



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].



New South Wales

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New South Wales

State Revenue and Fines Legislation Amendment (Miscellaneous) Bill 2022

No. _____, 2022

A Bill for

An Act to make miscellaneous amendments to legislation relating to State revenue and fines; and to amend the *Liquor Act 2007* in relation to the use of outdoor space for dining and performance.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *State Revenue and Fines Legislation Amendment (Miscellaneous) Act 2022*.

2 Commencement

This Act commences on the following days—

- (a) for Schedule 1[18], [19] and [31]—on a day or days to be appointed by proclamation,
- (b) for Schedule 2[1], [5] and [7]–[13]—on a day or days to be appointed by proclamation,
- (c) otherwise—the date of assent to this Act.

Schedule 1 Amendment of Duties Act 1997 No 123

[1] Section 8 Imposition of duty on certain transactions concerning dutiable property

Insert after section 8(1)(b)(viii)—

- (ix) another transaction that results in a change in beneficial ownership of dutiable property, other than an excluded transaction.

[2] Section 8(2A)

Insert after section 8(2)—

- (2A) Despite subsection (1)(b)(ix), an excluded transaction that results in a change in beneficial ownership of dutiable property is a dutiable transaction if it is part of a scheme or arrangement that, in the Chief Commissioner's opinion, was made with a collateral purpose of reducing the duty otherwise chargeable under this Chapter.

[3] Section 8(3)

Insert in alphabetical order—

beneficial ownership includes ownership of dutiable property by a person as trustee of a trust.

change in beneficial ownership includes the following—

- (a) the creation of dutiable property,
(b) the extinguishment of dutiable property,
(c) a change in equitable interests in dutiable property,
(d) dutiable property becoming the subject of a trust,
(e) dutiable property ceasing to be the subject of a trust.

excluded transaction means the following—

- (a) the purchase, gift, allotment or issue of a unit in a unit trust scheme,
(b) the cancellation, redemption or surrender of a unit in a unit trust scheme,
(c) the abrogation or alteration of a right relating to a unit in a unit trust scheme,
(d) the payment of an account owing for a unit in a unit trust scheme,
(e) the grant, renewal or variation of a lease for no consideration,
(f) the grant of an easement for no consideration,
(g) the grant of a profit a prendre for no consideration,
(h) the provision of a security interest within the meaning of the *Personal Property Securities Act 2009* of the Commonwealth,
(i) a change in a trustee's right of indemnity,
(j) the creation of an interest in dutiable property by statute,
(k) a transaction of a kind prescribed by the regulations,
(l) a combination of the transactions referred to in paragraphs (a)–(k).

[4] Section 8AA

Insert after section 8—

8AA	Imposition of duty on acknowledgment of trust	1				
(1)	This Chapter also charges duty on the making of a statement that—	2				
(a)	purports to be a declaration of trust over dutiable property, but	3				
(b)	merely has the effect of acknowledging that identified property vested, or to be vested, in the person making the statement is already held, or to be held, in trust for a person or purpose mentioned in the statement.	4 5 6				
(2)	For the purpose of charging the duty—	7				
(a)	the making of the statement is taken to be a declaration of trust over dutiable property and, accordingly, is a dutiable transaction, and	8 9				
(b)	the property vested, or to be vested, in the person making the statement is taken to be the property transferred, and	10 11				
(c)	the person making the statement is taken to be the transferee, and	12				
(d)	the transfer is taken to occur when the statement is made.	13				
[5]	Section 9 Imposition of duty on dutiable transactions that are not transfers	14				
	Insert at the end of the Table—	15				
	<table border="0" style="margin-left: 40px;"> <tr> <td style="padding-right: 10px;">another transaction that results in a change in beneficial ownership of dutiable property</td> <td style="padding-right: 10px;">the property the beneficial ownership of which is changed</td> <td style="padding-right: 10px;">the person who obtains the beneficial ownership or whose beneficial ownership is increased</td> <td>when beneficial ownership changes</td> </tr> </table>	another transaction that results in a change in beneficial ownership of dutiable property	the property the beneficial ownership of which is changed	the person who obtains the beneficial ownership or whose beneficial ownership is increased	when beneficial ownership changes	
another transaction that results in a change in beneficial ownership of dutiable property	the property the beneficial ownership of which is changed	the person who obtains the beneficial ownership or whose beneficial ownership is increased	when beneficial ownership changes			
[6]	Section 26 Certain transactions concerning goods and other property	16				
	Omit section 26(2).	17				
[7]	Section 49A Purchases “off the plan”	18				
	Omit “off the plan purchaser agreement” from section 49A(1A).	19				
	Insert instead “off the plan purchase agreement”.	20				
[8]	Section 49A(1B) and (4), definition of “off the plan purchase agreement”	21				
	Insert “the agreement for” after “completion of” wherever occurring.	22				
[9]	Section 49A(1D)	23				
	Insert after section 49A(1C)—	24				
(1D)	The residence requirement does not apply to a purchaser or transferee if, on the date of the agreement or transfer—	25 26				
(a)	the purchaser or transferee or, if there are 2 or more of them, at least 1 of the purchasers or transferees is a member of the Permanent Forces of the Australian Defence Force within the meaning of the <i>Defence Act 1903</i> of the Commonwealth, and	27 28 29 30				
(b)	the purchaser or transferee or, if there are 2 or more of them, each of the purchasers or transferees is enrolled to vote in State elections under the <i>Electoral Act 2017</i> .	31 32 33				
[10]	Section 68 Exemptions—break-up of marriages and other relationships	34				
	Insert after section 68(1A)(b)(ii)—	35				

	(ia) an agreement that the Chief Commissioner is satisfied has been made for the purpose of dividing relationship property as a consequence of the breakdown of the relationship, or	1 2 3
[11]	Section 76 Residence requirement	4
	Insert after section 76(2)—	5
	(2A) The Chief Commissioner may give an approval or exemption under this section at any time, even if—	6 7
	(a) the period of 12 months after completion of the agreement or transfer has already expired, or	8 9
	(b) the first home owner’s occupation of the home as a principal place of residence has already ceased.	10 11
[12]	Section 104ZJA, heading	12
	Omit “New home”. Insert instead “Certain”.	13
[13]	Section 104ZJA(1)(c)	14
	Insert at the end of section 104ZJA(1)(b)—	15
	, or	16
	(c) the land has been used by the transferee or a related body corporate, after completion of the transfer, wholly or predominantly for commercial or industrial purposes.	17 18 19
[14]	Section 104ZJA(6)	20
	Omit the subsection. Insert instead—	21
	(6) Surcharge purchaser duty may be refunded under this section only if an application for the refund is made—	22 23
	(a) within 12 months after the entitling event, and	24
	(b) no later than 10 years after completion of the transfer of the residential-related property to the Australian corporation.	25 26
[15]	Section 104ZJA(6A)	27
	Insert after section 104ZJA(6)—	28
	(6A) For the purposes of the <i>Taxation Administration Act 1996</i> , section 9(3)(c), a reassessment under this section is authorised to be made more than 5 years after the initial assessment.	29 30 31
[16]	Section 104ZJA(8)	32
	Insert in alphabetical order—	33
	<i>entitling event</i> means—	34
	(a) for a refund under subsection (1)(a)—the completion of the sale of the new home, or	35 36
	(b) for a refund under subsection (1)(b)—the issue of the subdivision certificate, or	37 38
	(c) for a refund under subsection (1)(c)—the start of the use of the land wholly or predominantly for commercial or industrial purposes.	39 40

[17] Section 163B Exemption—break-up of marriages and other relationships	1
Insert after section 163B(1)(b)(ii)—	2
(iii) an agreement that the Chief Commissioner is satisfied has been made for the purpose of dividing relationship property as a consequence of the breakdown of the relationship, or	3 4 5
[18] Section 259 What insurance is exempt from duty?	6
Omit section 259(1)(f). Insert instead—	7
(f) insurance effected by a contract of insurance issued by a private health insurer, within the meaning of the <i>Private Health Insurance Act 2007</i> of the Commonwealth, that covers the provision of—	8 9 10
(i) hospital benefits or medical benefits or both, whether or not other benefits are also provided, or	11 12
(ii) ambulance services, being services relating to the work of rendering first aid to, and the transport of, sick and injured persons,	13 14 15
[19] Section 259(1)(i)(i)	16
Omit “the hull of”.	17
[20] Section 267 Exemptions	18
Omit “the property of the parties or of either of them” wherever occurring in section 267(6A) and (7).	19 20
Insert instead “relationship property”.	21
[21] Section 267(6A)(c)	22
Insert at the end of section 267(6A)(b)—	23
, or	24
(c) an agreement that the Chief Commissioner is satisfied has been made for the purpose of dividing relationship property as a consequence of the breakdown of the relationship.	25 26 27
[22] Section 267(6B)	28
Omit “the property of a party to a de facto relationship”.	29
Insert instead “relationship property”.	30
[23] Section 267(9)	31
Omit “subsection (6) or (7)”. Insert instead “subsections (6)–(7)”.	32
[24] Section 267(11)	33
Insert after section 267(10)—	34
(11) In this section—	35
<i>marriage</i> includes a void marriage.	36
<i>matrimonial property</i> means property in relation to the parties to a marriage or of either of them, within the meaning of the <i>Family Law Act 1975</i> of the Commonwealth, including property treated as property in relation to the parties or of either of them as a result of an order made under that Act.	37 38 39 40
<i>party</i> to a marriage includes a person who was a party to a marriage that has been dissolved or annulled, in Australia or elsewhere.	41 42

relationship property—

- (a) in relation to a de facto relationship, means property in relation to the parties to the de facto relationship or of either of them, within the meaning of the *Family Law Act 1975* of the Commonwealth, including property treated as property in relation to the parties or of either of them as a result of an order made under that Act, or
- (b) in relation to a domestic relationship, means property of the parties to the relationship or of either of them.

[25] Section 274 Transfer of certain business property between family members

Omit section 274(1)–(5). Insert instead—

- (1) Duty under this Act is not chargeable in relation to a transfer of land used for primary production, together with other property that is an integral part of the business of primary production, if the Chief Commissioner is satisfied of all the matters specified in subsections (2)–(4).
- (2) Firstly, the Chief Commissioner must be satisfied that the transferor, or the person directing the transferor, is a member of the family of—
 - (a) the transferee, or
 - (b) the person directing the transferee.
- (3) Secondly, the Chief Commissioner must be satisfied that the land was, immediately before the transfer or the date of first execution of the instrument of transfer, land used for primary production in connection with a business carried on, whether alone or with others, by—
 - (a) the transferee, or a member of the family of the transferee, or
 - (b) the person directing the transferee, or a member of the family of the person directing the transferee.
- (4) Thirdly, the Chief Commissioner must be satisfied that the business will continue to be carried on, whether alone or with others, by—
 - (a) the transferee, or
 - (b) the person directing the transferee.
- (4A) For the purposes of this section, the ***person directing*** a transferor or transferee is—
 - (a) for a transferor or transferee acting in the capacity of—
 - (i) executor of a deceased estate—the deceased person, or
 - (ii) trustee of a bare trust—a person who is a named beneficiary of the trust, or
 - (iii) trustee of a self managed superannuation fund—a person who is a member of the fund, or
 - (b) for a transferor or transferee acting in the capacity of trustee of a discretionary trust—a person or persons who are entitled, as takers in default of appointment, to not less than a 25% interest in the capital of the trust, being an entitlement—
 - (i) for a transferor—that existed for at least 3 years before the date of the transfer or that existed from the date of establishment of the trust, or
 - (ii) for a transferee—that exists for at least 3 years after the date of the transfer, or

(c)	for a transferor or transferee acting in the capacity of trustee of a private unit trust scheme—a unit holder or unit holders in the unit trust scheme who hold the units beneficially and are entitled, as unit holders, to not less than 25% of the assets of the unit trust scheme on winding up, being an entitlement—	1 2 3 4 5
(i)	for a transferor—that existed for at least 3 years before the date of the transfer or that existed from the date of establishment of the trust, or	6 7 8
(ii)	for a transferee—that exists for at least 3 years after the date of the transfer, or	9 10
(d)	for a transferor or transferee that is a proprietary limited company—a shareholder or shareholders in the company who—	11 12
(i)	are beneficially entitled to the shares in the company, and	13
(ii)	are entitled to vote at meetings of the company, and	14
(iii)	are entitled as shareholders to not less than 25% of the assets of the company on winding up, being an entitlement—	15 16
(A)	for a transferor—that existed for at least 3 years before the date of the transfer or that existed from the date of incorporation of the company, or	17 18 19
(B)	for a transferee—that exists for at least 3 years after the date of the transfer.	20 21
(4B)	For a transfer involving a proprietary limited company or unit trust scheme (a <i>subsidiary entity</i>) that is owned by another proprietary limited company or unit trust scheme (the <i>parent entity</i>), a person is taken to be a person directing the subsidiary entity if the Chief Commissioner is satisfied that, had the parent entity been the transferor or transferee, as the case requires, the person would be the person directing the parent entity under subsection (4A).	22 23 24 25 26 27
(5)	Except as provided by subsections (4A) and (4B), there are no other cases in which a person is considered to be a person directing a transferor or transferee.	28 29
[26]	Section 274(5A) Omit “or shares”.	30 31
[27]	Section 274(6) Insert in alphabetical order— <i>transfer</i> of land includes the following— (a) an agreement for the sale or transfer of the land, (b) a lease of the land, (c) a transfer or assignment of a lease or permit in relation to the land. Note —The Dictionary also defines <i>transfer</i> to include an assignment and an exchange. <i>transferee</i> includes lessee and assignee. <i>transferor</i> includes lessor and assignor.	32 33 34 35 36 37 38 39 40 41
[28]	Chapter 11A Tax avoidance schemes Omit the Chapter.	42 43
[29]	Schedule 1 Savings, transitional and other provisions Insert at the end of the Schedule, with appropriate Part and clause numbering—	44 45

Part	Provisions consequent on State Revenue and Fines Legislation Amendment (Miscellaneous) Act 2022	1
		2
	Duty on changes in beneficial ownership	3
	Section 8(1)(b)(ix) does not apply to a transaction that occurs on or after the commencement of the subparagraph if the transaction occurs in accordance with an agreement or arrangement entered into before the commencement.	4 5 6
[30]	Dictionary	7
	Omit clause 1, definitions of <i>listed company</i> and <i>listed trust</i> . Insert in alphabetical order—	8
	<i>Chief Commissioner</i> means the Chief Commissioner of State Revenue under the <i>Taxation Administration Act 1996</i> .	9 10
	<i>declared stock exchange</i> means a stock exchange declared for the purposes of this definition by an order, published in the Gazette and in force, of the Minister, or of the Chief Commissioner as the Minister’s delegate.	11 12 13
	Note— Power to make an order includes power to amend or repeal the order—see the <i>Interpretation Act 1987</i> , section 43(2).	14 15
	<i>listed company</i> means a company whose shares are quoted on—	16
	(a) the Australian Securities Exchange, or	17
	(b) the London Exchange, or	18
	(c) the New York Exchange, or	19
	(d) the New Zealand Exchange, or	20
	(e) a stock exchange that is a member of the World Federation of Exchanges, or	21 22
	(f) a declared stock exchange.	23
	<i>listed trust</i> means a unit trust scheme whose units are quoted on—	24
	(a) the Australian Securities Exchange, or	25
	(b) the London Exchange, or	26
	(c) the New York Exchange, or	27
	(d) the New Zealand Exchange, or	28
	(e) a stock exchange that is a member of the World Federation of Exchanges, or	29 30
	(f) a declared stock exchange.	31
[31]	Dictionary, clause 1, definition of “livestock insurance”	32
	Insert at the end of the definition—	33
	but does not include insurance covering loss in relation to a pet.	34
[32]	Dictionary, clause 1, definition of “private company”, paragraph (b)	35
	Omit the paragraph. Insert instead—	36
	(b) a company that is limited by shares and whose shares are not quoted on—	37 38
	(i) the Australian Securities Exchange, or	39
	(ii) the London Exchange, or	40
	(iii) the New York Exchange, or	41
	(iv) the New Zealand Exchange, or	42

- (v) a stock exchange that is a member of the World Federation of Exchanges, or 1
 - (vi) a declared stock exchange. 2
- 3

Schedule 2 Amendment of Fines Act 1996 No 99

[1] Section 3 Definitions

Omit section 3(1), definition of *visitor driver privileges*. Insert in alphabetical order—
road transport legislation, for Part 4, Division 3, Subdivision 3—see section 70A.
visitor driver privileges, for Part 4, Division 3, Subdivision 3—see section 70A.
visitor privileges, for Part 4, Division 3, Subdivision 3—see section 70A.
visitor vehicle privileges, for Part 4, Division 3, Subdivision 3—see section 70A.

[2] Section 22 Persons who may deal with penalty notices (appropriate officers)

Omit “so” from section 22(2)(a).

[3] Section 22(2)(b)(i)

Omit “that Office”. Insert instead “Revenue NSW”.

[4] Sections 57(1A), 58(1)(e), 103(1)(d), 108L(a), 112D(b), 120(1)(d) and 125(2)

Omit the provisions.

[5] Section 58 Summary of enforcement procedure

Omit section 58(1)(b) and (c). Insert instead—

(b) Licence and registration enforcement action

If the fine is not paid within the period specified, Transport for NSW takes action against the fine defaulter’s driver licence, vehicle registration, visitor privileges or marine safety licence (see Division 3).

(c) Civil enforcement

Civil enforcement action in the form of a property seizure order, a garnishee order or the registration of a charge on land owned by the fine defaulter is taken if enforcement action under Division 3 is unavailable or unsuccessful, or if the Commissioner is satisfied that civil enforcement action is preferable (see Division 4).

[6] Section 58(1)(f)

Omit “order requiring community service work and imprisonment”.

Insert instead “orders requiring community service work”.

[7] Part 4, Division 3, heading

Omit the heading. Insert instead—

Division 3 Licence and registration enforcement action

Subdivision 1 Preliminary

[8] Section 65 When enforcement action taken under this Division

Omit “with respect to a fine defaulter’s driver licence” from section 65(3).

[9] Section 65(3A)	1
Omit the subsection.	2
[10] Part 4, Division 3, Subdivision 2, heading	3
Insert after section 65—	4
Subdivision 2 Suspension or cancellation of New South Wales driver licence or vehicle registration	5
	6
[11] Sections 66A and 69A	7
Omit the sections.	8
[12] Part 4, Division 3, Subdivisions 3 and 4	9
Insert after section 70—	10
Subdivision 3 Suspension of visitor driver and vehicle privileges	11
70A Definitions	12
In this Subdivision—	13
<i>road transport legislation</i> has the same meaning as in the <i>Road Transport Act 2013</i> .	14
<i>visitor driver privileges</i> means an exemption under road transport legislation that permits a person to drive a motor vehicle in this jurisdiction, even though the person does not hold a driver licence, because the person holds a licence or permit to drive a motor vehicle issued in a place outside this jurisdiction.	15
<i>visitor privileges</i> means—	16
(a) visitor driver privileges, or	17
(b) visitor vehicle privileges.	18
<i>visitor vehicle privileges</i> means an exemption under road transport legislation that permits a motor vehicle, registered outside this jurisdiction in the name of a person, to be used by the person in this jurisdiction.	19
	20
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70B Suspension of visitor privileges	26
(1) Transport for NSW must suspend visitor privileges of a fine defaulter against whom it is required to take enforcement action.	27
	28
(2) Transport for NSW must suspend visitor privileges even if the Commissioner has, after requiring Transport for NSW to take enforcement action—	29
(a) granted an extension of time for the payment of the fine, or	30
(b) allowed the fine defaulter to pay the fine by instalments.	31
	32
(3) Transport for NSW must remove the suspension of visitor privileges if the Commissioner directs it to cease enforcement action in relation to the fine defaulter under this Division.	33
	34
	35
(4) The statutory rules under the <i>Road Transport Act 2013</i> may make further provision for the suspension of visitor privileges in connection with fine enforcement orders.	36
	37
	38
(5) This section does not limit the powers of Transport for NSW in relation to visitor privileges under another Act.	39
	40

70C	Interim restoration of visitor privileges	1
(1)	A person may apply to Transport for NSW for restoration of visitor privileges suspended under this Division if—	2 3
(a)	for a penalty notice enforcement order—the person has lodged an application under Part 3, Division 5 to have an application to annul the order determined by the Local Court and the proceedings have not been determined, or	4 5 6 7
(b)	for a court fine enforcement order—the person has lodged an appeal against the conviction or sentence in relation to which the fine was imposed, or the person has lodged an application under the <i>Crimes (Appeal and Review) Act 2001</i> , Part 2 to annul the conviction or sentence, and the proceedings have not been determined.	8 9 10 11 12
(2)	In that case, Transport for NSW must restore visitor privileges by removing the suspension of visitor privileges.	13 14
(3)	Restored visitor privileges may be suspended again under this Act following the determination of the proceedings referred to in subsection (1) or in connection with a different fine payable by the person.	15 16 17
(4)	Visitor privileges cannot be restored under this section if visitor privileges have ceased to apply to the person for another reason under the road transport legislation.	18 19 20
	Subdivision 4	
	Suspension or cancellation of New South Wales marine safety licence	21 22
70D	Suspension or cancellation of marine safety licences	23
(1)	Transport for NSW has the same functions in relation to a boat driving licence or vessel registration certificate as it has under Subdivision 2 in relation to a driver licence or vehicle registration.	24 25 26
(2)	Accordingly, Subdivision 2 extends to a boat driving licence or vessel registration certificate—	27 28
(a)	as if a reference to a driver licence were a reference to a boat driving licence, and	29 30
(b)	as if a reference to vehicle registration were a reference to a vessel registration certificate.	31 32
(3)	The regulations may prescribe modifications of Subdivision 2 in its application to a boat driving licence or vessel registration certificate.	33 34
(4)	In this section—	35
	<i>boat driving licence</i> means a marine safety licence referred to in the <i>Marine Safety Act 1998</i> , section 29(e).	36 37
	<i>vessel registration certificate</i> means a marine safety licence referred to in the <i>Marine Safety Act 1998</i> , section 29(a).	38 39
[13]	Section 71 When enforcement action taken under this Division	40
	Omit “to suspend or cancel the driver licence or vehicle registration of the fine defaulter” from section 71(1)(a).	41 42
[14]	Part 4, Division 6 Imprisonment	43
	Omit the Division.	44

[15]	Section 98 Application of civil and other enforcement procedures	1
	Omit “and Division 6 (Imprisonment)”.	2
[16]	Section 99 Modification of enforcement procedures	3
	Omit “(Driver licence or vehicle registration suspension or cancellation)”.	4
[17]	Section 99A Definitions	5
	Insert after definition of <i>approved person</i> , paragraph (a)—	6
	(a1) a social worker with the qualifications specified by the guidelines, or	7
[18]	Section 99I Work and development guidelines	8
	Insert after section 99I(2)(f)—	9
	(f1) the qualifications required for a social worker to be an approved person,	10
[19]	Section 117 Access to information held by police and government agencies	11
	Omit section 117(1) and (1A). Insert instead—	12
	(1) Police officers or other members of the NSW Police Force and government agencies are authorised and required to provide the Commissioner, on request, with available information about a fine defaulter’s criminal record, address, email address, phone number, property, date of birth or driver licence number for the purpose of enabling the Commissioner to exercise a function under this Act in relation to the fine defaulter.	13 14 15 16 17 18
[20]	Section 117AA Access to information held by employers	19
	Omit “for the purposes of the enforcement of a garnishee order (within the meaning of section 73)”.	20 21
	Insert instead “for the purpose of enabling the Commissioner to exercise a function under this Act in relation to the fine defaulter”.	22 23
[21]	Section 117AB Access to and use of information held by credit reporting bodies	24
	Omit “for the purposes of the Commissioner taking action against the person to enforce payment of a fine” from section 117AB(1).	25 26
	Insert instead “for the purpose of enabling the Commissioner to exercise a function under this Act in relation to the fine defaulter”.	27 28
[22]	Section 117AB(2), definition of “relevant information”, paragraph (c)	29
	Insert after paragraph (b)—	30
	(c) the contact details of the fine defaulter’s current or last known employer.	31 32
[23]	Section 117AC	33
	Insert after section 117AB—	34
117AC	Access to information held by authorised deposit-taking institutions	35
	The Commissioner may require an authorised deposit-taking institution to provide the Commissioner with the following information for the purpose of enabling the Commissioner to decide whether to make a garnishee order in relation to a fine defaulter—	36 37 38 39

(a)	whether the fine defaulter has an account with the authorised deposit-taking institution,	1
		2
(b)	if so, the balance of the account.	3
[24]	Section 119A	4
	Insert after section 119—	5
119A	Penalty notices under this Act	6
(1)	A fines officer may issue a penalty notice to a person if it appears to the officer that the person has committed an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.	7
		8
		9
(2)	This Act applies to a penalty notice issued under this section.	10
	Note— If a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to further proceedings for the alleged offence.	11
		12
		13
(3)	The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations, not exceeding the maximum amount of penalty that could be imposed for the offence by a court.	14
		15
		16
		17
(4)	This section does not limit the operation of another provision of, or made under, this or another Act relating to proceedings that may be taken in relation to offences.	18
		19
		20
(5)	In this section—	21
	<i>fines officer</i> means a person referred to in section 22(2)(b).	22

Schedule 3 Amendment of Fines Regulation 2020

Clause 7A

Insert after clause 7—

7A Penalty notice offence—the Act, s 119A

An offence under the Act, section 38(3B) is prescribed as an offence for which a penalty notice may be issued and the amount payable under the penalty notice is—

- (a) in relation to an individual—\$704, or
- (b) in relation to a corporation—
 - (i) for a first offence within the last 5 years—\$1,487, or
 - (ii) for a second or subsequent offence within the last 5 years—\$3,988.

Schedule 4	Amendment of First Home Owner Grant (New Homes) Act 2000 No 21	1
		2
[1] Section 13 Eligible transactions		3
	Omit “contract to purchase a home” from section 13(3)(a).	4
	Insert instead “contract for the purchase of a home”.	5
[2] Section 13(3)(b)		6
	Omit “comprehensive building contract”.	7
	Insert instead “comprehensive home building contract”.	8
[3] Section 13(5)(b)		9
	Omit “contract to have a home built”.	10
	Insert instead “comprehensive home building contract”.	11
[4] Section 13AA Types of first home owner grant that are available		12
	Omit section 13AA(2)(a) and (b). Insert instead—	13
	(a) a comprehensive home building contract,	14
	(b) the building of a home by an owner builder.	15
[5] Section 13A Eligibility cap		16
	Omit section 13A(3)(a) and (b). Insert instead—	17
	(a) for a contract for the purchase of a home—the commencement date, or	18
	(b) for a comprehensive home building contract—the date the transaction is completed, or	19
	(c) for the building of a home by an owner builder—the date the transaction is completed.	20
[6] Section 18 Amount of grant		23
	Omit “contract to purchase a home” wherever occurring in section 18(2) and (3)(a).	24
	Insert instead “contract for the purchase of a home”.	25
[7] Section 20 Payment in advance, subject to statutory conditions		26
	Omit section 20(2B).	27

Schedule 5 Amendment of Land Tax Act 1956 No 27

- | | |
|--|----|
| | 1 |
| [1] Section 5B Surcharge land tax—residence requirement applying to principal place of residence exemption | 2 |
| Insert after section 5B(2)— | 3 |
| | 4 |
| (2A) A person does not use and occupy land as the person’s principal place of residence during a period of the person’s physical absence from Australia. | 5 |
| | 6 |
| (2B) The Chief Commissioner may, in exceptional circumstances, waive the requirement in subsection (2A) in relation to a person’s brief physical absence from Australia. | 7 |
| | 8 |
| | 9 |
| [2] Section 5C, heading | 10 |
| Omit “ new home ”. Insert instead “ certain ”. | 11 |
| [3] Section 5C(1)(c) | 12 |
| Insert at the end of section 5C(1)(b)— | 13 |
| | 14 |
| , or | 14 |
| (c) the land has been used by the corporation or a related body corporate, before or after the taxing date, wholly or predominantly for commercial or industrial purposes. | 15 |
| | 16 |
| | 17 |
| [4] Section 5C(6) | 18 |
| Omit the subsection. Insert instead— | 19 |
| (6) Surcharge land tax may be refunded under this section only if an application for the refund is made— | 20 |
| | 21 |
| (a) within 12 months after the entitling event, and | 22 |
| (b) no later than 10 years after completion of the transfer of the residential land to the Australian corporation. | 23 |
| | 24 |
| [5] Section 5C(6A) | 25 |
| Insert after section 5C(6)— | 26 |
| (6A) For the purposes of the <i>Taxation Administration Act 1996</i> , section 9(3)(c), a reassessment under this section is authorised to be made more than 5 years after the initial assessment. | 27 |
| | 28 |
| | 29 |
| [6] Section 5C(7) | 30 |
| Insert in alphabetical order— | 31 |
| <i>entitling event</i> means— | 32 |
| (a) for a refund under subsection (1)(a)—the completion of the sale of the new home, or | 33 |
| | 34 |
| (b) for a refund under subsection (1)(b)—the issue of the subdivision certificate, or | 35 |
| | 36 |
| (c) for a refund under subsection (1)(c)—the start of the use of the land wholly or predominantly for commercial or industrial purposes. | 37 |
| | 38 |
| [7] Section 5D Surcharge land tax—discretionary trusts | 39 |
| Omit section 5D(7). | 40 |

Schedule 6	Amendment of Liquor Act 2007 No 90	1
[1]	Section 165 Definitions	2
	Omit “on the day that is 12 months after the commencement” from section 165, definition of <i>prescribed period</i> , paragraph (b).	3
	Insert instead “at the beginning of 11 December 2023”.	4
[2]	Section 167 Repeal of Part	5
	Omit “2022”. Insert instead “2023”.	6
[3]	Schedule 1 Savings and transitional provisions	7
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	8
Part	Provision consequent on enactment of State Revenue and Fines Legislation Amendment (Miscellaneous) Act 2022	9
	Powers of local councils to encourage use of outdoor space	10
(1)	Anything done by a local council during the relevant period, that would have been validly done if the <i>State Revenue and Fines Legislation Amendment (Miscellaneous) Act 2022</i> , Schedule 6[1] and [2] had commenced before it was done, is taken to have been validly done under section 166.	11
(2)	In this clause—	12
	<i>relevant period</i> means the period—	13
(a)	starting at the beginning of 11 December 2021, and	14
(b)	ending on the commencement of this clause.	15

Schedule 7	Amendment of State Debt Recovery Act 2018 No 11	1
		2
[1] Section 4 Public authority—meaning		3
Omit section 4(5).		4
[2] Section 4A		5
Insert after section 4—		6
4A Payable—meaning		7
(1) In this Act, a reference to a fee, charge or other amount payable to a public authority includes a reference to a fee, charge or other amount that—		8
(a) is charged or administered by the public authority, and		9
(b) is payable to the Consolidated Fund on recovery or payment.		10
(2) To avoid doubt, a fee, charge or other amount may be payable for the purposes of this Act even if the fee, charge or other amount is not a judgment debt.		11
[3] Section 7 Referable debt—meaning		12
Omit “payable” from section 7(1)(a).		13
[4] Section 20 Debt recovery agreements		14
Insert after section 20(2)(b)—		15
(b1) without limiting paragraph (b), the issue of invoices by the Chief Commissioner, on behalf of the public authority, for fees, charges or other amounts payable to the public authority,		16
		17
		18
		19
		20
[5] Section 105 Access to information held by police, NSW government agencies and State owned corporations		21
Omit “take debt recovery action against the debtor” from section 105(1).		22
Insert instead “exercise a function under this Act in relation to the debtor”.		23
[6] Section 106 Access to information held by employers		24
Omit “for the purposes of taking debt recovery action under this Act” from section 106(1).		25
Insert instead “for the purpose of enabling the Chief Commissioner to exercise a function under this Act in relation to the debtor”.		26
[7] Section 107 Access to and use of information held by credit reporting bodies		27
Omit “for the purposes of the Chief Commissioner taking debt recovery action against the debtor” from section 107(1).		28
Insert instead “for the purpose of enabling the Chief Commissioner to exercise a function under this Act in relation to the debtor”.		29
[8] Section 107(2), definition of “relevant information”, paragraph (c)		30
Insert after paragraph (b)—		31
(c) the contact details of the debtor’s current or last known employer.		32
[9] Section 115 Service of notices		33
Omit section 115(1)(c). Insert instead—		34
		35
		36
		37
		38

(c)	in an approved electronic manner, or	1
[10]	Section 115(3)–(4A)	2
	Omit section 115(3) and (4). Insert instead—	3
(3)	For the purposes of this section, an <i>approved electronic manner</i> of serving a notice on a person means—	4
	(a) sending the notice to a telephone number or email address provided by the person for the purposes of the service of the notice, or	5
	(b) providing the person access to the notice via an online notification system if the person consents to the use of the system, or	6
	(c) another electronic manner prescribed by the regulations.	7
(4)	A person may, orally or in writing, provide an email address or telephone number, or consent to the use of an online notification system, for the purpose of being served—	8
	(a) a particular notice, or	9
	(b) a particular kind of notice, or	10
	(c) notices for a particular period, or	11
	(d) all notices.	12
(4A)	This section does not authorise a notice to be served on a person orally.	13
[11]	Section 115(5)(b)	14
	Omit the paragraph. Insert instead—	15
(b)	notice served in an approved electronic manner is taken to be served on a person the next working day after the notice is sent, or after the person is provided access to the notice via an online notification system, unless the person establishes that it was not served within that period.	16
[12]	Section 115(6)	17
	Insert in alphabetical order—	18
	<i>online notification system</i> means an online system approved by the Chief Commissioner for the purpose of enabling a person to securely access a document by means of a website, mobile telephone or mobile device or by other electronic means.	19
		20
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Schedule 8 Amendment of Taxation Administration Act 1996 No 97

[1] Section 7 Purpose of Act and relationship with other taxation laws

Insert after section 7(3)(h)—

- (h1) tax avoidance schemes, and

[2] Section 27 Amount of penalty tax

Omit section 27(1). Insert instead—

- (1) The amount of penalty payable for a tax default is, subject to this Division—
- (a) 25% of the amount of tax unpaid, or
- (b) if the taxpayer is a significant global entity within the meaning of the *Income Tax Assessment Act 1997* of the Commonwealth—50% of the amount of tax unpaid.

[3] Section 30 Increase in penalty tax for concealment

Insert after the matter relating to “Failure to take reasonable care but no intentional disregard of the law” in the Table—

Failure to take reasonable care, but no intentional disregard of the law, by significant global entity	50	10	40	60
--	----	----	----	----

[4] Section 33A

Insert after section 33—

33A Penalty tax relief

- (1) The Chief Commissioner may, in a way the Chief Commissioner thinks fit, publish guidelines on the circumstances in which, or the grounds on which, the Chief Commissioner may determine that no penalty tax is payable in relation to a tax default (*penalty tax relief guidelines*).
- (2) If the Chief Commissioner publishes penalty tax relief guidelines, the Chief Commissioner may determine that no penalty tax is payable in relation to a tax default after considering the guidelines.
- (3) This section does not affect section 27(3).

[5] Sections 83B and 83C

Insert before section 84—

83B Permitted disclosures—investigation and law enforcement

- (1) The Chief Commissioner may disclose information obtained under or in relation to the administration of a taxation law to an investigative or law enforcement agency to assist the agency to exercise its investigative, complaint handling or law enforcement functions.
- (2) In this section—
investigative or law enforcement agency means a government agency, or a government official, of a State, a Territory or the Commonwealth that has investigative, complaint handling or law enforcement functions.
investigative, complaint handling or law enforcement functions include functions that may result in the agency taking or instituting disciplinary,

criminal or other formal action or proceedings against a person or body under investigation.	1 2
83C Permitted disclosures—tax clearance checks	3
(1) The Chief Commissioner may disclose information about a taxpayer, obtained under or in relation to the administration of a taxation law, to a NSW public agency in connection with the procurement by the NSW public agency of goods or services from the taxpayer.	4 5 6 7
(2) In particular, the Chief Commissioner may disclose the following information about a taxpayer, as current at the time of disclosure, to assist the NSW public agency in assessing whether the taxpayer is an appropriate person from whom the NSW public agency should procure goods or services—	8 9 10 11
(a) information about a return that is required to be lodged by the taxpayer with the Chief Commissioner but has not been lodged,	12 13
(b) information about the taxpayer’s liability to pay tax under a taxation law,	14 15
(c) without limiting paragraph (a) or (b), information about a return, or tax liability, that is the subject of a special arrangement under section 37,	16 17
(d) the following information for the previous 5 years—	18
(i) the amount of penalty tax imposed on the taxpayer,	19
(ii) the amount of tax payable by the taxpayer and written off by the Chief Commissioner.	20 21
(3) For the purposes of this section—	22
(a) information about, or in relation to, a taxpayer includes information about, or in relation to, an associated person of the taxpayer, and	23 24
(b) a person is an <i>associated person</i> of a taxpayer if the person is an associated person of the taxpayer for the purposes of the <i>Duties Act 1997</i> .	25 26 27
Note— See the <i>Duties Act 1997</i> , Dictionary, clause 2.	28
(4) In this section—	29
<i>NSW public agency</i> means the following—	30
(a) a government sector agency within the meaning of the <i>Government Sector Employment Act 2013</i> ,	31 32
(b) a NSW Government agency,	33
(c) another public authority that is constituted by or under an Act or that exercises public functions, other than a State owned corporation,	34 35
(d) a State owned corporation prescribed by the regulations.	36
[6] Part 10A	37
Insert after Part 10—	38
Part 10A Tax avoidance schemes	39
Division 1 Preliminary	40
106E Object of Part	41
The object of this Part is to deter schemes to avoid tax liability.	42

106F	What is a tax avoidance scheme?	1
(1)	For the purposes of this Part, a <i>tax avoidance scheme</i> is a scheme that a person, whether alone or with others, enters into, makes or carries out for the sole or dominant purpose of enabling a tax liability to be avoided.	2 3 4
(2)	It does not matter if the scheme is entered into, made or carried out wholly or partly outside New South Wales.	5 6
(3)	In determining the sole or dominant purpose for which a scheme is entered into, made or carried out, any purpose related to avoiding a liability for foreign tax must be disregarded.	7 8 9
(4)	In this section— <i>foreign tax</i> means a duty, tax or other impost imposed under a law of another State, a Territory, the Commonwealth or a jurisdiction outside Australia.	10 11 12
106G	Matters relevant to whether scheme is tax avoidance scheme	13
	The following matters must be taken into account in determining whether a scheme is a tax avoidance scheme—	14 15
(a)	the way in which the scheme was entered into, made or carried out,	16
(b)	the form and substance of the scheme, including—	17
(i)	the legal rights and obligations involved in the scheme, and	18
(ii)	the economic and commercial substance of the scheme,	19
(c)	when the scheme was entered into or made and the length of the period during which the scheme was carried out,	20 21
(d)	the purpose of a taxation law, or of a provision of a taxation law, whether or not the purpose is expressly stated,	22 23
(e)	the effect that a taxation law would have in relation to the scheme apart from this Part,	24 25
(f)	any change in a person’s financial position, or other circumstances, that has resulted, will result, or may reasonably be expected to result, from the scheme,	26 27 28
(g)	the nature of any connection, whether of a business, family or other nature, between the person whose tax liability is avoided as a result of the scheme and another person whose financial position or other circumstances have changed, will change, or may reasonably be expected to change, as a result of the scheme,	29 30 31 32 33
(h)	the circumstances surrounding the scheme.	34
106H	Meaning of “scheme”	35
(1)	In this Part, a <i>scheme</i> means—	36
(a)	a trust, contract, agreement, arrangement, understanding, promise or undertaking, including all steps and transactions by which it is carried into effect—	37 38 39
(i)	whether entered into or made orally or in writing, and	40
(ii)	whether express or implied, and	41
(iii)	whether or not it is, or is intended to be, enforceable by legal proceedings, or	42 43
(b)	a scheme, plan or proposal, whether implemented or not, or	44
(c)	an action, a course of action or a course of conduct.	45

(2)	A scheme may be a unilateral scheme.	1
(3)	This Part applies in relation to a part of a scheme in the same way as it applies to a scheme and a reference in this Part to a scheme includes a reference to a part of a scheme.	2 3 4
106I	Meaning of “avoid”	5
	In this Part—	6
(a)	a reference to avoiding tax, or payment of tax, includes a reference to postponing payment of tax, and	7 8
(b)	a reference to avoiding tax liability includes a reference to reducing or postponing tax liability.	9 10
Division 2	Payment of avoided tax	11
106J	Payment of tax avoided as a result of tax avoidance scheme	12
(1)	A person is liable to pay the amount of tax avoided by the person as a result of a tax avoidance scheme.	13 14
(2)	For the purposes of this Part, the <i>amount of tax avoided</i> by a person as a result of a tax avoidance scheme is the amount of tax that, if the tax avoidance scheme had not been entered into, made or carried out—	15 16 17
(a)	would have been payable by the person, or	18
(b)	it is reasonable to expect would have been payable by the person, assuming that a reasonable alternative to entering into or making the scheme had been adopted, being an alternative that would have achieved the same economic or commercial result as the scheme, other than the result of avoiding tax.	19 20 21 22 23
(3)	The Chief Commissioner may make an assessment, or reassessment, of tax liability on the basis of the person’s liability under this Part to pay an amount of tax avoided by the person.	24 25 26
106K	When does a liability to pay avoided tax arise?	27
(1)	A liability to pay an amount of tax avoided by a person as a result of a tax avoidance scheme is taken to arise on the date the amount of tax avoided would have been payable if the tax avoidance scheme had not been entered into or made.	28 29 30 31
(2)	Accordingly, a tax default is taken to have occurred on the date the amount of tax avoided would have been payable if the tax avoidance scheme had not been entered into or made.	32 33 34
	Note— This means that interest and penalty tax may be charged in addition to the amount of tax avoided.	35 36
(3)	This section applies only if the Chief Commissioner issues a notice of assessment, or reassessment, of tax liability on the basis that a scheme is a tax avoidance scheme.	37 38 39
106L	Reasons for decision to be given	40
	A notice of assessment, or reassessment, of tax liability that is issued by the Chief Commissioner on the basis that a scheme is a tax avoidance scheme must be accompanied by a statement of the Chief Commissioner’s reasons for making the assessment or reassessment.	41 42 43 44

106M	Innocent participants	1
(1)	A person is liable under this Part to pay an amount of tax avoided by the person as a result of a tax avoidance scheme whether or not the person entered into, made or carried out the tax avoidance scheme.	2 3 4
(2)	However, a person is not liable to pay an amount of tax avoided by the person as a result of a tax avoidance scheme if the Chief Commissioner is satisfied that the person did not know, and could not reasonably be expected to have known, that the scheme was a tax avoidance scheme.	5 6 7 8
Division 3 Promotion of tax avoidance schemes		9
106N	Promotion of tax avoidance schemes prohibited	10
(1)	A person must not engage in conduct that results in a person being a promoter of a tax avoidance scheme.	11 12
(2)	A person is a <i>promoter</i> of a tax avoidance scheme if the person markets the scheme or otherwise encourages the growth of the scheme or interest in it.	13 14
(3)	However, a person is not a <i>promoter</i> of a tax avoidance scheme merely because the person—	15 16
(a)	provides advice about the scheme, or	17
(b)	distributes information or material about the scheme prepared by another person.	18 19
106O	Civil penalty for promotion of tax avoidance scheme	20
(1)	The Supreme Court may, on application by the Chief Commissioner, make an order requiring a person who contravenes section 106N to pay the State a civil penalty not exceeding—	21 22 23
(a)	10,090 penalty units for an individual, or	24
(b)	50,450 penalty units for a corporation.	25
(2)	In deciding what penalty is appropriate for a contravention of section 106N by a person (referred to in subsection (4) as a <i>promoter</i>), the Supreme Court may have regard to all matters it considers relevant, including the following—	26 27 28
(a)	the amount of the consideration received or receivable, directly or indirectly, by the person or associated persons, or both, in relation to the scheme,	29 30 31
(b)	the deterrent effect the penalty may have,	32
(c)	the amount of loss or damage incurred by a person who enters into, makes or carries out the tax avoidance scheme,	33 34
(d)	the nature and extent of the contravention,	35
(e)	the circumstances in which the contravention took place, including the deliberateness of the person's conduct and whether there was an honest and reasonable mistake of law,	36 37 38
(f)	the period over which the conduct extended,	39
(g)	whether the person took steps to avoid the contravention,	40
(h)	whether the person has previously been found by the Court to have engaged in the same or similar conduct,	41 42
(i)	the degree of the person's cooperation with the Chief Commissioner.	43

(3)	The debt arising from an order to pay a civil penalty is taken to be a judgment debt.	1 2
(4)	For the purposes of this section, a person is an <i>associated person</i> of a promoter of a tax avoidance scheme if the person is an associated person of the promoter for the purposes of the <i>Duties Act 1997</i> .	3 4 5
	Note— See the <i>Duties Act 1997</i> , Dictionary, clause 2.	6
106P	When civil penalty not available	7
(1)	The Supreme Court must not order a person (the <i>relevant person</i>) to pay a civil penalty if the person satisfies the Court—	8 9
(a)	that the conduct in relation to which the proceedings were instituted was due to a reasonable mistake of fact, or	10 11
(b)	that—	12
(i)	the conduct in relation to which the proceedings were instituted was due to the act or default of another person, to an accident or to some other cause beyond the relevant person’s control, and	13 14 15
(ii)	the relevant person took reasonable precautions and exercised due diligence to avoid the conduct.	16 17
(2)	The other person referred to in paragraph (1)(b) does not include someone who was an employee or agent of the relevant person when the alleged conduct occurred.	18 19 20
(3)	The Chief Commissioner must not make an application under section 106O for conduct referred to in section 106N in relation to a person’s involvement in a tax avoidance scheme if—	21 22 23
(a)	the scheme is based on treating a taxation law as applying in a particular way, and	24 25
(b)	that way agrees with—	26
(i)	advice given to the person or the person’s agent by or on behalf of the Chief Commissioner, or	27 28
(ii)	a statement in a publication approved in writing by the Chief Commissioner.	29 30
(4)	The Chief Commissioner must not make an application under section 106O in relation to a person’s involvement in a tax avoidance scheme more than 6 years after the person last engaged in conduct that resulted in the person or another person being a promoter of the scheme.	31 32 33 34
106Q	Injunctions	35
	The Supreme Court may, on application by the Chief Commissioner in relation to a person who has engaged, is engaging or is proposing to engage in conduct referred to in section 106N, grant an injunction—	36 37 38
(a)	restraining the person from engaging in the conduct, and	39
(b)	if, in the Court’s opinion, it is desirable to do so—requiring the person to do something.	40 41
106R	Voluntary undertakings	42
(1)	The Chief Commissioner may accept a written undertaking given by a person for the purposes of this section in connection with furthering the object of this Part.	43 44 45

(2)	The person may withdraw or vary the undertaking at any time, but only with the consent of the Chief Commissioner.	1 2
(3)	If the Chief Commissioner considers that the person who gave the undertaking has breached any of its terms, the Chief Commissioner may apply to the Supreme Court for an order under subsection (4).	3 4 5
(4)	If the Court is satisfied that the person has breached a term of the undertaking, the Court may make one or both of the following orders—	6 7
(a)	an order directing the person to comply with the term of the undertaking,	8 9
(b)	another order that the Court considers appropriate.	10
(5)	The Chief Commissioner may publish a written undertaking given by a person for the purposes of this section in a way the Chief Commissioner thinks fit.	11 12
[7]	Section 116 Service of documents by Chief Commissioner	13
	Omit “or given to” wherever occurring in section 116(1).	14
[8]	Section 116(1)(d1)	15
	Omit the paragraph. Insert instead—	16
	(d1) in an approved electronic manner, or	17
[9]	Section 116(4)–(7)	18
	Insert after section 116(3)—	19
(4)	For the purposes of this section, an <i>approved electronic manner</i> of serving a document on a person means—	20 21
(a)	sending the document to a telephone number or email address provided by the person for the purposes of the service of the document, or	22 23
(b)	providing the person access to the document via an online notification system if the person consents to the use of the system, or	24 25
(c)	another electronic manner prescribed by the regulations.	26
(5)	A person may, orally or in writing, provide an email address or telephone number, or consent to the use of an online notification system, for the purpose of being served—	27 28 29
(a)	a particular document, or	30
(b)	a particular kind of document, or	31
(c)	documents for a particular period, or	32
(d)	all documents.	33
(6)	This section does not authorise a document to be served on a person orally.	34
(7)	In this section—	35
	<i>online notification system</i> means an online system approved by the Chief Commissioner for the purpose of enabling a person to securely access a document by means of a website, mobile telephone or mobile device or by other electronic means.	36 37 38 39
	<i>serve</i> includes give or send.	40
[10]	Schedule 1 Savings, transitional and other provisions	41
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	42

Part	Provisions arising from enactment of State Revenue and Fines Legislation Amendment (Miscellaneous) Act 2022	1
		2
		3
Part 10A—tax avoidance schemes		4
(1)	Part 10A, as inserted by the <i>State Revenue and Fines Legislation Amendment (Miscellaneous) Act 2022</i> , applies to a scheme that is—	5
	(a) entered into or made on or after the commencement of the Part, or	6
	(b) carried out on or after the commencement of the Part, regardless of when it was first entered into or made.	7
(2)	However, Part 10A does not apply to tax avoided by a person as a result of a tax avoidance scheme if, apart from the scheme, the tax liability would have arisen before the commencement of the Part.	8
		9
(3)	A provision of Part 10A that corresponds, or substantially corresponds, to a provision of the duty avoidance provisions extends to a scheme to which the duty avoidance provisions applied immediately before their repeal.	10
		11
(4)	In this clause—	12
	<i>duty avoidance provisions</i> means the <i>Duties Act 1997</i> , Chapter 11A.	13
	<i>scheme</i> includes part of a scheme.	14
	<i>tax</i> does not include duty under the <i>Duties Act 1997</i> .	15
	<i>tax liability</i> does not include liability for duty under the <i>Duties Act 1997</i> .	16
		17
		18
		19
		20

Schedule 9	Amendment of other legislation	1
9.1	Crimes (Administration of Sentences) Act 1999 No 93	2
[1]	Section 3 Interpretation	3
	Omit “or section 89 of the <i>Fines Act 1996</i> ” from section 3(1), definition of <i>intensive correction order</i> .	4 5
[2]	Section 4 Application of Part	6
	Omit section 4(1)(b).	7
[3]	Section 4(3)	8
	Omit “(b),”.	9
9.2	Crimes (Administration of Sentences) Regulation 2014	10
	Clause 33 Separation of different classes of inmates	11
	Omit clause 33(3)(e). Insert instead—	12
	(e) inmates who are imprisoned as fine defaulters under the laws of the Commonwealth or the Australian Capital Territory.	13 14
9.3	Crimes (Sentencing Procedure) Act 1999 No 92	15
	Section 54 Exclusions from Division	16
	Omit “the <i>Fines Act 1996</i> or” from section 54(b).	17