement in relation to transitional arrangements.

Date of effect

3.3 Clause 2 of the Bill provides that this Bill, once enacted, will commence when it has received royal assent or after the *A New Tax System (Goods and Services Tax) Act 1999*; the GST imposition Acts; and the *A New Tax System (Goods and Services Tax Administration) Act 1999* have commenced, whichever is later. The Intergovernmental Agreement will commence between the Commonwealth, States and the Territories on 1 July 1999 unless otherwise agreed by the Parties.

Background to the amendment

3.4 At the 1999 Premiers' Conference it was agreed that the transitional arrangements agreed at the November 1998 Special Premiers' Conference and subsequently proposed in Schedule 1 to the Bill should be amended. The agreement reached by all Parties and reflected in the Intergovernmental Agreement was that the distribution of GST revenue grants should be solely on the basis of horizontal fiscal equalisation after 2001-02 rather than 2002-03.

Explanation of the amendment

3.5 Amendments are made to clauses 4, 5 and 6 of Schedule 1 of the Bill to provide that the distribution of GST revenue grants will be in accordance with the horizontal fiscal equalisation in each year after 2001-02. Under clause 6(2) of Schedule 1 of the Bill, a State or Territory will continue to receive an amount of transitional assistance if this is necessary to ensure that the State or Territory budget is no worse off during the transition period than it would have been in the absence of the reforms.

4

Other Payments

Overview

4.1 The proposed additions to Part 3 of the Bill will provide the States and Territories with an entitlement to revenue replacement payments in 2000-01 which will be equal to the amount of business franchise fee safety net revenues (less administrative costs) collected after 30 June 2000 with respect to 1999-2000.

Summary of the legislation

Purpose of the legislation

4.2 To provide a State or Territory with an entitlement to an amount of revenue replacement payments in 2000-01.

Date of effect

4.3 Clause 2 of the Bill provides that this Bill, once enacted, will commence when it has received royal assent or after the *A New Tax System (Goods and Services Tax) Act 1999*; the GST imposition Acts; and the *A New Tax System (Goods and Services Tax Administration) Act 1999* have commenced, whichever is later. States and Territories will be entitled to revenue replacement payments from 1 July 2000 following the repeal of the existing *States Grants (General Purposes) Act 1994*.

Background to the legislation

4.4 On 5 August 1997 the High Court ruling on tobacco franchise fees in New South Wales (*Ha and Lim v. New South Wales* and *Walter Hammond & Associates Pty Ltd v. New South Wales*) cast into doubt the constitutional validity of all State business franchise fees. At the unanimous request of the States, the Commonwealth announced 'safety net' arrangements to protect State finances. These arrangements provided for an increase in the rate of Commonwealth customs and excise duty on tobacco and petroleum products and an increase in the rate of wholesale sales tax on alcoholic beverages. All revenue collected by the Commonwealth under these arrangements is returned to the States and Territories (less administrative costs) as revenue replacement payments.

4.5 Due to the delay between the time at which a business incurs a liability to pay an amount of safety net surcharge and the time when it is received by the Commonwealth, an amount of surcharge liabilities will be paid to the Commonwealth after 30 June 2000 and will need to be provided to the States and Territories as revenue replacement payments in 2000-01. The proposed amendment repeats the provision in the *States Grants (General Purpose) Act 1994* to provide an appropriation for the revenue replacement payments to be made in 2000-01.

Explanation of the legislation

4.6 Clause 14A specifies entitlement of the States and Territories to revenue replacement payments in 2000-01. The total amount of revenue replacement payments is subject to determination by the Commissioner of Taxation and the Chief Executive Officer of Customs.

4.7 A technical amendment is also made to clause 14(2) of the Bill to clarify the base amount of competition payments to be provided to the States and Territories under the *States Grants (General Purposes) Act 1994* in 1999-2000.