



New South Wales

Revenue, Fines and Other Legislation Amendment Bill 2023

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the following Acts—

- (a) the *Duties Act 1997*,
- (b) the *Fines Act 1996*,
- (c) the *Government Sector Finance Act 2018*,
- (d) the *Land Tax Management Act 1956*,
- (e) the *Payroll Tax Act 2007*,
- (f) the *Police Act 1990*,
- (g) the *Property Tax (First Home Buyer Choice) Act 2022*,
- (h) the *State Debt Recovery Act 2018*,
- (i) the *Taxation Administration Act 1996*,
- (j) the *Unclaimed Money Act 1995*,
- (k) the *Valuation of Land Act 1916*,
- (l) the *First Home Owner Grant and Shared Equity Act 2000*.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Duties Act 1997 No 123

Schedule 1[1] provides that if, as a result of the division of a corporation (the *dividing corporation*), a corporation (a *new corporation*) holds land previously held by the dividing corporation, the land is taken to have vested in the new corporation by statute law and is a dutiable transaction.

Schedule 1[2] clarifies that an instrument lodged electronically under the *Electronic Conveyancing National Law (NSW)* that is not digitally signed is taken to have been first executed when the Chief Commissioner of State Revenue (the *Chief Commissioner*) first receives information relating to the instrument.

Schedule 1[3] removes the time limit within which dutiable transactions need to occur to be treated as a single transaction for aggregation purposes.

Schedule 1[4] provides that, if the Chief Commissioner assesses or reassesses the liability to duty resulting from a change in consideration under an agreement for the sale or transfer of dutiable property after the agreement is entered into, but before the property is transferred, the applicable rate of duty is the rate when the agreement was first executed.

Schedule 1[5] provides that a wholly owned sub-trust of a managed investment scheme includes a sub-trust that is jointly owned by the managed investment scheme and another wholly owned sub-trust of the managed investment scheme. The amendment also applies transfer concessions to particular transfers consequent on the deregistration of managed investment schemes.

Schedule 1[6] extends the duty concession for property vested in an apparent or real purchaser of dutiable property to the legal personal representative of an apparent or real purchaser.

Schedule 1[7] provides that an instrument declaring a trust relating to unidentified property or non-dutiable property that is electronically signed is taken to have been executed in New South Wales in certain circumstances. **Schedule 1[8]** makes a consequential amendment.

Schedule 1[9] clarifies that the concessional duty provisions that apply to a person who is consolidating the person's superannuation into a fund of which the person is already a member apply in the same way to a person changing superannuation funds.

Schedule 1[10] clarifies that the concessional duty provisions that apply to a person transferring or consolidating the person's superannuation apply only to the extent that the value of the dutiable property being transferred does not exceed the value of the person's superannuation entitlement and no consideration is given in relation to the transfer.

Schedule 1[11] provides that duty is not chargeable on a transfer of property to a registered native title body corporate if the transfer is in accordance with an indigenous land use agreement.

Schedule 1[12] omits the *Duties Act 1997*, section 305, as Schedule 9[6] inserts a similar provision into the *Taxation Administration Act 1996*, which will apply in relation to the *Duties Act 1997*.

Schedule 1[13] provides for the application of certain amendments.

Schedule 2 Amendment of Fines Act 1996 No 99

Schedule 2[5] makes it an offence for a person to offer or agree to have the person's details used in a nomination notice relating to various driving and parking offences if the person was not actually driving or in charge of the vehicle at the time of the offence. A person on whom a penalty reminder notice is served for an offence may use a nomination notice to nominate the person who was actually driving or in charge of the vehicle or vessel at the time of the offence. **Schedule 2[1]–[4]** make consequential amendments.

Schedule 2[7] provides that a notice of a fine enforcement order is taken to have been served on a body corporate if the notice is returned undelivered from the registered office of the body corporate. **Schedule 2[6]** makes a consequential amendment.

Schedule 2[8], [10] and [11] provide that—

- (a) a work and development order may be made in relation to a person who lives outside New South Wales, and
- (b) a person or body who supervises or provides services or treatment to a person under a work and development order may also live or be located outside New South Wales.

Schedule 2[9] enables a person who is at least 25 years of age to undertake a mentoring program under a work and development order. Currently a person must be under 25 years of age.

Schedule 2[12] enables the Commissioner of Fines Administration (the *Fines Commissioner*) to write off a person's unpaid fine, if enforcement of the fine has not commenced, at the same time as writing off the person's other unpaid fines in relation to which enforcement has commenced.

Schedule 2[13] enables the Fines Commissioner, and other persons engaged in the administration of the *Fines Act 1996*, to disclose personal information about a person that is obtained in the administration or execution of that Act to the Chief Executive Officer of Service NSW.

Schedule 2[14] makes it an offence for a person to give false or misleading information to the Fines Commissioner, an authorised officer under the *Fines Act 1996* or another person engaged in the administration of that Act.

Schedule 3 Amendment of Government Sector Finance Act 2018 No 55

Schedule 3[1] and [2] enable the Chief Commissioner to recover certain act of grace payments if the person who received the payment does not comply with the terms and conditions of the payment. The amendments also apply certain provisions of the *Taxation Administration Act 1996* relating to record-keeping, offences and investigations to persons to whom certain act of grace payments are made.

Schedule 3[3] applies particular amendments to act of grace payments made before the commencement of the amendments.

Schedule 4 Amendment of Land Tax Management Act 1956 No 26

Schedule 4[1] and [2] provide that land used as a site for a school is exempt from land tax even if the land is not owned by the school.

Schedule 4[3] removes a redundant provision in relation to unutilised land value.

Schedule 4[4]–[8] incorporate gender neutral language.

Schedule 5 Amendment of Payroll Tax Act 2007 No 21

Schedule 5[1] provides that an entity (the *successor*) and a former entity, including a corporation that is in administration, being wound up or deregistered constitute a group if the successor, often known as a phoenix operator or corporation, and the entity are or were sufficiently influenced by the same third party. The amendment will enable payroll tax to be recovered from these groups. **Schedule 5[2] and [3]** make consequential amendments.

Schedule 6 Amendment of Police Act 1990 No 47

Schedule 6 provides that the Commissioner of Police may enter into an information sharing arrangement with the Fines Commissioner for the purposes of sharing or exchanging information if the information—

- (a) is obtained in connection with the administration or execution of the *Fines Act 1996*, and

- (b) assists the NSW Police Force to exercise law enforcement or investigative functions under the *Police Act 1990* or another Act.

Schedule 7 Amendment of Property Tax (First Home Buyer Choice) Act 2022 No 60

Schedule 7 corrects minor drafting errors in the *Property Tax (First Home Buyer Choice) Act 2022*.

Schedule 8 Amendment of State Debt Recovery Act 2018 No 11

Schedule 8 makes it an offence for a person to give false or misleading information to the Chief Commissioner, an authorised officer under the *State Debt Recovery Act 2018* or another person engaged in the administration of that Act.

Schedule 9 Amendment of Taxation Administration Act 1996 No 97

Schedule 9[2] provides that the 5-year limit on reassessment of a person's tax liability does not apply if the reassessment is to give effect to a decision about an objection or review about any assessment, not only the initial assessment of the person's tax liability.

Schedule 9[3] clarifies that if all relevant facts and circumstances were not disclosed to the Chief Commissioner at the time of an assessment, a reassessment may be made outside the 5-year limit without the Chief Commissioner having to assess the particular facts and circumstances.

Schedule 9[4], [7], [8] and [9] increase penalties payable under the *Taxation Administration Act 1996* for offence relating to taxpayer activities that impede a proper assessment of tax liabilities.

Schedule 9[5] enables the Chief Commissioner to require a taxpayer to provide, or to obtain at the Chief Commissioner's own initiative or rely on, a valuation of property for the purposes of assessing the tax liability of the taxpayer. The Chief Commissioner may recover the costs of a valuation from the taxpayer in certain circumstances.

Schedule 9[6] enables a tax refund owed to a person to be offset against a fine owed by the person under the *Fines Act 1996*.

Schedule 9[10] and [12] enable a tax officer under the *Taxation Administration Act 1996* to disclose information obtained under or in relation to the administration of a taxation law to the Chief Executive Officer of Service NSW and to the Secretary of the Treasury. **Schedule 9[10]** also updates a reference to the Department of Enterprise, Investment and Trade.

Schedule 9[11] creates a new offence of tax evasion for which the maximum penalty is 500 penalty units or 2 years imprisonment, or both.

Schedule 9[14] creates new offences for knowingly or recklessly disclosing or using confidential tax information, or knowingly concealing or attempting to conceal the unlawful disclosure or use of confidential tax information. The maximum penalty for both offences is 10,090 penalty units (\$1,109,900) for an individual or 50,450 penalty units (\$5,549,500). **Schedule 9[1]** and [13] make consequential amendments.

Schedule 9[15] provides that the Chief Commissioner may only allow an objection to an assessment or other decision to be lodged after the current 60-day period for up to 5 years after the assessment or decision.

Schedule 9[16] provides that the offence of promoting a tax avoidance scheme extends to promoting a scheme that may result in a group constituted under the *Payroll Tax Act 2007*, section 74A, as inserted by Schedule 5 of this Bill, also known as phoenix operations.

Schedule 9[17] gives the Chief Commissioner a general power to determine how tax is paid to the Chief Commissioner, rather than specifying the methods of payment allowed.

Schedule 10 Amendment of Unclaimed Money Act 1995 No 75

Schedule 10[2] provides that money held by an enterprise in an account is not unclaimed money if the enterprise knows or has reason to believe that the account has not been operated on because of a dispute between 1 or more persons about who owns the money.

Schedule 10[3] provides that the Chief Commissioner may publish information about unclaimed money only if the identity of the owner of the unclaimed money is known.

Schedule 10[5] requires an application for repayment of unclaimed money to be made in a form approved by the Chief Commissioner and allows the Chief Commissioner to request more information from an applicant and to refuse to determine an application if the information is not provided. **Schedule 10[1] and [4]** make consequential amendments.

Schedule 10[6] requires the Chief Commissioner to give written notice to a person who is required to repay money that was wrongly paid to them under the *Unclaimed Money Act 1995*. The notice must specify the period, of not less than 21 days, within which the person must repay the money.

Schedule 10[7] provides that money that is wrongly paid to a person is to be treated as unpaid tax for certain provisions of the *Taxation Administration Act 1996*. This will allow the money to be recovered from third parties and corporations and for the Chief Commissioner and authorised officers to exercise their investigative functions.

Schedule 10[8] enables the Chief Commissioner to apply unclaimed money owed to a person to the person's tax debts, grant debts, referable debts or fines.

Schedule 10[9] inserts provisions relating to objections and reviews of decisions made by the Chief Commissioner under the *Unclaimed Money Act 1995*. The provisions are based on similar provisions in the *Taxation Administration Act 1996*. Under the proposed provisions—

- (a) an applicant for unclaimed money may lodge a written objection to a decision made by the Chief Commissioner, and
- (b) objections may be lodged out of time in certain circumstances, and
- (c) if the applicant does not provide relevant information to the Chief Commissioner, the determination of the objection may be suspended until the information is provided, and
- (d) an applicant may apply to the Civil and Administrative Tribunal or the Supreme Court for further review, if—
 - (i) the applicant is dissatisfied with the Chief Commissioner's determination of the applicant's objection, or
 - (ii) the Chief Commissioner does not make a determination within 90 days.

Schedule 11 Amendment of Valuation of Land Act 1916 No 2 relating to property tax

Schedule 11 amends the *Valuation of Land Act 1916* to provide for objections to valuations of land for the purposes of property tax assessments in the same way as for land tax assessments.

Schedule 12 Amendment of Valuation of Land Act 1916 No 2 relating to provision and use of information

Schedule 12[1] inserts proposed section 71A to provide that relevant information received by the Registrar-General must be given to the Valuer-General and may be received by the Valuer-General. **Relevant information** is defined as information contained in a notice of an event lodged with the Registrar-General, as referred to in section 71(2), or information contained in a

dealing, application or instrument accompanying such a notice or relating to a transaction or other event involving land.

Schedule 12[2] inserts proposed section 78A to permit the Valuer-General to use applicable information for a purpose connected with the Valuer-General's functions, sell applicable information to a person or make applicable information publicly available free of charge. **Applicable information** is defined as relevant information, within the meaning of section 71A(2), given to the Valuer-General under section 71A. This includes relevant information that is, or may be, personal information within the meaning of the *Privacy and Personal Information Protection Act 1998*.

Schedule 12[3] provides that proposed sections 71A and 78A extend to the giving, receipt, use, sale or other provision of information referred to in the relevant sections before the commencement of the proposed Act.

Schedule 13 Amendment of First Home Owner Grant and Shared Equity Act 2000 No 21

Schedule 13 provides that all money appropriated by Parliament to the Treasurer for the general purposes of the Government and directed by the Treasurer to be paid into the NSW Shared Equity Scheme Fund (the **Fund**) must be paid into the Fund. The schedule also makes it clear that payments, before the commencement of the proposed Act, into the Fund by the Department of Customer Service that in total constituted the relevant amount are taken to have been, and always to have been, validly made. Similarly, the payment of an amount out of the Fund that constituted part of the relevant amount is taken to have been, and always to have been, validly made.