Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.
This Bill is cognate with the Appropriation Bill 2008.

Overview of Bill

The objects of this Bill are as follows:

(a) to amend the Duties Act 1997:

(i) to bring forward the date for abolition of duty on transfers of business assets, statutory licences and permissions and poker machine entitlements, to 1 January 2011, and

(ii) to provide a duty exemption for certain restructure arrangements known as “top hatting” arrangements, and

(iii) to ensure that duty on transfers of shares in commercial fisheries is abolished on 1 January 2009 (when duty on transfers of marketable securities is abolished),

(b) to amend the Payroll Tax Act 2007 so that:

(i) the current payroll tax rate of 6% will be reduced to 5.5% over 3 years, and

(ii) the tax-free threshold will be indexed annually (starting on 1 July 2008) so that it will increase in line with increases in the Consumer Price Index for Sydney, and

(iii) special arrangements will apply in the 3 financial years over which the reduction in tax rate will be phased in (including arrangements for the allocation of any unused portion of tax-free threshold for a half-year to the other half of the year),

(c) to amend the Public Finance and Audit Act 1983 as a consequence of the introduction of a new Australian Accounting Standard, and for other purposes,

(d) to amend the Public Sector Employment and Management Act 2002 to ensure that the prohibition on an executive officer undertaking paid work outside the duties of his or her position without the approval of the officer’s employer extends to paid work of any kind (whether or not employment to which that Act applies).

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.

Clause 3 is a formal provision that gives effect to the amendments to the Duties Act 1997, the Payroll Tax Act 2007, the Public Finance and Audit Act 1983 and the Public Sector Employment and Management Act 2002 set out in Schedules 1–4.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Duties Act 1997

Abolition of duty on transfers of business assets, statutory licences and permissions and poker machine entitlements

Duty on the transfer of business assets, and on the transfer of statutory licences and permissions, and poker machine entitlements, is due to be abolished on 1 July 2012. Schedule 1 [6] brings forward that abolition date to 1 January 2011.

Schedule 1 [1] and [2] are consequential amendments.

Exemption for “top hatting” arrangements

A “top hatting” arrangement is 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.

Schedule 1 [7] grants an exemption from duty on a transfer of marketable securities (or an agreement for transfer or vesting of marketable securities) in connection with such an arrangement if the Chief Commissioner is satisfied that the scheme concerned would qualify as a roll-over under Subdivision 124-Q of the Income Tax Assessment Act 1997 of the Commonwealth. (That Act provides for capital gains tax relief in respect of such schemes.)

Schedule 1 [8] grants an exemption from land rich duty on an acquisition that is made for the purpose of such an arrangement. The Chief Commissioner must be 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 the Duties Act 1997.

The exemption will cease to apply (and will be taken never to have applied) if the interposed trust ceases to be a listed trust, widely held trust or a land rich landholder within 12 months after the scheme is completed.

Shares in commercial fisheries

At present, a transfer of shares in a commercial fishery (that is, a share management fishery under the Fisheries Management Act 1994) is dutiable on the basis that it is a transfer of a statutory licence or permission (as shares in a fishery entitle the holder to take fish in the fishery). However, a transfer of such shares is charged at the same rate as a transfer of marketable securities.

Schedule 1 [3] ensures that shares in commercial fisheries are treated as equivalent to marketable securities for duties purposes and that duty on a transfer of shares in a commercial fishery will be abolished on 1 January 2009 (the date on which marketable securities duty will be abolished).

Schedule 1 [4], [5] and [9] are related amendments.

Savings and transitional provisions

Schedule 1 [10] enables savings and transitional regulations to be made as a consequence of the proposed Act.

Schedule 1 [11] provides for the application of the “top hatting” exemption in respect of transactions occurring on or after 1 July 2008 (except transfers made as a consequence of agreements entered into before that date).

Schedule 2 Amendment of Payroll Tax Act 2007

Reduction of tax rate

Schedule 2 [2] reduces the rate at which payroll tax is charged from 6% to 5.5% over 3 years.

The new tax rates will be as follows:

(a) 5.75% from 1 January 2009,

(b) 5.65% from 1 January 2010,

(c) 5.5% from 1 January 2011.

Indexation of the tax-free threshold

Schedule 2 [3] and [4] provide for the tax-free threshold for payroll tax to be increased at the start of each financial year in line with increases in the Consumer Price Index for Sydney. The first increase is to occur on 1 July 2008 and will increase the threshold from $600,000 to $623,000. The method of calculation of the CPI increase gives a result that is the same as the annual percentage change in the CPI published by the Australian Bureau of Statistics. Schedule 2 [1] makes a consequential amendment.

Transitional arrangements for phasing in of new tax rates
Schedule 2 [5] and [6] provide the following special arrangements for the calculation of payroll tax during the 3 financial years over which the reductions in the payroll tax rate will be phased in:
(a) For the calculation of tax payable on a monthly return basis, the tax-free threshold will be apportioned according to the number of days in the month to which the return relates.
(b) For the purposes of the end of financial year reconciliation of payroll tax, separate calculations of tax will be performed for the 2 half-years of the financial year and the 2 amounts then aggregated (to allow for the fact that the change in tax rate will occur half way through the 2008, 2009 and 2010 financial years).
(c) If the wages paid in a half-year are less than the tax-free threshold apportioned to that half-year, any unused portion of the threshold will be applied in the other half-year to reduce the amount of taxable wages in that other half-year.
Schedule 2 [7] enables savings and transitional regulations to be made as a consequence of the proposed Act.
Schedule 3 Amendment of Public Finance and Audit Act 1983
Introduction of new accounting standard
In October 2007, the Australian Accounting Standards Board issued a new accounting standard for public sector financial reporting (AASB 1049: Whole of Government and General Government Sector Financial Reporting), which applies from 1 July 2008. The amendments to the Public Finance and Audit Act 1983 are proposed largely as a consequence of that new accounting standard.
Year-end and other financial reports by Treasurer
At present, the Treasurer is required to prepare a consolidated financial report for the total state sector at the end of each financial year (referred to as the total state sector accounts).
Consistent with the new accounting standard, it is now proposed that the Treasurer will be required to prepare the following reports (in accordance with that standard):
(a) a whole of government financial report (this is the equivalent of the total state sector accounts), and
(b) financial statements for the general government sector.
The whole of government financial report relates to all entities controlled by the New South Wales Government. For consistency with other States, this report will now be referred as the consolidated financial statements, rather than the total state sector accounts.
The general government sector financial statements relate to a subset of the entities to which the consolidated financial statements relate (mostly Government Departments and public authorities).
The Treasurer will be permitted to present the consolidated financial statements and the general government sector financial statements in the form of a single report.
Schedule 3 [3] gives effect to the amendments described above.
The Auditor-General will be required to audit the general government sector financial statements (in addition to the consolidated financial statements). Similarly, the Public Accounts Committee of Parliament is given power to examine the general government sector financial statements (in addition to the consolidated financial statements). See Schedule 3 [15], [18] and [23].
In addition, monthly statements and half-yearly reviews in relation to Budget aggregates and estimates prepared by the Treasurer under the Act will no longer be required by the Act to be prepared on a Government Finance Statistics or GFS basis, as the new accounting standard harmonises (or incorporates) those GFS principles.
See Schedule 3 [4] and [6].

Schedule 3 [1], [2], [5], [7], [9], [10], [16], [17], [19]–[22] and [24] are consequential amendments.

Budget Papers

At present, the Budget Papers are required to include primary financial statements prepared in accordance with Australian Accounting Standards and primary financial statements prepared in accordance with GFS principles. This requirement is replaced with a requirement that the Budget Papers include the following statements, prepared in accordance with Australian Accounting Standards (which will incorporate GFS principles):

(a) a statement of financial position for the general government sector,

(b) an operating statement for the general government sector,

(c) a cash flow statement for the general government sector.

These statements have been generally understood to be the equivalent of primary financial statements. See Schedule 3 [14].

The Treasurer will continue to be required to report to Parliament on any departure from Australian Accounting Standards in the preparation of the primary financial statements. However, provisions relating to the Treasurer’s Accounting Advisory Panel are removed. (At present, the Act provides that the Treasurer may consult with the Panel before departing from an accounting standard.) Also, it will not be necessary for the primary financial statements to be presented with notes (such as notes explaining significant accounting policies). This is not required at present.

Schedule 3 [11], [14] and [15] give effect to the amendments described above.

The reference to “GFS”, in the context of Budget aggregates, is removed (again, because the new accounting standard incorporates GFS principles). See Schedule 3 [12].

Other amendments

The Budget Papers will be required to include information about the results and services of, and total expenses of, service groups (rather than a statement of outcomes, outputs and total expenses for Budget programs). See Schedule 3 [13].

The Treasurer will be given power to issue directions to accounting officers and authorities relating to budgeting generally (at present this power is limited to program budgeting). See Schedule 3 [8].

The general government sector will be defined in the Act (rather than by cross-reference to the Fiscal Responsibility Act 2005). However, the proposed definition is exactly the same as the current definition in the Fiscal Responsibility Act 2005. See Schedule 3 [1].

Schedule 3 [25] enables savings and transitional regulations to be made as a consequence of the proposed Act.

Schedule 3 [26] provides for the application of the amendments from the 2008–2009 financial year.

Schedule 4 Amendment of Public Sector Employment and Management Act 2002

Section 83 of the Public Sector Employment and Management Act 2002 prohibits an executive officer from undertaking paid work outside the duties of his or her executive position without the consent of the officer’s employer. The amendment in Schedule 4 makes it clear that this prohibition extends to any paid work (whether or not employment in the New South Wales Government Service).