



New South Wales

State Revenue Legislation Amendment Bill 2015

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to extend existing exemptions from duty for transactions relating to amalgamations of registered clubs to de-amalgamations of registered clubs and related transfers of club premises and car parks,
- (b) to update references to stock exchanges so that concessions applicable to other stock exchanges will apply in the case of entities or securities listed or quoted on the London Stock Exchange (including AIM) and the New York Stock Exchange,
- (c) to modernise procedures for nomination of persons in charge of vehicles or vessels who have committed offences by persons who would otherwise be responsible for the offences and to make other amendments relating to nominations,
- (d) to enable refunds, in cases of hardship, of payments under garnishee orders issued against fine defaulters,
- (e) to clarify the status of calculations of self-assessed tax liability by the Chief Commissioner of State Revenue.

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 on the date of assent to the proposed Act, other than the amendments exempting registered clubs from duty for de-amalgamation transactions. Those amendments are taken to have commenced on

20 January 2012, the date of the commencement of the de-amalgamation provisions authorising the transactions.

Schedule 1 Amendment of Duties Act 1997 No 123

Schedule 1 [1] exempts from duty a transfer, or agreement for the sale or transfer, of dutiable property to give effect to an amalgamation or de-amalgamation, or both, of a registered club. Currently, the exemption applies only to amalgamations. An exemption is also conferred for the transfer, or an agreement for the sale or transfer, of the premises or car park of a club for the purposes of an amalgamation or de-amalgamation, or both. The proposed amendment is taken to have commenced on the date of the commencement of the de-amalgamation provisions authorising the transactions.

Schedule 1 [3], [4], [7] and [8] include separate references to the London Stock Exchange (including AIM) and the New York Stock Exchange in the definitions of *listed company*, *listed trust*, *private company* and *recognised stock exchange*. Previously, references to those bodies were captured by references in those definitions to the World Federation of Exchanges, a body to which the London Stock Exchange and the New York Stock Exchange no longer belong. The amendments will have the effect of re-applying concessional and other provisions of the *Duties Act 1997* that previously applied to things listed or quoted on those exchanges. **Schedule 1 [2]** provides that the definitions are taken to have always referred to those exchanges.

Schedule 1 [5] and [6] insert definitions of *London Exchange* and *New York Exchange*.

Schedule 2 Amendment of Fines Act 1996 No 99

Schedule 2 [1] inserts a definition of *vehicle or vessel offence*.

Schedule 2 [2] makes it clear that any action taken against a person's driver licence as a result of demerit points action resulting from a penalty notice is to be reversed if the penalty notice is withdrawn, and that any licence affected as a consequence, is to be restored by Roads and Maritime Services (*RMS*) from the date of withdrawal of the penalty notice (subject to any other matters that affect the licence).

Schedule 2 [3] and [4] modernise the process for nomination of the person who was in charge of a vehicle or vessel when an offence was committed for the purpose of proceedings being taken against that person rather than the owner of or other responsible person for the vehicle or vessel who was issued with a penalty notice for the offence. The nomination notice approved by the Commissioner of Fines Administration (the *Commissioner*) will now be able to be used by individuals rather than a statutory declaration being required. A statutory declaration may be required to be given by a responsible person who supplies a nomination notice to verify nominations contained in that notice.

Schedule 2 [4] also substitutes the offence relating to giving a false nomination in a nomination notice and increases penalties for offences. The new offence reflects the corresponding offence under the *Road Transport Act 2013* and, in particular, does not require the person committing the offence to know that the information is false.

Schedule 2 [5] omits repealed offences from the list of vehicle and vessel offences for which a nomination may be given. **Schedule 2 [9]** inserts a provision that continues the application of the nomination provision to enforcement proceedings for those offences.

Schedule 2 [6] adds offences relating to the deposit of litter from a motor vehicle or a trailer attached to a motor vehicle to the list of vehicle and vessel offences for which a nomination may be made.

Schedule 2 [7] requires the Commissioner to seek a review of a decision to issue a penalty notice for a vehicle or vessel offence before annulling a penalty notice enforcement order for the offence, if a nomination notice nominating a person who was in charge of the vehicle or vessel is given to the Commissioner. It does not matter if the nomination notice was given outside the time required

for providing it. The effect of the amendment is to provide an alternative to referral to the Local Court on annulment, as a review may result in the withdrawal of the penalty notice enforcement order and the order ceasing to have effect.

Schedule 2 [8] enables the Commissioner to refund to a fine defaulter an amount paid to the Commissioner under a fine defaulter garnishee order. The refund may be paid on application by the fine defaulter, or on the Commissioner's own motion, if the Commissioner thinks it appropriate to do so on the grounds of hardship. A refund will not affect the liability for the debt concerned.

Schedule 2 [9] inserts savings and transitional provisions consequent on the enactment of the proposed Schedule.

Schedule 3 Amendment of Road Transport Act 2013 No 18

Schedule 3 [1] and [4]–[7] modernise the process for nomination of the person who was in charge of a vehicle when a camera recorded or parking offence was committed for the purpose of proceedings being taken against that person rather than the owner of or other responsible person for the vehicle who was issued with a penalty notice for the offence. The relevant nomination document approved by RMS will now be able to be used by individuals rather than a statutory declaration being required. A statutory declaration may be required to be given by a responsible person who supplies a relevant nomination document to verify nominations contained in that document.

Schedule 3 [2] and [3] increase the maximum penalty that may be imposed for making a false nomination in a relevant nomination document from \$11,000 to \$22,000 for corporations and from \$5,500 to \$11,000 for individuals.

Schedule 3 [8] imposes an additional penalty of \$5,500 for the offence of failing to provide a statutory declaration verifying nominations contained in a relevant nomination document, if committed by an individual. Currently, only corporations can be required to provide such a statutory declaration.

Schedule 4 Amendment of Taxation Administration Act 1996 No 97

Schedule 4 [1] confirms that a calculation by the Chief Commissioner of State Revenue of the tax liability of a person on the basis of a payroll tax return is an assessment of tax liability. One consequence of this is that the time limits for objections to assessments, and for reassessments, will apply to those matters from the date of the calculation. The effect of the provision may be extended by regulation to other kinds of tax liabilities.

Schedule 4 [2] preserves the operation of a court decision insofar as it is inconsistent with the amendment made by **Schedule 4 [1]**.



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New South Wales

State Revenue Legislation Amendment Bill 2015

No. , 2015

A Bill for

An Act to make miscellaneous changes to certain State revenue legislation.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>State Revenue Legislation Amendment Act 2015</i> .	3
2 Commencement	4
(1) This Act commences on the date of assent to this Act, except as provided by subsection (2).	5
	6
(2) Schedule 1 [1] is taken to have commenced on 20 January 2012.	7

Schedule 1 Amendment of Duties Act 1997 No 123

[1] Section 65 Exemptions from duty

Omit section 65 (3). Insert instead:

(3) Registered clubs

No duty is chargeable under this Chapter on any of the following:

- (a) a transfer, or an agreement for the sale or transfer, of dutiable property to give effect to an amalgamation or de-amalgamation, or both, of registered clubs as referred to in Divisions 1A and 1B of Part 2 of the *Registered Clubs Act 1976*,
- (b) a transfer, or an agreement for the sale or transfer, of all or part of any premises or an associated car park occupied by a club to another club for the purposes of any such amalgamation or de-amalgamation, or both,

if any information and documents that may be required by the Chief Commissioner are given to the Chief Commissioner.

[2] Schedule 1 Savings, transitional and other provisions

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Provisions consequent on enactment of State Revenue Legislation Amendment Act 2015

References to London Exchange and New York Exchange

A reference in the Dictionary to the World Federation of Exchanges is taken, until the date of assent to the *State Revenue Legislation Amendment Act 2015*, to have always included a reference to the London Exchange and the New York Exchange.

[3] Dictionary, clause 1, definition of "listed company"

Insert "the London Exchange, the New York Exchange" after "the New Zealand Exchange".

[4] Dictionary, clause 1, definition of "listed trust"

Insert "the London Exchange, the New York Exchange" after "the New Zealand Exchange".

[5] Dictionary, clause 1, definition of "London Exchange"

Insert in alphabetical order:

London Exchange means the London Stock Exchange (also known as the LSE) and includes AIM.

[6] Dictionary, clause 1, definition of "New York Exchange"

Insert in alphabetical order:

New York Exchange means the New York Stock Exchange (also known as NYSE).

[7] Dictionary, clause 1, definition of "private company"

Insert "the London Exchange, the New York Exchange" after "the New Zealand Exchange".

[8] Dictionary, clause 1, definition of “recognised stock exchange”	1
Insert after paragraph (ba):	2
(bb) the London Exchange, or	3
(bc) the New York Exchange, or	4

Schedule 2 Amendment of Fines Act 1996 No 99

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

vehicle or vessel offence—see section 38.

[2] Section 24G Effect of withdrawal of penalty notice

Omit section 24G (2) (b) (i). Insert instead:

- (i) any action taken to record demerit points against a person in the NSW demerit points register kept under the *Road Transport Act 2013* because of that payment is to be reversed, and any driver licence affected as a consequence of the recording of the demerit points is to be restored (subject to any other matters affecting the licence), by Roads and Maritime Services from the date of the withdrawal of the penalty notice, and

[3] Section 38 Circumstances in which person issued with penalty reminder notice for vehicle or vessel offence is not liable to pay penalty

Omit section 38 (1) (a). Insert instead:

- (a) on or before the due date specified in the penalty reminder notice, gives the appropriate officer for the penalty notice to which the penalty reminder notice relates (or other person or body specified in that notice) an approved nomination notice containing the name and address of some other person who was in charge of the vehicle or vessel concerned at all relevant times relating to the offence, or

[4] Section 38 (2)–(3F)

Omit section 38 (1A)–(3B). Insert instead:

- (2) The Commissioner may approve 1 or more notices (*approved nomination notices*) for use when nominating persons under this section as persons in charge of vehicles or vessels.
- (3) Without limiting subsection (2), the Commissioner may approve notices under that subsection:
 - (a) to be provided in printed or electronic form (or both), and
 - (b) to be used in relation to more than 1 offence involving 1 or more vehicles or vessels, if the person given the penalty reminder notice is a corporation.
- (3A) An appropriate officer for the penalty notice to which the penalty reminder notice relates may, by written notice (a *verification notice*) served on a person who gives an approved nomination notice, require the person to supply a statutory declaration for use in court proceedings verifying any of the information contained in the approved nomination notice that is specified in the verification notice.
- (3B) A person served with a verification notice must supply the required statutory declaration within the period specified in the notice (being a period of not less than 7 days after the date of service).
Maximum penalty: 50 penalty units (in the case of an individual) and 100 penalty units (in the case of a corporation).
- (3C) A statutory declaration that is given for the purposes of this section, if produced in any proceedings against the person named in the declaration in

	respect of the vehicle or vessel offence concerned, is admissible and is prima facie evidence that the person was in charge of the vehicle or vessel at all relevant times relating to the offence.	1 2 3
(3D)	A statutory declaration that relates to more than one vehicle or vessel offence is not a statutory declaration under, or for the purposes of, this section unless each of the offences is a camera recorded offence (within the meaning of Division 2 of Part 7.3 of the <i>Road Transport Act 2013</i>) detected by the same camera device at approximately the same time.	4 5 6 7 8
(3E)	A person must not, in an approved nomination notice given under subsection (1), falsely nominate another person as the person who was in charge of the vehicle or vessel at the time the offence occurred.	9 10 11
	Maximum penalty:	12
	(a) if the offence relates to a vehicle or vessel registered or owned otherwise than in the name of an individual—200 penalty units, or	13 14
	(b) in any other case—100 penalty units.	15
(3F)	A person falsely nominates another person as the person in charge of a vehicle or vessel for the purposes of subsection (3E) if either a false name or address (or both a false name and address) for the other person is given in an approved nomination notice.	16 17 18 19
[5]	Section 38 (4), definition of “vehicle or vessel offence”	20
	Omit paragraphs (b), (k) and (n).	21
[6]	Section 38 (4), definition of “vehicle or vessel offence”	22
	Insert after paragraph (e):	23
	(e1) an offence under section 146 of the <i>Protection of the Environment Operations Act 1997</i> ,	24 25
[7]	Section 49A Review of penalty notice before annulment	26
	Insert after section 49A (1):	27
(1A)	Before the Commissioner annuls a penalty notice enforcement order relating to a vehicle or vessel offence, the Commissioner is to seek a review of the decision to issue a penalty notice to which the order applies if an approved nomination notice in relation to the offence (within the meaning of section 38) is given to the Commissioner or the appropriate officer for the penalty notice for the offence.	28 29 30 31 32 33
(1B)	For the purposes of subsection (1A) and the review under this section, it does not matter if the approved nomination notice is not given within the period required by section 38.	34 35 36
[8]	Section 77A	37
	Insert after section 77:	38
77A	Garnishee order refunds in case of hardship	39
(1)	The Commissioner may, on the Commissioner’s own initiative or on the application of a fine defaulter, refund an amount paid to the Commissioner under a garnishee order if the Commissioner thinks it appropriate to do so on the ground of hardship experienced by the fine defaulter or a dependant of the fine defaulter because of payments under the garnishee order.	40 41 42 43 44

(2)	A refund does not affect the liability of the fine defaulter for any debt that is the subject of the garnishee order, including for any amount refunded to the fine defaulter.	1 2 3
(3)	This section does not affect any other right of a fine defaulter to seek a review or to apply to the Hardship Review Board under this Act.	4 5
[9]	Schedule 3 Savings, transitional and other provisions	6
	Insert at the end of the Schedule with appropriate Part and clause numbering:	7
Part	Provisions consequent on enactment of State Revenue Legislation Amendment Act 2015	8 9
	Definition	10
	In this Part:	11
	<i>amending Act</i> means the <i>State Revenue Legislation Amendment Act 2015</i> .	12
	Enforcement action relating to repealed offences	13
	Section 38, as in force immediately before the repeal of paragraphs (b), (k) and (n) of the definition of <i>vehicle or vessel offence</i> in section 38 (4), continues to apply in relation to any enforcement action relating to an offence specified in those paragraphs.	14 15 16 17
	Refunds of amounts payable under garnishee orders	18
	Section 77A, as inserted by the amending Act, extends to garnishee orders and payments made under those orders before the commencement of that section.	19 20

Schedule 3 Amendment of Road Transport Act 2013 No 18

[1] Section 183 Definitions

Omit the definition of *relevant nomination document* from section 183 (1). Insert instead:

relevant nomination document means:

- (a) in the case of a responsible person served with a penalty notice in relation to a designated offence—an approved nomination document under section 189 (1), or
- (b) in the case of a responsible person served with a court attendance notice in relation to a designated offence—a statutory declaration.

[2] Section 188 Offences relating to nominations

Omit “100 penalty units” from section 188 (2). Insert instead “200 penalty units”.

[3] Section 188 (2), penalty

Omit “50 penalty units”. Insert instead “100 penalty units”.

[4] Section 189 Nominations by responsible persons

Omit “corporations” where firstly occurring in section 189 (1).

Insert instead “responsible persons”.

[5] Section 189 (1)

Omit “the corporations are”. Insert instead “they are”.

[6] Section 189 (3)

Omit the subsection. Insert instead:

- (3) If a responsible person for a vehicle supplies an approved nomination document to an authorised officer for the purpose of section 185 or 186, an authorised officer may, by written notice served on the person (a *verification notice*), require the person to supply a statutory declaration for use in court proceedings that verifies such of the nominations contained in the approved nomination document as are specified in the verification notice.

[7] Section 189 (4)

Omit “corporation”. Insert instead “person”.

[8] Section 189 (4), penalty

Omit “100 penalty units”.

Insert instead “50 penalty units (in the case of an individual) or 100 penalty units (in the case of a corporation)”.

Schedule 4 Amendment of Taxation Administration Act 1996 No 97

[1] Section 8 General power to make assessment

Insert after section 8 (2):

- (3) For the avoidance of doubt, an assessment of tax liability is taken to have been made when the Chief Commissioner calculates the tax liability of a taxpayer based on a return under the *Payroll Tax Act 2007* or any other Act prescribed by the regulations for the purposes of this subsection (whether or not the Chief Commissioner issues a notice of assessment as a result of that calculation or otherwise notifies the taxpayer of the calculation).

[2] Schedule 1 Savings, transitional and other provisions

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Provisions arising from enactment of State Revenue Legislation Amendment Act 2015

Reassessment

Section 8 (3) of this Act, as inserted by the *State Revenue Legislation Amendment Act 2015*, extends to any calculation of tax liability made by the Chief Commissioner at any time before the commencement of that provision but does not extend to any matter the subject of a decision in *Freelance Global Ltd v Chief Commissioner of State Revenue* [2014] NSWSC 127.