



New South Wales

State Revenue and Other Legislation Amendment (Budget) Act 2008 No 48

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Acts	2
4 Repeal of Act	2
Schedule 1 Amendment of Duties Act 1997 No 123	3
Schedule 2 Amendment of Payroll Tax Act 2007 No 21	7
Schedule 3 Amendment of Public Finance and Audit Act 1983 No 152	15
Schedule 4 Amendment of Public Sector Employment and Management Act 2002 No 43	22



New South Wales

State Revenue and Other Legislation Amendment (Budget) Act 2008 No 48

Act No 48, 2008

An Act to make miscellaneous amendments to State revenue and other legislation in connection with the Budget for the year 2008–2009. [Assented to 30 June 2008]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Revenue and Other Legislation Amendment (Budget) Act 2008*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) The following provisions commence, or are taken to have commenced, on the dates indicated:
 - (a) Schedule 1 [7] and [8] and Schedule 2—1 July 2008,
 - (b) Schedule 3—3 June 2008.

3 Amendment of Acts

The Acts specified in Schedules 1–4 are amended as set out in those Schedules.

4 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Duties Act 1997 No 123

(Section 3)

[1] Section 11 What is “dutiabale property”?

Omit “1 July 2012” from the note at the end of the section.

Insert instead “1 January 2011”.

[2] Sections 26, 26A and 28

Omit “1 July 2012” wherever occurring. Insert instead “1 January 2011”.

[3] Section 34 Abolition of duty on all transfers of marketable securities and commercial fishery shares—effective 1 January 2009

Insert “and commercial fishery shares” after “marketable securities” in section 34 (1).

[4] Section 34 (2)

Insert “or commercial fishery shares” after “marketable securities”.

[5] Section 34 (3)

Insert after section 34 (2):

(3) In this section:

commercial fishery share means a share in a share management fishery (within the meaning of the *Fisheries Management Act 1994*).

[6] Sections 35, 36 and 37 and notes to section 65 (6) and (7)

Omit “1 July 2012” wherever occurring. Insert instead “1 January 2011”.

[7] Section 66 Exemptions—marketable securities

Insert after section 66 (10):

(11) **“Top hatting” arrangements**

No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of marketable securities, or a vesting of marketable securities by or as a consequence of an order of a court, if the Chief Commissioner is satisfied that the transfer or vesting is made to give effect to a scheme that would qualify as a roll-over under Subdivision 124-Q of the *Income Tax Assessment Act 1997* of the Commonwealth.

[8] Section 163ZEA

Insert after section 163ZE:

163ZEA Exemption for “top hatting” arrangements

- (1) An acquisition by a person of an interest in a landholder is an exempt transaction if the Chief Commissioner is satisfied that:
 - (a) the acquisition is made for the purpose of giving effect to a scheme that would qualify as a roll-over under Subdivision 124-Q of the *Income Tax Assessment Act 1997* of the Commonwealth, and
 - (b) when the scheme is completed, the interposed trust will be a listed trust, widely held trust or a land rich landholder, and
 - (c) the acquisition is not part of a scheme a purpose of which is to minimise duty otherwise payable under this Act.

Note. A roll-over involves a scheme for interposing a unit trust scheme (whether a new or existing unit trust scheme) between persons who have an ownership interest in 2 or more unit trust schemes, or in one or more companies and one or more unit trust schemes, and the unit trust schemes or companies in which they have an ownership interest. The interests of the unit holders or shareholders are stapled together to form stapled securities and the interposed unit trust becomes the owner of all the stapled interests.

- (2) An acquisition by a person for the purposes of a scheme referred to in Subdivision 124-Q of the *Income Tax Assessment Act 1997* of the Commonwealth ceases to be an exempt transaction if:
 - (a) the interposed trust is not a listed trust, widely held trust or land rich landholder when the scheme is completed, or
 - (b) the interposed trust ceases to be a listed trust, widely held trust or a land rich landholder at any time within 12 months after the scheme is completed.
- (3) If an acquisition ceases to be an exempt transaction:
 - (a) duty is chargeable under this Chapter in respect of the acquisition as if the acquisition had never been an exempt acquisition, and
 - (b) the person who made the acquisition must lodge an acquisition statement (within the meaning of section 163H) or a revised acquisition statement with the Chief Commissioner to reflect the fact that the acquisition has ceased to be an exempt transaction, and

(c) a tax default does not occur for the purposes of the *Taxation Administration Act 1996* if the duty (if any) chargeable under this Chapter as a result of the acquisition ceasing to be an exempt transaction is paid within 3 months after the acquisition ceases to be an exempt transaction.

(4) In this section:
interposed trust, in relation to a scheme, has the same meaning as it has in section 124–1045 of the *Income Tax Assessment Act 1997* of the Commonwealth.

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

Omit “statutory licences and permissions is abolished on 1 July 2012” from the note to section 274 (2).

Insert instead “shares in a share management fishery is abolished on 1 January 2009”.

[10] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Revenue and Other Legislation Amendment (Budget) Act 2008

[11] Schedule 1

Insert at the end of Schedule 1 (with appropriate Part and clause numbering):

Part Provisions consequent on enactment of State Revenue and Other Legislation Amendment (Budget) Act 2008

Application of “top hatting” exemptions

- (1) The amendment made to section 66 by the *State Revenue and Other Legislation Amendment (Budget) Act 2008* applies in respect of the following:
- (a) an agreement for the sale or transfer of marketable securities first executed on or after 1 July 2008,
 - (b) a transfer of marketable securities that occurs on or after 1 July 2008 (except where made in conformity with an agreement for sale or transfer entered into before 1 July 2008),

- (c) the vesting of marketable securities by or as a consequence of an order of a court, if the order is made on or after 1 July 2008.
- (2) Section 163ZEA, as inserted by the *State Revenue and Other Legislation Amendment (Budget) Act 2008*, applies in respect of an acquisition made on or after 1 July 2008.

Schedule 2 Amendment of Payroll Tax Act 2007 No 21

(Section 3)

[1] Section 86 Registration

Omit section 86 (1). Insert instead:

- (1) An employer who is not already registered must apply for registration as an employer under this Act if:
 - (a) during a month in a financial year the employer pays or is liable to pay, anywhere, wages of more than the weekly threshold amount per week that are wholly or partly taxable wages, or
 - (b) the employer is a member of a group the members of which together during a month in a financial year pay or are liable to pay, anywhere, wages of more than the weekly threshold amount per week that are wholly or partly taxable wages,

with the *weekly threshold amount* calculated in accordance with the following formula (disregarding any amount in cents):

$$\frac{TA}{N} \times 7$$

where:

N is the number of days in the financial year.

TA is the threshold amount for the financial year as provided by Schedule 1.

[2] Schedule 1 Calculation of payroll tax liability for financial year commencing 1 July 2007 and subsequent financial years

Omit the definition of **R** in clause 1. Insert instead:

R is:

- (a) 6% until 1 January 2009, and
- (b) 5.75% on and from 1 January 2009 until the end of 31 December 2009, and
- (c) 5.65% on and from 1 January 2010 until the end of 31 December 2010, and
- (d) 5.5% on and from 1 January 2011.

[3] Schedule 1, clause 1

Omit the definition of *TA* or *threshold amount*. Insert instead:

TA or *threshold amount* is:

- (a) \$600,000 for a financial year before the financial year commencing on 1 July 2008, or
- (b) for the financial year commencing on 1 July 2008 and subsequent financial years—the threshold amount for that financial year determined in accordance with clause 1A.

[4] Schedule 1, clause 1A

Insert after clause 1:

1A Indexation of threshold amount commencing in 2008

- (1) This clause applies to the determination of the threshold amount for the financial year commencing on 1 July 2008 and subsequent financial years.
- (2) The threshold amount for a financial year is to be determined by multiplying \$600,000 by A/B , where:
A is the Sydney CPI number for March in the financial year before the financial year for which the threshold amount is to be determined, and
B is the Sydney CPI number for March 2006, and
 A/B is calculated to 3 decimal places.
- (3) If the threshold amount for a financial year determined in accordance with subclause (2) would be an amount that is less than the threshold amount for the previous financial year, the threshold amount for the financial year is to be determined to be the same as the threshold amount for that previous financial year.
- (4) If the threshold amount determined under this clause for a financial year is not a multiple of \$1,000, the amount is to be rounded to the nearest \$1,000 (with an amount of \$500 to be rounded down).
- (5) The Chief Commissioner is to publish a notice in the Gazette before the start of each financial year (starting with the financial year commencing on 1 July 2009) specifying the threshold amount determined under this clause for the financial year.

Note. The threshold amount for the 2008 financial year determined under this clause is \$623,000.

(6) In this clause:

Sydney CPI number means the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

[5] Schedule 2 NSW specific provisions

Insert after clause 3:

3A Special provision for financial years 2008–2010

For payroll tax payable in relation to a financial year commencing on 1 July 2008, 2009 or 2010:

- (a) the amount of payroll tax that an employer is required to pay is to be ascertained in accordance with Schedule 2A rather than Schedule 1, and
- (b) clauses 2 and 3 do not apply to the calculation of that payroll tax, and
- (c) a reference in section 82 (Determination of correct amount of payroll tax) to Schedule 1 is to be read as a reference to Schedule 2A.

[6] Schedule 2A

Insert after Schedule 2:

Schedule 2A Special provisions for financial years 2008–2010

(Schedule 2, clause 3A)

Part 1 Introduction

1 Application of Schedule

This Schedule applies for the purpose of ascertaining the payroll tax payable by an employer in relation to a financial year commencing on 1 July 2008, 2009 or 2010.

2 Determination of amount of payroll tax

- (1) The amount that an employer is liable to pay as payroll tax for any period is to be determined in accordance with this Schedule.
- (2) The amount of payroll tax that an employer is required to pay in relation to a return of wages in respect of a period is the amount determined for that period in accordance with this Schedule.

3 Determination of payroll tax for full financial year

The amount that an employer is liable to pay as payroll tax for a financial year is to be determined as the sum of the amount that the employer is liable to pay as payroll tax for the first half of the financial year and the amount that the employer is liable to pay as payroll tax for the second half of the financial year, with those amounts determined in accordance with this Schedule.

Note. This method of adding the payroll tax payable for 2 half-years accommodates the change of tax rates that occurs on 1 January of 2009, 2010 and 2011 (which is half way through each of the relevant financial years).

4 Definitions

In this Schedule:

annual threshold amount means the threshold amount under Schedule 1 for the financial year of which the relevant period forms part.

financial year means a financial year commencing on 1 July 2008, 2009 or 2010.

half-year means the first or second half of a financial year (with the first half comprising the months July to December and the second half comprising the months January to June).

N is the number of days in the relevant period.

R has the same value as in Schedule 1 in respect of the relevant period.

relevant period means the period to which the calculation of the relevant payroll tax relates.

TA or **threshold amount** for a relevant period is the amount calculated by multiplying the annual threshold amount by $N/365$.

Note. Clauses 9 and 14 provide that when wages for half a financial year are less than the threshold amount for that half-year, the unused portion of that threshold amount is to be allocated to the other half of the financial year.

Part 2 Employers who are not members of a group

5 Application of Part

This Part applies only to an employer who is not a member of a group.

6 Definitions

In this Part:

C is the number of days in the relevant period in respect of which the employer paid or was liable to pay taxable wages or interstate wages (otherwise than as a member of a group).

IW represents the total interstate wages paid or payable by the employer concerned (otherwise than as a member of a group) during the relevant period.

TW represents the total taxable wages paid or payable by the employer concerned (otherwise than as a member of a group) during the relevant period.

7 Payroll of employer not more than threshold

An employer is not liable to pay payroll tax for a relevant period if the total taxable wages and interstate wages paid or payable by the employer (otherwise than as a member of a group) during that period is not more than the *employer's threshold amount* for that period, being the amount calculated in accordance with the following formula:

$$TA \times \frac{C}{N}$$

8 Payroll of employer over threshold

If the total taxable wages and interstate wages paid or payable by an employer (otherwise than as a member of a group) during the relevant period is more than the employer's threshold amount for that period, the employer is liable to pay as payroll tax for that period the amount of dollars calculated in accordance with the following formula:

$$\left[TW - \left[\frac{TW}{TW + IW} \times TA \times \frac{C}{N} \right] \right] \times R$$

9 Increase in half-year threshold for threshold credit from other half-year

- (1) If the total taxable wages and interstate wages paid or payable by an employer during a half-year otherwise than as a member of a group (*the half-year total*) is less than the threshold amount for that half-year (*the half-year TA*), the difference between the half-year total and the half-year TA is to be added to the threshold amount for the other half-year of the financial year concerned to arrive at an *adjusted TA* for that other half-year.

- (2) When there is an adjusted TA for the second half of a financial year, the threshold amount for any relevant period in that second half is the amount determined by multiplying the adjusted TA by $N/181$.
- (3) When there is an adjusted TA for the first half of a financial year, that adjusted TA is the threshold amount that is to be used to determine the amount that the employer is liable to pay as payroll tax for that first half (as part of the determination of the amount of payroll tax payable for the full financial year) but is not to be used to redetermine the amount of payroll tax for any relevant period that is part of that first half.

Part 3 Groups with a designated group employer

10 Application of Part

This Part applies only to an employer who is a member of a group for which there is a designated group employer.

11 Definitions

In this Part:

C is the number of days in the relevant period in respect of which at least one member of the group paid or was liable to pay (as a member of the group) taxable wages or interstate wages.

GIW represents the total interstate wages paid or payable by the group concerned during the relevant period.

GTW represents the total taxable wages paid or payable by the group concerned during the relevant period.

TW represents the total taxable wages paid or payable by the employer concerned (as a member of the group) during the relevant period.

12 Payroll of group not more than threshold

None of the members of a group is liable to pay payroll tax for the relevant period if the total taxable wages and interstate wages paid or payable by the group during that period is not more than the **group threshold amount** for that period, being the amount calculated in accordance with the following formula:

$$TA \times \frac{C}{N}$$

13 Payroll of group over threshold

- (1) If the total taxable wages and interstate wages paid or payable by a group during the relevant period is more than the group threshold amount for that period, payroll tax is payable as provided by subclauses (2) and (3).
- (2) The designated group employer for the group is liable to pay as payroll tax for the relevant period the amount of dollars calculated in accordance with the following formula:

$$\left[TW - \left[\frac{GTW}{GTW + GIW} \times TA \times \frac{C}{N} \right] \right] \times R$$

- (3) Each member of the group (other than that designated group employer) is liable to pay as payroll tax for the relevant period the amount of dollars calculated in accordance with the following formula:

$$TW \times R$$

14 Increase in second-half TA for first-half credit

- (1) If the total taxable wages and interstate wages paid or payable by a group during a half-year (*the half-year total*) is less than the threshold amount for that half-year (*the half-year TA*), the difference between the half-year total and the half-year TA is to be added to the threshold amount for the other half-year of the financial year concerned to arrive at an *adjusted TA* for that other half-year.
- (2) When there is an adjusted TA for the second half of a financial year, the threshold amount for any relevant period in that second half is the amount determined by multiplying the adjusted TA by $N/181$.
- (3) When there is an adjusted TA for the first half of a financial year, that adjusted TA is the threshold amount that is to be used to determine the amount that the employer is liable to pay as payroll tax for that first half (as part of the determination of the amount of payroll tax payable for the full financial year) but is not to be used to redetermine the amount of payroll tax for any relevant period that is part of that first half.

Part 4 Groups with no designated group employer

15 Application of Part

This Part applies only to an employer who is a member of a group for which there is no designated group employer.

16 Definitions

In this Part:

TW represents the total taxable wages paid or payable by the employer concerned (as a member of the group) during the relevant period.

17 Calculation of payroll tax

Each member of the group is liable to pay as payroll tax for the relevant period the amount of dollars calculated in accordance with the following formula:

$$TW \times R$$

[7] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Revenue and Other Legislation Amendment (Budget) Act 2008

Schedule 3 Amendment of Public Finance and Audit Act 1983 No 152

(Section 3)

[1] Section 4 Definitions

Omit the definitions of *financial report*, *general government sector* and *the Total State Sector Accounts* from section 4 (1).

Insert the following in alphabetical order:

consolidated financial statements means the consolidated financial statements for the State prepared by the Treasurer under section 6 (1).

general government sector means New South Wales agencies or activities listed or described as part of the general government sector by the Australian Bureau of Statistics (which are listed or described in accordance with international statistics conventions).

general government sector financial statements means the financial statements for the general government sector prepared by the Treasurer under section 6 (1).

[2] Section 4 (1)

Omit paragraph (a) of the definition of *financial year*. Insert instead:

- (a) the consolidated financial statements or the general government sector financial statements, means the period from 1 July to the next following 30 June,

[3] Section 6

Omit the section. Insert instead:

6 Preparation of consolidated financial statements and general government sector financial statements

- (1) As soon as practicable after the end of each financial year, the Treasurer is to prepare:
 - (a) consolidated financial statements for the State as at 30 June in that financial year, being a whole of government financial report for the State prepared in accordance with Australian Accounting Standards, and
 - (b) financial statements for the general government sector as at 30 June in that financial year, being a financial report for the general government sector prepared in accordance with Australian Accounting Standards.

- (2) The consolidated financial statements and general government sector financial statements may be presented in a single report, in such form or manner as the Treasurer may determine.
- (3) The Treasurer may combine, include or amalgamate with, or present together with, in such form or manner as the Treasurer may determine, or attach to, the statements required to be prepared under this section such other reports as the Treasurer may determine.
- (4) On or before 15 September, the Treasurer is to transmit the statements prepared under this section in relation to the preceding financial year to the Auditor-General.

[4] Section 8 Monthly statements and half-yearly reviews

Omit “GFS” in section 8 (1). Insert instead “general government sector”.

[5] Section 8 (2)

Omit “and the Total State Sector Accounts”.

Insert instead “, the consolidated financial statements and the general government sector financial statements”.

[6] Section 8 (3) (a) and (b)

Omit “GFS” wherever occurring.

[7] Section 9 Treasurer’s directions

Omit section 9 (2) (g). Insert instead:

- (g) the preparation of the consolidated financial statements, general government sector financial statements and other financial reports,

[8] Section 9 (2) (k)

Omit “program”.

[9] Section 23A Transfers in relation to commitments

Omit “Total State Sector Accounts” from section 23A (4).

Insert instead “consolidated financial statements”.

[10] Section 24 Transfer of functions between Departments etc

Omit “Total State Sector Accounts” from section 24 (5).

Insert instead “consolidated financial statements”.

[11] Section 27A

Omit the section. Insert instead:

27A Preparation and presentation of Budget Papers

- (1) The Budget Papers are to be presented on a basis that covers the general government sector.
- (2) The primary financial statements in the Budget Papers are to be prepared in accordance with Australian Accounting Standards and presented in a format that accords with Australian Accounting Standards.
- (3) The Treasurer may determine that the standards referred to in subsection (2) should be departed from if the Treasurer is of the opinion that the departure is necessary in a particular case to present an accurate view of the financial position detailed in the Budget Papers.
- (4) The Treasurer is to prepare a report on any such departure containing details of, and reasons for, the departure and the report is to be tabled in each House of Parliament with the Budget Papers.
- (5) It is not necessary for the Budget Papers to be presented so as to include notes within the meaning of Australian Accounting Standards.
- (6) In this section:
primary financial statements in the Budget Papers means the financial statements referred to in section 27AA (2) (e).

[12] Section 27AA Content of Budget Papers

Omit "GFS" from section 27AA (1) and (2) (b), wherever occurring.

[13] Section 27AA (2) (c)

Omit the paragraph. Insert instead:

- (c) information about the results and services and total expenses of each service group,

[14] Section 27AA (2) (e)

Omit section 27AA (2) (e) and (f). Insert instead:

- (e) the following financial statements:
 - (i) a statement of financial position for the general government sector,

- (ii) an operating statement for the general government sector,
- (iii) a cash flow statement for the general government sector.

[15] Section 27B The Auditor-General

Omit “Total State Sector Accounts” from section 27B (3) (a).

Insert instead “consolidated financial statements, the general government sector financial statements”.

[16] Section 39 Application and interpretation

Insert after section 39 (2A):

- (2B) A reference in this Division to a financial report, in relation to a statutory body, is a reference to the financial report referred to in section 41A.

[17] Section 45A Application and interpretation

Insert after section 45A (3):

- (3A) A reference in this Division to a financial report, in relation to a Department, is a reference to the financial report referred to in section 45D.

[18] Section 49

Omit the section. Insert instead:

49 Examination of consolidated financial statements and general government sector financial statements

- (1) The Auditor-General:
 - (a) is to examine the consolidated financial statements and general government sector financial statements transmitted to the Auditor-General by the Treasurer in accordance with section 6 (4), and
 - (b) is to prepare and sign an opinion, in relation to each of those statements, as to whether the statements are properly drawn up in accordance with this Act.
- (2) If the consolidated financial statements and general government sector financial statements are presented in a single report, the Auditor-General may prepare and sign a single opinion in relation to that report.

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- (3) On or before 22 October after receiving the consolidated financial statements and general government sector financial statements from the Treasurer, the Auditor-General is to transmit the statements and the opinion or opinions prepared under this section to the Treasurer.
 - (4) Nothing in this section prevents the alteration of the consolidated financial statements or general government sector financial statements, with the approval of the Auditor-General, after being received by the Auditor-General and before being transmitted to the Treasurer.

[19] Section 51

Omit the section. Insert instead:

51 Presentation of financial statements and opinions to Legislative Assembly

- (1) The Treasurer, not later than 31 October in the year following that to which the consolidated financial statements and general government sector financial statements relate, is to present those statements as audited by the Auditor-General, and the opinion or opinions of the Auditor-General as to those statements, to the Legislative Assembly.
- (2) If, at the time at which the Treasurer seeks to present the audited statements and Auditor-General's opinion to the Legislative Assembly, the Legislative Assembly is not sitting, the Treasurer is to present the audited statements and opinion to the Clerk of the Legislative Assembly to be dealt with in accordance with section 63C.

[20] Section 52 Auditor-General's reports

Omit "Total State Sector Accounts" from section 52 (1) where firstly occurring.

Insert instead "consolidated financial statements and general government sector financial statements".

[21] Section 52 (1)

Omit "Total State Sector Accounts" where secondly occurring.

Insert instead "statements".

[22] Section 52 (3)

Omit “Total State Sector Accounts”.

Insert instead “consolidated financial statements, the general government sector financial statements”.

[23] Section 57 Functions of Committee

Omit “Total State Sector Accounts” from section 57 (1) (a) and (c), wherever occurring.

Insert instead “consolidated financial statements and general government sector financial statements”.

[24] Section 63F

Omit the section. Insert instead:

63F Status of Workers Compensation Insurance Fund

The Workers Compensation Insurance Fund established under the *Workers Compensation Act 1987* (including the assets and liabilities of that Fund):

- (a) is not an entity under the control of the New South Wales Government for the purposes of the preparation of the consolidated financial statements under this Act, and
- (b) is not part of the general government sector for the purposes of this Act or the *Fiscal Responsibility Act 2005*.

[25] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Revenue and Other Legislation Amendment (Budget) Act 2008

[26] Schedule 4, Part 6

Insert after Part 5:

Part 6 Provisions consequent on enactment of State Revenue and Other Legislation Amendment (Budget) Act 2008

14 Application of amendments

- (1) The amendments made to this Act by the *State Revenue and Other Legislation Amendment (Budget) Act 2008* apply only in respect of the Budget Papers, consolidated financial statements

and general government sector financial statements for the financial year commencing on 1 July 2008 and the following financial years.

- (2) This Act, as in force immediately before the amendments made by the *State Revenue and Other Legislation Amendment (Budget) Act 2008*, continues to apply in respect of the Total State Sector Accounts for the financial year commencing 1 July 2007.
- (3) The amendments made to section 8 of this Act by the *State Revenue and Other Legislation Amendment (Budget) Act 2008* do not apply in respect of a monthly statement referred to in that section for a month before July 2008.

**Schedule 4 Amendment of Public Sector
Employment and Management Act 2002
No 43**

(Section 3)

Section 83 Approval to undertake other paid work

Insert “(whether or not that paid work is employment to which this Act applies)” after “employer”.

[Agreement in principle speech made in Legislative Assembly on 3 June 2008
Second reading speech made in Legislative Council on 25 June 2008]

BY AUTHORITY