



New South Wales

# State Revenue and Fines Legislation Amendment (Miscellaneous) Bill 2022

## Explanatory note

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

## Overview of Bill

The objects of this Bill are—

- (a) to make miscellaneous amendments to legislation relating to State revenue and fines, and
- (b) to amend the *Liquor Act 2007* to extend the provision that allows local councils to encourage the use of outdoor space for dining and performance.

## 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

### Imposition of duty on changes in beneficial ownership

**Schedule 1[1] and [2]** charge duty on transactions that result in a change in the beneficial ownership of dutiable property. **Schedule 1[3]** defines terms used for the purposes of the duty and **Schedule 1[5]** makes a consequential amendment. The provisions are modelled on similar provisions of the *Duties Act 2000* of Victoria, section 7. **Schedule 1[29]** exempts transactions from the duty if they occur in accordance with agreements or arrangements entered into before the imposition of the duty.

### **Imposition of duty on acknowledgment of trust**

**Schedule 1[4]** charges duty on the making of a statement that—

- (a) purports to be a declaration of trust, but
- (b) merely acknowledges that identified property is already held, or to be held, in trust.

The amendment is in response to the judgment of the Court of Appeal in *Chief Commissioner of State Revenue v Benidorm Pty Ltd* [2020] NSWCA 285.

### **Residence requirement**

Property must be used as a person's principal place of residence for a continuous period of 6 months, starting within a year of a relevant transaction, for the person to be eligible for certain concessions under the *Duties Act 1997*. This requirement is referred to as the **residence requirement**.

**Schedule 1[9]** exempts defence force personnel from the residence requirement that ordinarily must be complied with to defer payment of duty on an off the plan purchase agreement.

**Schedule 1[11]** clarifies that the Chief Commissioner of State Revenue may give an exemption from, or an approval to modify, the residence requirement under the First Home Buyers Assistance Scheme in specified circumstances.

### **Refunds of surcharge purchaser duty**

**Schedule 1[13]** enables surcharge purchaser duty paid in relation to a transfer of land to be refunded if, after the transfer, the land is used by the transferee wholly or predominantly for commercial or industrial purposes. **Schedule 1[12], [14] and [16]** make consequential amendments.

**Schedule 1[15]** permits reassessment of liability to pay surcharge purchaser duty more than 5 years after an initial assessment of liability.

### **Exemptions from duty—agreements on breakdown of de facto relationships**

**Schedule 1[10], [17] and [21]** exempt transactions made in accordance with an agreement for the division of relationship property on the breakdown of a de facto relationship from the following duties—

- (a) duty on transactions concerning dutiable property,
- (b) duty on the acquisition of interests in landholders,
- (c) duty on motor vehicle registration.

The exemptions are consistent with equivalent exemptions under the *Duties Act 1997* applicable to transactions made in accordance with an agreement for the division of matrimonial property on the dissolution of a marriage.

**Schedule 1[20] and [22]** standardise terminology and **Schedule 1[23] and [24]** make consequential amendments.

### **Exemptions from duty—insurance**

**Schedule 1[18]** exempts ambulance services insurance from the duty otherwise chargeable on insurance.

**Schedule 1[19]** extends a duty exemption for insurance of the hull of a floating vessel used primarily for commercial purposes so that the exemption applies to insurance of the whole vessel.

**Schedule 1[31]** clarifies that **livestock insurance**, which is exempt from duty if effected or renewed on or after 1 January 2018, does not include pet insurance, and therefore ensures that pet insurance continues to be subject to duty as general insurance and, in particular, as Type A insurance.

### **Exemptions from duty—primary production land transfers between family members**

At present, the exemption from duty on primary production land transfers between family members only applies if the transferee is an individual. **Schedule 1[25]** extends the exemption so that it also applies when the transferee is not an individual but is instead a deceased estate, a trust, a superannuation fund, a private unit trust scheme or a proprietary limited company. In that case, the family member must, instead of being the transferee, be the person directing the transferee. In addition, if the transferee is a proprietary limited company or a trustee of a discretionary trust or of a private unit trust scheme, the person directing the transferee must, for the exemption to apply, maintain the person's minimum 25% interest in the transferee for 3 years after the transfer. **Schedule 1[26] and [27]** make consequential amendments.

### **Ministerial declarations of stock exchanges**

**Schedule 1[30] and [32]** enable the Minister administering the *Duties Act 1997*, or the Chief Commissioner of State Revenue as the Minister's delegate, to add to the list of stock exchanges on which—

- (a) a company's shares, or a unit trust scheme's units, must be quoted to be considered, respectively, a *listed company* or a *listed trust*, and
- (b) a company's shares must not be quoted to be considered a *private company*.

In doing so, the Minister or Chief Commissioner may modify the application of provisions of the Act that use the defined terms. The function is exercised by order published in the Gazette.

### **Other amendments**

**Schedule 1[6]** removes a limitation on the discretion of the Chief Commissioner of State Revenue to disregard the value of goods when calculating the dutiable value of certain transactions concerning goods and other property. The amendment is made as a consequence of the abolition, on 1 July 2016, of duty on transfers of business assets including goodwill.

**Schedule 1[7]** corrects a typographical error.

**Schedule 1[8]** inserts missing words.

**Schedule 1[28]** makes an amendment consequent on Schedule 8[6].

## **Schedule 2      Amendment of Fines Act 1996 No 99**

### **Fine enforcement action—visitor vehicle privileges and marine safety licences**

**Schedule 2[12]** extends the fine enforcement functions of Transport for NSW under the *Fines Act 1996* by requiring Transport for NSW to suspend or cancel a fine defaulter's visitor vehicle privileges, or marine safety licence, if directed to do so by the Commissioner of Fines Administration. **Schedule 2[1], [5], [7]–[11], [13] and [16]** make consequential amendments.

### **Fine enforcement action—imprisonment**

**Schedule 2[14]** removes from the Commissioner of Fines Administration the power to seek the imprisonment of a fine defaulter who fails to comply with a community service order. **Schedule 2[4], [6] and [15]** make consequential amendments. Schedule 9 makes consequential amendments to other legislation.

### **Social worker supervision of work and development orders**

**Schedule 2[17] and [18]** enable a social worker, who has the qualifications specified by work and development guidelines made by the Minister administering the *Crimes (Sentencing Procedure) Act 1999*, to supervise the activities undertaken by a fine defaulter under a work and development order to satisfy a fine.

### **Access to information by Commissioner of Fines Administration**

**Schedule 2[19]–[21]** provide that the Commissioner of Fines Administration may access certain information for the purpose of enabling the Commissioner to exercise any of the Commissioner's functions under the *Fines Act 1996*, rather than only to exercise specified functions. Schedule 2[19] also requires police and other government agencies to provide the Commissioner of Fines Administration, on request, available information about a fine defaulter's email address and phone number.

**Schedule 2[22]** authorises a credit reporting body to disclose to the Commissioner of Fines Administration the contact details of the current or last known employer of a fine defaulter.

**Schedule 2[23]** enables the Commissioner of Fines Administration to obtain from an authorised deposit-taking institution the balance of a fine defaulter's bank account for the purpose of deciding whether to make a garnishee order against the fine defaulter.

### **Penalty notices**

**Schedule 2[24]** enables employees of, and other persons engaged or authorised by, Revenue NSW to issue penalty notices for alleged offences under the *Fines Act 1996*.

### **Other amendments**

**Schedule 2[2]** omits a redundant word.

**Schedule 2[3]** updates a reference to a government agency.

## **Schedule 3 Amendment of Fines Regulation 2020**

**Schedule 3** enables a penalty notice to be issued to a person who does not, within the period specified in a verification notice, supply a statutory declaration verifying the person responsible for a vehicle or vessel offence. The amount payable under the penalty notice is equivalent to the amount prescribed in relation to an equivalent offence under the *Road Transport Act 2013*, section 189(4).

## **Schedule 4 Amendment of First Home Owner Grant (New Homes) Act 2000 No 21**

### **Eligibility caps for first home owner grants**

**Schedule 4[5]** provides that the total value of a comprehensive home building contract is, for the purpose of deciding eligibility for a first home owner grant, to be determined at the date the contract is completed rather than the date when the contract is made.

**Schedule 4[7]** extends a condition on the payment of a first home owner grant, made in anticipation of compliance with the eligibility cap, from the building of a home by an owner builder to—

- (a) a contract for the purchase of a home, and
- (b) a comprehensive home building contract.

### **Other amendments**

**Schedule 4[1]–[4] and [6]** standardise terminology.

## **Schedule 5 Amendment of Land Tax Act 1956 No 27**

### **Exemption from surcharge land tax for principal places of residence**

For a person to be eligible for an exemption from surcharge land tax for land on the basis that the land is the person's principal place of residence, the person must use and occupy the land for a continuous period of 200 days in a land tax year. **Schedule 5[1]** clarifies that a period during

which a person is physically absent from Australia does not count towards the 200 day period. The amendment also permits the Chief Commissioner of State Revenue to waive this requirement in exceptional circumstances.

### **Refunds of surcharge land tax**

**Schedule 5[3]** enables surcharge land tax paid in relation to land to be refunded if the land is used by the taxpayer wholly or predominantly for commercial or industrial purposes. **Schedule 5[2], [4] and [6]** make consequential amendments.

**Schedule 5[5]** permits reassessment of liability to pay surcharge land tax more than 5 years after an initial assessment of liability.

### **Other amendment**

**Schedule 5[7]** makes an amendment consequent on Schedule 1[28] and Schedule 8[6].

## **Schedule 6 Amendment of Liquor Act 2007 No 90**

The *Liquor Act 2007*, Part 12 allows local councils to encourage the use of outdoor space for dining and performance during the *prescribed period*, to assist with social distancing measures during the COVID-19 pandemic. The *Customer Service Legislation Amendment Act 2021* extended the operation of Part 12 until 11 December 2022 but did not make a corresponding amendment to the definition of prescribed period.

**Schedule 6[2]** further extends the operation of Part 12 until 11 December 2023 and **Schedule 6[1]** provides that the prescribed period ends on the same day.

**Schedule 6[3]** validates anything done by a local council that would have been validly done if Schedule 6[1] and [2] had commenced before the thing was done.

## **Schedule 7 Amendment of State Debt Recovery Act 2018 No 11**

### **Payable amounts**

**Schedule 7[2]** makes it clear that a court judgment in relation to a fee, charge or other amount is not required for the fee, charge or other amount to be considered payable for the purposes of the *State Debt Recovery Act 2018*. **Schedule 7[1] and [3]** make consequential and related amendments.

### **Content of debt recovery agreements**

**Schedule 7[4]** ensures that a debt recovery agreement between the Chief Commissioner of State Revenue and a public authority may provide for the issue of invoices by the Chief Commissioner on behalf of the public authority.

### **Access to information by Chief Commissioner of State Revenue**

**Schedule 7[5]–[7]** provide that the Chief Commissioner of State Revenue may access certain information for the purpose of enabling the Chief Commissioner to exercise any of the Chief Commissioner's functions under the *State Debt Recovery Act 2018*, rather than only to exercise specified functions.

**Schedule 7[8]** authorises a credit reporting body to disclose to the Chief Commissioner of State Revenue the contact details of the current or last known employer of a debtor.

### **Electronic service of documents**

**Schedule 7[9]** enables the electronic service of documents under the *State Debt Recovery Act 2018* to be effected not only by email but also in other ways. **Schedule 7[10]** specifies the ways

in terms that are equivalent to the *Fines Act 1996*, section 4A. **Schedule 7[11] and [12]** make consequential amendments.

## **Schedule 8      Amendment of Taxation Administration Act 1996 No 97**

### **Penalty tax**

**Schedule 8[2]** doubles, from 25% to 50%, the rate of penalty tax payable for a tax default by a significant global entity as defined by the *Income Tax Assessment Act 1997* of the Commonwealth. **Schedule 8[3]** makes a consequential amendment.

**Schedule 8[4]** allows the Chief Commissioner of State Revenue to—

- (a) publish guidelines on when no penalty tax is payable for a tax default, and
- (b) determine that no penalty tax is payable for a tax default after considering the guidelines.

The amendment does not limit the Chief Commissioner's existing power to determine that no penalty tax is payable for a tax default.

### **Disclosure of information by Chief Commissioner of State Revenue**

**Schedule 8[5]** permits the Chief Commissioner of State Revenue to disclose tax information for the purposes of—

- (a) investigation and law enforcement, and
- (b) tax clearance checks by certain government and other public agencies of New South Wales.

### **Tax avoidance schemes**

**Schedule 8[6]** makes provision, in the *Taxation Administration Act 1996*, to deter the making of, entry into or carrying out of tax avoidance schemes. **Schedule 8[1]** makes a consequential amendment.

Proposed **Part 10A, Divisions 1 and 2** re-enact, in a modified form, the provisions of the *Duties Act 1997*, Chapter 11A (the *duty avoidance provisions*), which deter schemes to avoid duty under the *Duties Act 1997*. The proposed Divisions extend the duty avoidance provisions' application to schemes for the avoidance of all kinds of tax liability rather than only liability to pay duty.

Proposed **Part 10A, Division 3** prohibits the promotion of tax avoidance schemes and also provides for the following—

- (a) ordering payment of civil penalties for breaches of the prohibition,
- (b) making injunctions in relation to proposed breaches of the prohibition,
- (c) voluntary undertakings in connection with tax avoidance schemes.

The proposed Division makes provision about the promotion of tax avoidance schemes in terms that are similar to equivalent provisions in the *Taxation Administration Act 1953* of the Commonwealth, Schedule 1, Chapter 4, Part 4–25, Division 290.

**Schedule 8[10]** provides for savings and transitional arrangements, including by ensuring the re-enacted provisions extend to a scheme to which the duty avoidance provisions applied before their repeal.

Schedule 1[28] repeals the duty avoidance provisions consequent on Schedule 8[6].

### **Electronic service of documents**

**Schedule 8[8]** enables the electronic service of documents under the *Taxation Administration Act 1996* to be effected not only by email but also in other ways. **Schedule 8[9]** specifies the ways in terms that are equivalent to the *Fines Act 1996*, section 4A. **Schedule 8[7]** makes a consequential amendment.

## **Schedule 9      Amendment of other legislation**

**Schedule 9** amends other legislation consequent on Schedule 2[14].