

1998

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

A NEW TAX SYSTEM (FRINGE BENEFITS REPORTING) BILL 1998

A NEW TAX SYSTEM (MEDICARE LEVY SURCHARGE-FRINGE
BENEFITS) BILL 1998

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Treasurer, the Hon Peter Costello, MP)

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General outline and financial impact

Reporting of fringe benefits on group certificates

This Bill amends the *Fringe Benefits Tax Assessment Act 1986* and the *Income Tax Assessment Act 1936* to implement the first phase of the Government's tax reform package for fringe benefits tax (FBT). Employers will be required, from the 1999-2000 year of income, to identify on group certificates the grossed-up taxable value of certain employee fringe benefits. This value will be included in the income tests used to determine liability for various tax surcharges, levies and other income related obligations. In implementing the changes to the Medicare levy surcharge, the A New Tax System (Medicare Levy Surcharge-Fringe Benefits) Bill 1998 is being introduced to impose the surcharge on the reported amounts.

Date of effect: From 1 April 1999, employers will be required to ascribe the taxable value of most fringe benefits to individual employees. The reported value will first be used in income tests for the income year ending 30 June 2000.

Proposal announced: This proposal was announced on 13 August 1998 in the Government's tax reform package, *Tax Reform: not a new tax, a new tax system: The Howard Government's Plan for a New Tax System*.

Financial impact: The measure is expected to raise \$255 million in 2000-2001; \$260 million in 2001-2002; \$265 million in 2002-2003 and \$270 million in 2003-2004.

Compliance cost impact: The Compliance Cost Impact Statement for this measure is incorporated in the Regulation Impact Statement which appears at the end of Chapter 1.

Summary of regulation impact statement

Impact: Medium to high

Main points:

- Employers will be required to calculate the taxable value of fringe benefits provided in respect of each employee's employment and record the grossed-up taxable value on the employee's group certificate where the amount exceeds \$1000.

- Employers providing fringe benefits of greater than \$1,000 in respect of individual employees may face additional compliance costs as a result of this measure, including employers who currently provide benefits which are exempt from FBT under certain provisions.
- Some employees receiving reportable fringe benefits amounts will be affected by this measure; for example, where employees were avoiding government surcharges or income related obligations through salary packaging arrangements.

Policy objective

The policy objective of this measure is to enhance the fairness of the taxation and social security systems by enabling the value of fringe benefits to be taken into account in income tests for determining entitlement to government benefits, and liability to tax surcharges and income related obligations. This will minimise the opportunities available to employees to swap cash salary for fringe benefits to avoid surcharges and levies and to access rebates to which they would not otherwise be entitled on the basis of their total remuneration.

Chapter 1

Fringe Benefits Tax – Reporting of Fringe Benefits

Overview

1.1 The Bill will amend the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) and the *Income Tax Assessment Act 1936* (ITAA36) to introduce provisions to govern the reporting of fringe benefits.

1.2 The Bill also introduces consequential amendments to the *Fringe Benefits Tax (Application to the Commonwealth) Act 1986*, the *Higher Education Funding Act 1988*, the *Medicare Levy Act 1986*, the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, and the *Superannuation Contributions Tax (Members of Constitutionally Protected Funds) Assessment and Collection Act 1997*.

1.3 A further Bill, which also arises as a consequence of this measure, the A New Tax System (Medicare Levy Surcharge-Fringe Benefits) Bill 1998 is also being introduced.

Tax reform

1.4 On 13 August 1998, the Government released its tax reform package called *Tax Reform: not a new tax, a new tax system: The Howard Government's Plan for a New Tax System*. In the package the Government stated its intention to reform the fringe benefits tax (FBT) provisions to make the system fairer for all taxpayers.

1.5 This Bill deals with the implementation of one of those measures. This measure will require employers to record the grossed-up taxable value of fringe benefits provided in respect of an employee's employment on their group certificates where the taxable value of those benefits exceeds \$1,000. Not all fringe benefits need to be reported on group certificates. Fringe benefits that arise in respect of meal entertainment and car parking fringe benefits are excluded from the reporting requirement. The compliance costs associated with reporting these excluded benefits outweigh the equity considerations that this measure is seeking to address.

1.6 The reportable fringe benefits amount will be used in determining a taxpayer's entitlement to income-tested tax concessions, liability to income-tested surcharges and levies and, at a later stage,

entitlement to government benefits. Together these measures will improve the equity of the taxation and social security systems.

1.7 The amendments required to achieve this outcome are described in the following Sections:

- Section 1** Amendments to the *Fringe Benefits Tax Assessment Act 1986* and the *Fringe Benefits Tax (Application to the Commonwealth) Act 1986*
- Section 2** Amendments to the *Income Tax Assessment Act 1936*
- Section 3** Amendments to the *Higher Education Funding Act 1988*
- Section 4** Amendments to the *Medicare Levy Act 1986*
- Section 5** Amendments to the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* and the *Superannuation Contributions Tax (Members of Constitutionally Protected Funds) Assessment and Collection Act 1997*
- Section 6** Introduction of A New Tax System (Medicare Levy Surcharge - Fringe Benefits) Bill 1998
- Section 7** Regulation impact statement

Summary of the amendments

Purpose of the amendments

1.8 The purpose of the amendments is to reform the FBT provisions, by introducing a system of reportable fringe benefits, which will assist in making the taxation system fairer and more equitable for all taxpayers.

1.9 This Bill amends the FBTA and the ITAA36 and contains consequential amendments which together will:

- require the calculation of the individual fringe benefits amount for each employee;
- require the recording of the reportable fringe benefits amount on an employee's group certificate; and
- ensure the reportable fringe benefits total is used in various income tests when determining an individual's liability for

certain surcharges and other obligations and eligibility for certain concessions.

Date of effect

1.10 From 1 April 1999, employers will be required to ascribe the taxable value of most fringe benefits to individual employees.

1.11 For the year of income ending 30 June 2000, the grossed-up taxable value of certain fringe benefits will be recorded on employee group certificates.

Background to the legislation

Current law

1.12 The FBTAA imposes an obligation on employers to calculate their annual liability for fringe benefits tax and remit the amount calculated (less instalments paid) with an annual fringe benefits tax return, generally by 28 April each year. Broadly, an employer is liable to tax on the aggregate taxable value of fringe benefits provided in respect of his or her employees during a year of tax.

1.13 Broadly, the taxable values of all fringe benefits are totalled to give the aggregate fringe benefits amount. The aggregate fringe benefits amount is then grossed-up to a tax inclusive amount, referred to as the fringe benefits taxable amount. The FBT payable is the tax imposed on the fringe benefits taxable amount.

1.14 The current fringe benefits tax provisions do not require an employer to determine the taxable value of fringe benefits in respect of each employee. Liability is based on the fringe benefits taxable amount of the employer and there is no requirement to record fringe benefits on employee group certificates. These amendments do not alter the employer's final tax liability, only the way in which that liability is calculated.

Explanation of the amendments

Section 1: Amendments to the *Fringe Benefits Tax Assessment Act 1986*

1.15 *New Part IIA – Core Provisions* is inserted into the FBTA to determine the amount on which an employer must pay fringe benefits tax and to determine an employee's individual fringe benefits amount. Note that the new provisions do not change an employer's aggregate fringe benefits amount or an employer's fringe benefits taxable amount. As a result, there is no change to an employer's liability. The provisions have been simplified and grouped together in this new part for clarity and ease of reference.

1.16 *New Part IIA* has the following Divisions:

Division of Part IIA	New sections	Description
1	5A and 5B	Working out an employer's fringe benefits taxable amount
2	5C	Working out an employer's aggregate fringe benefits amount
3	5D, 5E and 5F	Working out an employee's individual fringe benefits amount

Employer's fringe benefits taxable amount

1.17 *Division 1 of new Part IIA* contains the provisions for working out an employer's fringe benefits taxable amount. The fringe benefits taxable amount is currently calculated in accordance with section 136AA. Section 136AA has been relocated in *new section 5B*.

1.18 An employer's *fringe benefits taxable amount* is calculated for a year of tax as:

$$\text{Employer's aggregate fringe benefits amount} \times \frac{1}{1 - \text{rate of fringe benefits tax}}$$

1.19 Where an employer is using the record keeping exemption arrangements in Part XIA of the FBTA, the employer's aggregate fringe benefits amount will be determined by that Part, which could be the aggregate fringe benefits amount of an earlier year of tax. *[New subsection 5B(2)]*

Employer's aggregate fringe benefits amount

1.20 **Division 2 of new Part IIA** establishes how to work out an employer's aggregate fringe benefits amount. Aggregate fringe benefits amount is currently defined in subsection 136(1). The existing definition is replaced by a new definition in **new section 5C** to reflect the changes necessary for reporting an employee's individual fringe benefits amount.

1.21 An employer's *aggregate fringe benefits amount* for a year of tax is the total of the following:

- all the individual fringe benefits amounts of each employee;
- added to
- all the taxable values of all the excluded fringe benefits provided in respect of all employees.

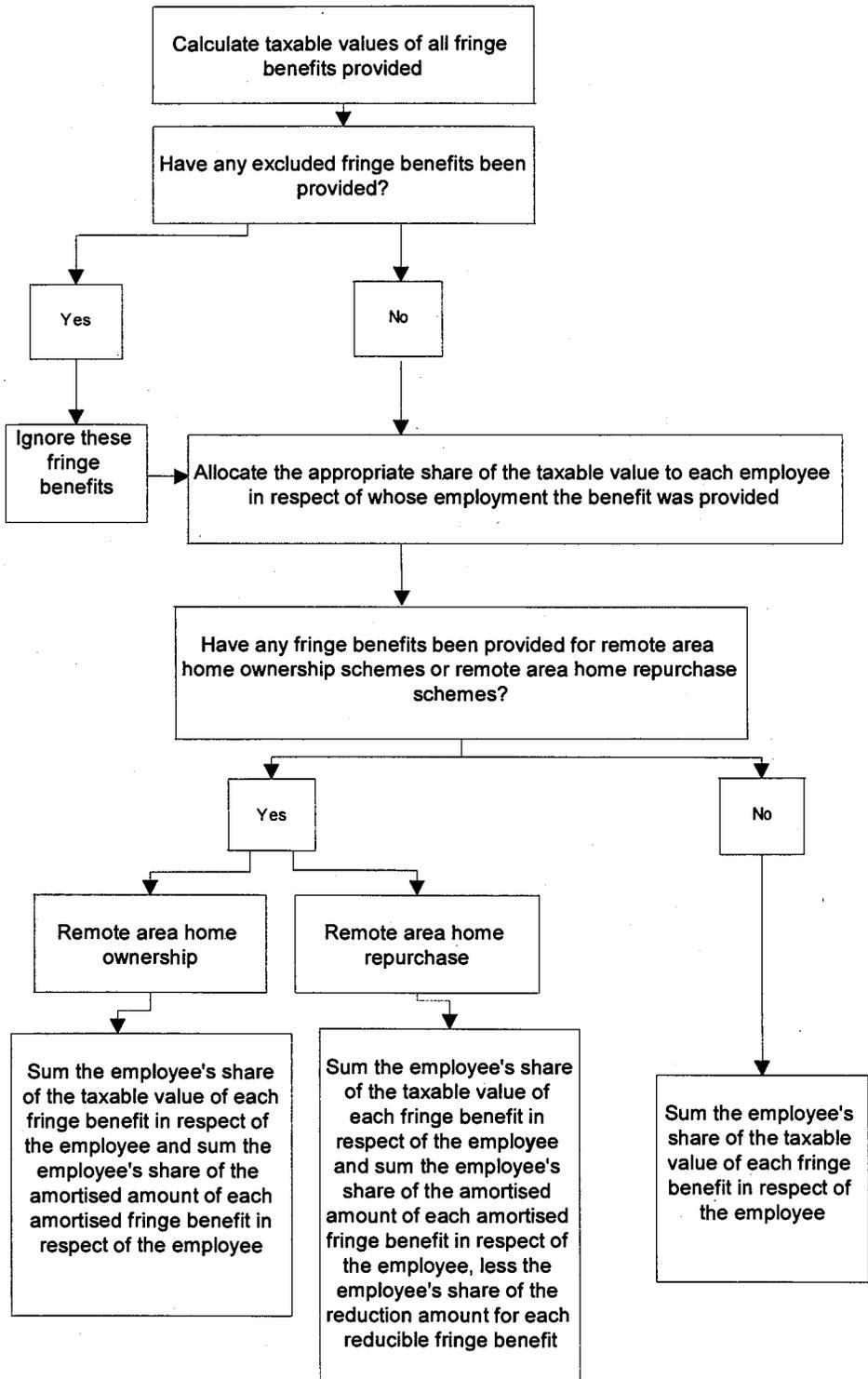
1.22 Broadly, an employer pays tax on the aggregate fringe benefits amount (refer the employer's fringe benefits taxable amount above). Note though, where an employer is using the record keeping exemption arrangements in Part XIA, as outlined in paragraphs 1.35 and 1.36, the employer's aggregate fringe benefits amount for the year of tax could be the amount determined in an earlier base year. An employer who ceases business part way through the FBT year may have their aggregate fringe benefits amount determined in accordance with section 135L, broadly a pro-rated amount.

1.23 The terms *individual fringe benefits amount* and *excluded fringe benefit* are explained in the following paragraphs.

Employee's individual fringe benefits amount

1.24 **Division 3 of new Part IIA** provides the general and specific rules for determining an employee's individual fringe benefits amount, the definition of an excluded fringe benefit and how to work out the employee's share of the taxable value of a fringe benefit. The diagram below illustrates how an employee's individual fringe benefits amount is determined.

Determining an employee's individual fringe benefits amount



Excluded fringe benefit

1.25 An *excluded fringe benefit* is a fringe benefit that is provided in relation to the provision of meal entertainment or a car parking fringe benefit, or a fringe benefit that has been prescribed by regulation. **[New subsection 5E(3)]**

1.26 *Provision of meal entertainment* is defined in section 37AD and broadly means entertainment by way of food or drink, and accommodation, travel or reimbursement of expenses in relation to that entertainment.

1.27 The exclusion of the provision of meal entertainment relates not only to the provision of meal entertainment in accordance with Division 9A, but also to the provision of meal entertainment as another type of fringe benefit. For example, a property fringe benefit that would satisfy the definition in section 37AD if the employer had made an election will be an excluded fringe benefit. A tax exempt body fringe benefit that would otherwise fall within the definition contained in section 37AD will also be an excluded fringe benefit.

1.28 Fringe benefits arising from the provision of meal entertainment are being excluded from the reportable fringe benefits system in order to avoid any additional compliance costs and complexity in allocating a share of the taxable value to an individual employee.

1.29 *Car parking fringe benefits* provided in accordance with Division 10A are also excluded fringe benefits because of the compliance costs associated with allocating the taxable value to individual employees. However, an expense payment fringe benefit for car parking will not be an excluded fringe benefit as the allocation of taxable value to individual employees is much simpler than under Division 10A.

1.30 In future, other benefits may be prescribed by regulation to be excluded fringe benefits. This will be done where the compliance costs associated with allocating taxable value to an individual employee exceed the equity objectives which this measure is seeking to achieve.

General rule

1.31 In the general case, the *individual fringe benefits amount* is the employee's share of the taxable value of all fringe benefits, other than excluded fringe benefits, provided to the employee or to associates of the employee. The individual fringe benefits amount will also include benefits provided by an associate of the employer, or under an arrangement between the employer (and/or an associate of the employer) and a third party. **[New subsection 5E(2)]**

Special rules

1.32 The specific cases relate to remote area housing schemes and the use of section 135G. The specific cases apply in preference to the general case. ***[New subsection 5E(8)]***

1.33 Where an amortised fringe benefit is provided, the *individual fringe benefits amount* is the employee's share of the taxable value of all fringe benefits, other than excluded fringe benefits (see paragraph 1.25) and amortised fringe benefits, provided to the employee or an associate of the employee and the sum of the employee's share of amortised amounts relating to the employee. ***[New subsection 5E(4)]***

1.34 Where a reducible fringe benefit is provided, the *individual fringe benefits amount* is the amount worked out using either the general case or the amortised fringe benefits rule, depending on whether an amortised fringe benefit has been provided or not, less the employee's share of the reduction amount for all reducible fringe benefits. ***[New subsection 5E(5)]***

1.35 An employer using the record keeping exemption arrangements in Part XIA, where the employer's aggregate fringe benefits amount for the current year of tax is determined in accordance with section 135G (broadly the aggregate fringe benefits amount of an earlier year), must determine the individual fringe benefits amount of the employee. The employer must also advise the employee of this amount in writing, ie. on a group certificate. ***[New subsection 5E(6)]***

1.36 Where an employer's aggregate fringe benefits amount is determined under section 135G the entire aggregate fringe benefits amount must be allocated to individual employees. Excluded fringe benefits would also need to be allocated to individual employees. The sum of the individual fringe benefits of the current year must equal the aggregate fringe benefits amount of the base year. ***[New paragraph 5E(7)(a)]***

1.37 In determining the individual fringe benefits amount, the employer must have regard to the fringe benefits provided to individual employees in the current year of tax. The employer must also act reasonably, taking into account all relevant matters. For example, the employer could not simply determine an employee's individual fringe benefits amount for the current year of tax based on the fact that the employee received the benefit in the earlier year of tax but not the current year. ***[New paragraph 5E(7)(b)]***

Determining the employee's share

1.38 Under the current law, an employer calculates the taxable value of a fringe benefit without regard to the number of recipients. Some fringe benefits are provided for the benefit of one employee only, while others

are for the benefit of multiple recipients. In order to calculate the individual fringe benefits amount, the employer must allocate the taxable value to employees in a manner that is fair and reasonable. **New section 5F** provides the basis for working out an employee's share of the taxable value of a fringe benefit.

Benefit provided in respect of one employee

1.39 Where a fringe benefit is provided in respect of one employee's employment and not in respect of another employee's employment, the *employee's share* of the taxable value is 100%. This is because the employee or an associate of the employee is provided with the benefit. The way in which the benefit is provided, ie. as part of a salary package or employment conditions, is not relevant. This apportionment also applies to the amortised amount and the reducible amount. [**New subsection 5F(2)**]

Example

1.40 A managing director of a company is reimbursed for his children's school fees. The expense payment fringe benefit is provided in respect of that employee's employment and no other employee. As a result, the employee's share of the taxable value is 100%.

Benefit shared by 2 or more employees

1.41 Where one fringe benefit is provided in respect of the employment of 2 or more employees, the *employee's share* is the portion of the taxable value that reasonably reflects the amount of benefit received by each employee. For benefits in this category, the employer must exercise discretion and reasonably allocate the taxable value between employees taking into account all relevant factors, such as the fact that not all recipients may utilise the benefit to the same extent. The sum of the employees' shares must equal the total taxable value of the benefit. No portion of the taxable value of the fringe benefit can remain unallocated between employees. This apportionment also applies to the amortised amount and the reducible amount. [**New subsections 5F(3) and (5)**]

Example

1.42 An employer gives 2 employees a holiday package as a fringe benefit. The package is for 2 people and cannot be taken as 2 single holidays. The taxable value of the package is \$5,000. It would be reasonable for the employer to allocate the taxable value between the employees on a 50-50 split basis. Therefore, each employee's share is \$2,500. It may not always be reasonable for the employer to apportion the taxable value equally between the number of recipients. It is in these cases that the employer must take into consideration other matters such as usage of the benefit.

Class of benefits in respect of one or more employees

1.43 Where many benefits with one calculation of taxable value are provided to one or more recipients, the *employee's share* is the portion of the taxable value that reasonably reflects the amount of benefit provided in respect of that employee's employment. The employer must take all relevant matters into consideration when apportioning the taxable value and the apportionment must be justifiable. **[New subsection 5F(4)]**

1.44 Where the class of fringe benefits were provided to one employee, the employee's share is 100% of the taxable value. Where there are multiple employees in respect of whose employment the benefit was provided, the sum of the employees' shares must equal the taxable value of the benefit for the year of tax. **[New subsections 5F(5) and (7)]**

1.45 Car fringe benefits are an example of numerous fringe benefits with a single calculation. For example, a car fringe benefit arises each day that a car is available for private use by an employee or an associate of an employee. However, the calculation of taxable value for a car for the year of tax is made for all the car fringe benefits provided in a year of tax in respect of that car.

Example

1.46 An employer has a vehicle, which is used for business purposes and is available for private use by all employees. The employer elects to use the operating cost basis method to determine the taxable value of the car fringe benefits for that vehicle. The taxable value is the proportion of the operating costs that relate to non-business use of the car less recipients' contributions.

1.47 Assume that the total operating costs (actual costs, deemed depreciation and deemed interest) of the car are \$15,260 and that the percentage of private use is 25% having regard to the relevant documentary requirements. Assume that there are no recipient contributions. The taxable value of the car fringe benefit is \$3,815. The employer must now allocate the taxable value to the individual recipients of the fringe benefit.

1.48 Assume that there are 10 employees who use the vehicle in the year. Because all employees benefit from the use of the vehicle equally, the employer decides to calculate the employee's share as:

$$\begin{array}{r} \text{Total taxable value} \\ \text{Number of recipients} \\ = \text{\$3,815} \\ 10 \\ =\text{\$381.50} \end{array}$$

1.49 This might be an appropriate rate for pool cars where the only entitlement to private use is for travel between home and work.

1.50 A way of allocating taxable value to individual employees could be to determine an overnight rate for the car. From the above example, the taxable value of \$3,815 represents the private use of the car by numerous employees. For the purposes of determining an employee's individual fringe benefits amount the employer could work out an overnight rate:

$$\frac{\$3,815}{240 *}$$

= \$15.90 per night

and then multiply the number of nights that an employee had the car by the overnight rate to arrive at the employee's individual fringe benefits amount.

* This represents the number of nights the car was used for home to work travel.

1.51 Note though, the entire taxable value of the car must be allocated between employees. A reasonable agreement arrived at between an employer and an employee, that takes into account all relevant matters, would satisfy the Commissioner.

Reportable fringe benefits

1.52 *New Part XIB* is inserted to determine the reportable fringe benefits totals which are relevant for working out an employee's liability for certain surcharges and levies and eligibility for certain concessions.

Section of Part XIB	Description
135N	Employee's reportable fringe benefits total
135P	Employee's reportable fringe benefits amount – general rule
135Q	Reportable fringe benefits amount for some employees of certain institutions

1.53 Using the individual fringe benefits amount, *new Part XIB* determines an employee's reportable fringe benefits amount and an employee's reportable fringe benefits total. There are different rules for determining an employee's reportable fringe benefits amount when the employer is a public benevolent institution or a body which provides care for sick and elderly or disadvantaged persons. The reportable fringe benefits amount is included on the employee's group certificate. [*New section 135M*]

Reportable fringe benefits amount – general rule

1.54 An employee has a *reportable fringe benefits amount* for a year of income where the employee's individual fringe benefits amount for the year of tax ending on 31 March in the year of income exceeds \$1,000 for that particular employer. **[New subsection 135P(1)]**

1.55 The *reportable fringe benefits amount* relates to a year of income as it is included on a group certificate for the income year ending 30 June. However, the individual fringe benefits amount is calculated in relation to a year of tax, that is, a FBT year ending on 31 March. For example, a fringe benefit that arises on 15 June 2000 will be included in the individual fringe benefits amount for the year of tax ending 31 March 2001. Where the individual fringe benefits amount for that year in respect of a particular employer is greater than \$1,000, the amount (after being grossed-up) will be included in the reportable fringe benefits amount for the year of income ending 30 June 2001.

1.56 An employee will have a *reportable fringe benefits amount* in relation to each employer; therefore, where an employee has more than one employer, there may be more than one reportable fringe benefits amount. The sum of these reportable fringe benefits amounts is the reportable fringe benefits total (this is explained further at paragraph 1.67).

1.57 The *reportable fringe benefits amount* is:

$$\text{Individual fringe benefits amount} \times \frac{1}{1 - \text{rate of fringe benefits tax}}$$

1.58 This calculation effectively grosses-up the individual fringe benefits amount to an income tax inclusive amount. The rate of tax used in the formula is the FBT rate that applies for the year of tax in which the fringe benefit is provided. **[New subsection 135P(2)]**

Reportable fringe benefits amount – employees of certain institutions

1.59 The reportable fringe benefits amount is worked out under **new section 135Q** for employees of employers who are described in section 57A or 58 of the FBTAA.

1.60 Section 57A provides that a benefit received by an employee of:

- a public benevolent institution where the benefit is provided in respect of that employment; and

- a government body where the employee performs the employment duties exclusively in, or in connection with, a public hospital that is a public benevolent institution;

is an exempt benefit.

1.61 Under section 58, certain benefits provided to an employee who lives with and cares for disadvantaged or elderly persons in residential premises of the employer are exempt benefits where the employer is a government body, religious institution or a non-profit company.

1.62 An employee of one of these institutions has a *reportable fringe benefits amount* for a year of income where the sum of:

- the employee’s individual fringe benefits amount for the year of tax ending on 31 March in the year of income; and
- the employee’s individual quasi-fringe benefits amount for the year of tax ending on 31 March in the year of income;

exceeds \$1,000. **[New subsection 135Q(2)]**

1.63 The *individual quasi-fringe benefits amount* represents the individual fringe benefits amount that would have arisen had sections 57A and 58 not been enacted and no other fringe benefits were provided. **[New subsection 135Q(3)]**

1.64 By including the notional taxable value of these exempt benefits in the reportable fringe benefits amount, these employers will have to calculate the taxable values of the benefits provided. While these employers are required to report these amounts on group certificates where they exceed \$1,000, the benefits will continue to be exempt from FBT.

1.65 The value of the *reportable fringe benefits amount* is:

$$\left[\begin{array}{l} \text{Individual fringe} \\ \text{benefits amount} \end{array} + \begin{array}{l} \text{Individual quasi-fringe} \\ \text{benefits amount} \end{array} \right] \times \frac{1}{1 - \text{rate of fringe benefits tax}}$$

1.66 The rate of tax used in the formula is the FBT rate that applies for the year of tax in which the benefit is provided. **[New subsection 135Q(4)]**

Reportable fringe benefits total

1.67 An employee’s *reportable fringe benefits total* for a year of income is the sum of the employee’s reportable fringe benefits amounts from every employer of the employee. **[New section 135N]**

1.68 This total is relevant for working out the employee's eligibility for certain income tax concessions, Medicare levy surcharge, superannuation surcharge and repayment of HECS debt (see Sections 2 to 6). An employer is not required to calculate this amount.

Consequential amendments to the FBTA

Car fringe benefits and emergency services vehicles

1.69 An amendment is to be made to section 7 of the FBTA in relation to car benefits and the circumstances under which a car fringe benefit arises when the vehicle is an emergency service vehicle.

1.70 Broadly, under subsection 7(1), a car benefit arises on any day on which a car is used for, or is available for, the private use of an employee or an employee's associate. Subsection 7(2) currently provides that where a car is garaged at or near the employee's residence, the car is taken to be available for private use.

1.71 *New subsection 7(2A)* is inserted into the FBTA so that a car benefit will not arise where the car is garaged at or near the employee's residence and the car is a car that is:

- used by an ambulance service, a firefighting service or a police service;
- marked on its exterior as being for use by any of those emergency services; and
- fitted with flashing lights and sirens. *[Item 2, Schedule 1]*

1.72 This will remove from FBT, benefits that arise where an employee lives at or near the station. These vehicles are specially equipped for their designated purpose and are generally not available for private use.

Definitions

1.73 *Aggregate fringe benefits amount* has the meaning given by *new section 5C*. *[Item 6, Schedule 1]*

1.74 *Employee's share* has the meaning given by *new section 5F*. *[Item 7, Schedule 1]*

1.75 *Excluded fringe benefit* has the meaning given by *new subsection 5E(3)*. *[Item 8, Schedule 1]*

1.76 The definition of *fringe benefits taxable amount* is amended to make reference to *new section 5B* instead of section 136AA. *[Item 9, Schedule 1]*

1.77 *Individual fringe benefits amount* has the meaning given by *new section 5E*. [Item 10, Schedule 1]

1.78 *Individual quasi-fringe benefits amount* has the meaning given by *new subsection 135Q(3)*. [Item 11, Schedule 1]

1.79 *Reportable fringe benefits amount* has the meaning given by *new section 135P* or *new section 135Q* as appropriate. [Item 12, Schedule 1]

1.80 *Reportable fringe benefits total* has the meaning given by *new section 135N*. [Item 13, Schedule 1]

Application

1.81 The amendments to the FBTA apply in relation to the year of tax commencing on 1 April 1999 and later years. [Item 16, Schedule 1]

Fringe Benefits Tax (Application to the Commonwealth) Act 1986

1.82 The title and objects of the *Fringe Benefits Tax (Application to the Commonwealth) Act 1986* are amended to apply to the calculation of reportable fringe benefits. [Items 17 and 18, Schedule 1]

Section 2: Amendments to the *Income Tax Assessment Act 1936*

1.83 *Schedule 2* to the Bill contains the consequential amendments to the ITAA36 for the reporting of fringe benefits. *Schedule 2* contains the following Parts:

Part	Description
1	Reporting reportable fringe benefits amounts and totals
2	Effect of fringe benefits on deductions for superannuation contributions
3	Effect of fringe benefits on rebate for personal superannuation contributions
4	Effect of fringe benefits on rebate for contributions to spouse's superannuation
5	Medicare levy surcharge on reportable fringe benefits total

Reporting reportable fringe benefits amounts and totals

1.84 Amendments to the ITAA36 implement the requirement for employers to include the reportable fringe benefits amount on group certificates. The provisions that are affected by these changes are:

- subsection 6(1), definitions;
- section 221F, which deals with the obligations of group employers and imposes penalties for failure to comply with those obligations;
- section 221H, which deals with the application of tax instalment deductions and the employee's obligations regarding group certificates; and
- section 162, which deals with the obligations of taxpayers to furnish returns.

1.85 Definitions of *reportable fringe benefits amount* and *reportable fringe benefits total* are inserted in subsection 6(1). *Reportable fringe benefits amount*, in relation to a year of income, means the employee's reportable fringe benefits amount for the year of income in respect of the employee's employment by an employer. The reportable fringe benefits amount has the meaning given in the FBTA, as does the definition of *employee*. [Item 1, Schedule 2] An *employee* is defined in the FBTA to be a current employee, a future employee and a former employee. *Reportable fringe benefits total* for a year of income for an employee takes its meaning from the FBTA. [Item 2, Schedule 2]

Reportable fringe benefits amount and group certificates

1.86 Subsection 221F(5B) lists the information that an employer must include in a group certificate (such as tax file number where quoted and salary and wages) for an employee in their employment. ***New paragraph 221F(5B)(d)*** is inserted to include the reportable fringe benefits amount for the year of income in the requirements of a group certificate. [Item 3, Schedule 2] If any amount of the reportable fringe benefits amount for the income year was included in an earlier group certificate, the amount is not included in the later group certificate. A similar amendment is made to subsection 221F(5D) for employees who leave the employment of the employer. [New paragraph 221F(5D)(d)]

1.87 Subsection 221F(5E) removes the requirement for an employer to issue group certificates annually or when an employee leaves the employment of the employer when certain conditions are met (relating to casual domestic employment). ***New paragraph 221F(5E)(d)*** is inserted to also remove the requirement for the completion of a group certificate where the employee does not have a reportable fringe benefits amount. [Item 7, Schedule 2]

1.88 Under subsection 221F(5H), an employer who makes an eligible termination payment to an employee must, within 14 days of making the payment, complete a group certificate and give two copies to the employee. Subject to subsection 221F(5H), ***new subsection***

221F(5GA) requires an employer to complete a group certificate for an employee who ceases employment between 1 April and 30 June and has a reportable fringe benefits amount for the following year of income. **[Item 8, Schedule 2]**

1.89 **New subsection 221F(5GB)** requires an employer to include the tax file number and the reportable fringe benefits amount on the group certificate. **[Item 8, Schedule 2]** Under **new subsection 221F(5GC)**, the employer must give two copies of the completed group certificate to the employee within 14 days of a request by the employee or within 14 days after the end of the income year. **[Item 8, Schedule 2]**

1.90 **New subsection 221F(5GD)** confirms that the new requirements of subsection 221F(5GA) are in addition to the existing requirement of subsection 221F(5H). **[Item 8, Schedule 2]**

1.91 Subsection 221F(5J) requires an employer to send group certificates for salary and wages and a reconciliation statement of tax instalments deducted and paid to the Commissioner by 14 August each year. **New paragraph 221F(5J)(aa)** extends this requirement to cover group certificates showing reportable fringe benefits amounts. **[Item 9, Schedule 2]** Therefore, by 14 August each year, the employer must send to the Commissioner all group certificates showing reportable fringe benefits amounts for the 12 month period ending 31 March of the same year.

1.92 Subsection 221F(7) broadly allows the Commissioner to vary the information and obligations imposed on a group employer by subsections 221F(5) to (5D) and (5H) to (5J). This provision is being amended to allow the Commissioner to vary the information and obligations imposed by **new subsections 221F(5GA) to (5GC)**. **[Item 10, Schedule 2]**

1.93 Similarly, subsection 221F(15) is also being amended to include references to **new subsections 221F(5GA) to (5GC)**. **[Item 11, Schedule 2]** This subsection makes it an offence to contravene one of the provisions.

1.94 **New subsection 221F(16)** provides that, for the purposes of section 221F, *employee* has the meaning given by the FBTA. The definition in the FBTA is broader than the income tax definition and will mean an employee – employer relationship exists when only benefits are provided as remuneration. **[Item 12, Schedule 2]**

1.95 **New subsection 221F(17)** provides that, for the purposes of section 221F, *employer* has the meaning given by the FBTA. The definition in the FBTA is broader than the income tax definition and will mean an employee – employer relationship exists when only benefits are provided as remuneration. **[Item 13, Schedule 2]**

1.96 Subsection 221H(1) requires an employee to retain a group certificate for salary or wages for a period of 5 years after an assessment has been made for the relevant income year. The subsection has been rewritten to extend the requirement to group certificates showing reportable fringe benefits amounts. If the group certificate is requested by the Commissioner within the 5 year period, the employee must provide it. *[New subsection 221H(1)]* *Employee* has the same meaning as in the FBTA. *[New subsection 221H(1AA)]*

Application

1.97 These amendments apply to group certificates prepared in relation to the income year commencing 1 July 1999 and later years. *[Item 16, Schedule 2]* Note though, *new subsection 221F(17)*, which widens the definition of *employer*, commences on the 28th day after the Bill receives Royal Assent. *[New subsection 2(2)]*

Returns of reportable fringe benefits totals

1.98 Subsection 162(1) authorises the Commissioner to require a person to furnish a new return, or a further or fuller return, of the income or any part of the income derived by that person in any year, whether derived on his or her own behalf or as an agent or trustee. The Commissioner usually exercises this power where the Commissioner is dissatisfied with the original return or where a return has not been lodged. Subsection 162(2) provides that the return must be furnished even though no income has been derived. Subsection 162(1) is amended to allow the Commissioner to request a fuller return in relation to the person's reportable fringe benefits total for a year of income and the return must be furnished even when there is no reportable fringe benefits total for the income year. *[Items 17 and 18, Schedule 2]*

Application

1.99 The amendments apply in relation to reportable fringe benefits totals for the year of income commencing 1 July 1999 and later years of income. *[Item 19, Schedule 2]*

Effect of fringe benefits on deductions for superannuation contributions

Deductions for personal superannuation contributions

1.100 Section 82AAT of the ITAA36 allows a tax deduction for personal contributions made to a complying superannuation fund or to a retirement savings account. A person is entitled to the deduction if he or she is self employed or does not have any superannuation support from his or her employer. Subsection 82AAS(3) extends this concession to a person who is substantially self employed. A person is substantially self employed if the total remuneration he or she receives from an employer

who provides superannuation support is less than 10% of his or her total assessable income.

1.101 The amendments include the reportable fringe benefits total for the income year with the employee's assessable income for the purpose of applying the 10% test. *[Items 20 to 24, Schedule 2]*

Application

1.102 The amendments apply for the 1999-2000 year of income and later years of income. *[Item 25, Schedule 2]*

Effect of fringe benefits on rebate for personal superannuation contributions

Rebate for personal superannuation contributions

1.103 Under section 159SZ a person who is not entitled to a deduction for any personal contributions made to a complying superannuation fund or retirement savings account is entitled to a rebate if the assessable income is less than \$31,000.

1.104 The amendments add the taxpayer's reportable fringe benefits total for the year of income to the taxpayer's assessable income for the purposes of determining his or her entitlement to the rebate. *[Items 26 and 27, Schedule 2]*

Application

1.105 The amendments apply for the 1999-2000 year of income and later years of income. *[Item 28, Schedule 2]*

Effect of fringe benefits on rebate for contributions to spouse's superannuation

Rebate for contributions to spouse's superannuation

1.106 Under section 159T a rebate is allowable for contributions made by a taxpayer to a complying superannuation fund or retirement savings account on behalf of his or her dependant spouse where the income of the spouse is less than \$13,800.

1.107 The amendments include the spouse's reportable fringe benefits total for the year of income with the assessable income of the spouse, on whose behalf the contributions are made, for the purpose of determining the taxpayer's entitlement to the rebate. *[Items 29 and 30, Schedule 2]*

Application

1.108 The amendments apply for the 1999-2000 year of income and later years of income. **[Item 31, Schedule 2]**

Medicare levy and Medicare levy surcharge

1.109 Part VIIB of the ITAA36 contains provisions relating to the Medicare levy. **New subsection 251R(1A)** is inserted to define *surcharge* as the Medicare levy surcharge that is imposed by the *A New Tax System (Medicare Levy Surcharge - Fringe Benefits) Act 1998* (see Section 6). **[Item 33, Schedule 2]**

1.110 Section 251X provides that a notice of assessment served on a taxpayer who is liable to pay tax must also specify the amount of any Medicare levy payable by the taxpayer. Section 251X is rewritten to require the Commissioner to set out the amount of the Medicare levy and the surcharge assessed in the notice of assessment. **[Items 34 and 36, Schedule 2]**

1.111 Section 251W allows the Commissioner to specify any information requirements relating to the Medicare levy in regulations. This requirement is extended to apply to the surcharge as well as the levy. **[Items 35 and 39, Schedule 2]**

Application

1.112 The amendments apply in relation to levy and surcharge payable in respect of the 1999-2000 year of income and later years of income. **[Item 38, Schedule 2]**

Section 3: Amendments to the *Higher Education Funding Act 1988*

1.113 **Schedule 3** to the Bill amends the *Higher Education Funding Act 1988* to include the reportable fringe benefits total in calculations for the repayment of the higher education contribution scheme (HECS) debt.

1.114 The repayment of the HECS debt is calculated as a percentage of the person's HEC repayment income. *HEC repayment income* is defined in subsection 106H(1).

1.115 The definition of *HEC repayment income* is rewritten to include the person's reportable fringe benefits total. **[Items 1 and 2, Schedule 3]**

Application

1.116 The amendment applies in relation to the 1999-2000 year of income and later years of income. *[Item 2, Schedule 3]*

Section 4: Amendments to the Medicare Levy Act 1986

1.117 *Schedule 4* to the Bill amends the *Medicare Levy Act 1986* to ensure that the reportable fringe benefits total is added to a person's taxable income in determining whether the person exceeds the Medicare levy surcharge threshold and, thus, is liable for the Medicare levy surcharge.

1.118 It should be noted, however, that the additional surcharge levied under the *Medicare Levy Act 1986* is imposed only on the taxpayer's taxable income. The additional surcharge which is imposed on the reportable fringe benefits total is levied under the *A New Tax System (Medicare Levy Surcharge - Fringe Benefits) Act 1998*.

Application

1.119 The amendment applies in determining the Medicare levy surcharge payable for the 1999-2000 year of income and later years of income. *[Item 8, Schedule 4]*

Section 5: Amendments to Superannuation Contributions Tax Acts

1.120 *Schedule 5* to the Bill amends the following Acts which govern the superannuation surcharge:

- *Superannuation Contributions Tax (Assessment and Collection) Act 1997*; and
- *Superannuation Contributions Tax (Members of Constitutionally Protected Funds) Assessment and Collection Act 1997*.

1.121 Under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* a superannuation provider is liable to pay superannuation surcharge on any deductible contributions made on behalf of a member where the member's adjusted taxable income is greater than the surcharge threshold. For the 1998-1999 income year the surcharge threshold is \$75,856.

1.122 The *Superannuation Contributions Tax (Members of Constitutionally Protected Funds) Assessment and Collection Act 1997*

contains similar provisions for members of constitutionally protected superannuation funds established under various State Acts of Parliament.

1.123 The amendments include the reportable fringe benefits total in the adjusted taxable income of a member to determine whether deductible contributions made on behalf of the member are subject to the superannuation surcharge. *[Items 1 and 2, Schedule 5]*

Application

1.124 The amendments apply for financial years starting on or after 1 July 1999. *[Item 3, Schedule 5]*

Section 6: A New Tax System (Medicare Levy Surcharge Fringe Benefits) Bill 1998

1.125 The A New Tax System (Medicare Levy Surcharge Fringe Benefits) Bill 1998 imposes a Medicare levy surcharge on persons whose taxable income and reportable fringe benefits total exceed thresholds set out in the Bill. The surcharge is 1% of the reportable fringe benefits total. Persons can avoid the imposition of the surcharge by taking out adequate private hospital insurance.

Explanation of the legislation

Preliminary

1.126 *New Part 1* of the Bill defines the key terms used throughout the surcharge provisions.

Assessment Act

1.127 *Assessment Act* means the *Income Tax Assessment Act 1936*. *[New subsection 3(1)]*

Dependant

1.128 A person is a *dependant* of another person for a period if the person would be a dependant of the other person for Medicare levy purposes. *[New section 5]* Broadly, a dependant is a person who is a resident of Australia and is either a spouse or a child of the person contributing to their maintenance. Subsections 251R(4), (5), (6B), (6C) and (6D) of the ITAA36 which limit the definition of *dependant*, are to be disregarded when determining whether a person is a dependant for the purposes of this Bill.

Family surcharge threshold

1.129 A person's *family surcharge threshold* for a year of income is \$100,000. **[New subsection 6(1)]** However, where the person has 2 or more dependants who are children, the threshold amount is calculated in accordance with the following formula **[New subsection 6(2)]**:

$$\$100,000 + (\$1,500 \times (\text{Number of dependants who are children} - 1))$$

Therefore, the family surcharge threshold for a person who has 2 dependant children is:

$$\$100,000 + (\$1,500 \times (2 - 1)) = \$101,500$$

1.130 The family surcharge threshold reflects the thresholds contained in section 3A of the *Medicare Levy Act 1986* for the purposes of determining the surcharge payable on an individual's taxable income.

Married

1.131 **New section 7** defines when people are treated as *married* to include de facto couples and new widows and widowers. People living separately and apart are not taken to be married for the purpose of the surcharge provisions.

Prescribed Person

1.132 A person is a *prescribed person* for the period if they are a prescribed person for Medicare levy purposes. **[New section 8]** *Prescribed persons* include defence personnel and members of their families who are eligible for free medical treatment, people who are entitled to free medical treatment under the *Veterans' Entitlements Act 1986*, and recipients of certain payments under the *Social Security Act 1991* or the *Veterans' Entitlements Act 1986*. Persons who are *prescribed persons* for Medicare levy purposes are deemed to have private patient hospital insurance. **[New subsections 13(2) and 14(2)]**

Provides private patient hospital cover

1.133 An insurance policy is considered to *provide private patient hospital cover* where it is an applicable benefits arrangement as defined under the *National Health Act 1953*. **[New section 4]** Broadly, an applicable benefits arrangement will exist where there is an arrangement between the registered organisation conducting a health benefits fund and the person contributing to the health fund, where the person is covered (wholly or partly) for liabilities to pay fees incurred in respect of hospital treatment and professional services of a medical practitioner during hospital treatment, in respect of which a Medicare benefit is payable.

Reportable fringe benefits total

1.134 *Reportable fringe benefits total* of a person for a year of income has the meaning given by subsection 6(1) of the ITAA36. **[New subsection 3(1)]** Essentially, the *reportable fringe benefits total* is the sum of the employee's reportable fringe benefits amounts from every employer, which are recorded on each of the employee's group certificates.

Resident of Australia

1.135 **New subsection 10(2)** defines a *resident of Australia* in accordance with subsection 6(1) of the ITAA36. However, the surcharge provisions do not apply to residents of Norfolk Island who are treated as residents of Australia for income tax purposes. **[New subsection 10(3)]**

Surcharge

1.136 *Surcharge* means the Medicare levy surcharge imposed by **new section 10** discussed in paragraph 1.138.

Taxable income

1.137 **New subsection 9(1)** defines *taxable income* as the person's taxable income amount determined for the purposes of the ITAA36, other than section 271-105 amounts (in Schedule 2F to the ITAA36) subject to family trust distribution tax. A person's taxable income may be reduced under **new subsection 9(2)** by the total of the rebatable amounts relating to subsection 159SA(1) of the ITAA36, which have a rate of tax of 0%. Subsection 159SA(1) ensures that a person may be entitled to a rebate of tax where their assessable income includes any eligible assessable income.

Imposition of surcharge

1.138 **New Part 2** of the Bill imposes the Medicare levy surcharge. The surcharge is payable by a person who is a resident of Australia at any time during the year of income. The amount of the surcharge imposed is based on the person's reportable fringe benefits total for a year of income. **[New subsection 10(1)]** The surcharge is first payable on the reportable fringe benefits total of a person for the year of income commencing 1999-2000 and all subsequent years of income. **[New subsection 10(4)]**

Note, the surcharge payable on a person's taxable income is imposed under the *Medicare Levy Act 1986*.

Amount of surcharge payable

1.139 **New Part 3** of the Bill contains 4 Divisions that provide general and specific rules for establishing the amount of surcharge payable by a person.

Division	Description
1	General Rule
2	Amount of surcharge for single person without dependants
3	Amount of surcharge for single person with dependants
4	Amount of surcharge for married person

General Rule

1.140 **Division 1 of New Part 3** of the Bill outlines the general rule for determining the amount of surcharge payable by a person. This is essentially the total of the surcharge amounts calculated in accordance with the divisions applicable to the person’s family circumstances during the year of income: single person without dependants; single person with dependants; and married persons (with or without dependants). **[New subsection 11(1)]**

1.141 For example, where a person’s circumstances change during the income year, eg. a person marries, the total surcharge payable is the sum of the surcharge amount calculated for the period the person was not married, and the surcharge amount calculated for the period during which the person was married (see Example 2 in paragraph 1.155).

1.142 **New subsection 11(2)** ensures that individuals are not liable for the surcharge if their taxable income does not exceed \$13,389. This provision is consistent with the exemption from the Medicare levy available to those individuals who earn less than \$13,389.

1.143 **New subsection 11(3)** overrides the general rule in **new subsection 11(1)** where the person’s taxable income for the year of income is greater than \$13,389, but less than or equal to \$14,474. In this case, the amount of surcharge payable on the reportable fringe benefits total is not more than 20% of the difference between the person’s taxable income and \$13,389. This provision is designed to reflect the concessional Medicare levy treatment for individuals whose income is between \$13,389 and \$14,474.

Amount of surcharge for single person without dependants

1.144 **New subsection 12(1)** outlines the conditions under which a single person without dependants is liable for the surcharge. The sum of the person’s taxable income and reportable fringe benefits total for the year of income must be greater than \$50,000. **[New paragraph 12(1)(a)]** Further, the person must not be married, must be without dependants, must not be a prescribed person, and not have adequate private patient hospital insurance for the period to which **new subsection 12(2)** applies. **[New paragraph 12(1)(b)]**

1.145 The amount of surcharge payable is discussed in paragraphs 1.154 and 1.155.

Amount of surcharge for single person with dependants

1.146 **Division 3 of New Part 3** of the Bill establishes how to work out the surcharge payable by a single person with 1 or more dependants. The family surcharge threshold forms one of the criteria for determining whether a person is liable for the surcharge, and will vary according to the number of dependant children of the person.

1.147 In the case of a person with one dependant, the sum of the person's taxable income and reportable fringe benefits total must not exceed the family surcharge threshold of \$100,000. Where the person has 2 or more dependant children, the aggregate of the person's taxable income and reportable fringe benefits total must not exceed the family threshold calculated in accordance with the formula outlined in paragraph 1.129 above. Additionally, the Division requires that the person is not a prescribed person and either the person or any one of his/her dependants does not have private patient hospital insurance. **[New subsection 13(1)]**

1.148 Subsection 251U(2) of the ITAA36 deems a person, who would otherwise be a prescribed person, not to be a prescribed person if any one of their dependants is not a prescribed person. For the purposes of applying this Division, subsection 251U(2) is disregarded and the person is treated as being covered by private patient hospital insurance. Similarly, a person's dependants are deemed to be covered by private patient hospital insurance where they are a prescribed person or would be apart from subsection 251U(2). **[New subsection 13(2)]**

1.149 The amount of surcharge payable is discussed in paragraphs 1.154 and 1.155.

Amount of surcharge for married person

1.150 **Division 4** of the Bill applies to a person if during the year of income the person was married, was not a prescribed person and either the person or any one of their dependants were not covered by private patient hospital insurance. **[New subsection 14(1)]**

1.151 The family threshold test is also applied to a married person. However, the taxable income and reportable fringe benefits total of the spouse are included in the calculations, in addition to the person's equivalent amounts. Where this combined total exceeds the relevant family threshold and the sum of the person's taxable income and reportable fringe benefits total exceeds \$13,389, the person will be required to pay the surcharge. **[New paragraphs 15(b) & (c) and 16(2)(b) & (c)]** As discussed in paragraph 1.148, subsection 251U(2) of the ITAA36 is disregarded in applying this Division and the person or their

dependants, who would otherwise be a prescribed person except for that subsection, are treated as being covered by private patient hospital insurance. *[New subsection 14(2)]*

1.152 *New subsection 16(5)* requires that any share of the net income of a trust estate to which a person's spouse is presently entitled is to be included in the spouse's taxable income for the purposes of calculating the family surcharge threshold in *new subsection 16(2)*. Also, subsection 271-105(1) of Schedule 2F to the ITAA36 is assumed not to have applied in calculating the net income of the trust estate.

1.153 The amount of surcharge payable is discussed in paragraphs 1.154 and 1.155.

Amount of surcharge if Divisions apply for whole year

1.154 Where, for the whole period, the person is single without dependants, single with dependants, or is married, the surcharge amount is calculated as 1% of the person's reportable fringe benefits total for the year. *[New subsections 12(2) & 13(3), and section 15]*

Example – Single person without dependants

Bill has a taxable income of \$36,000 and a reportable fringe benefits total of \$15,000 during the 1999-2000 year of income. Bill is not married, does not have any dependants for the whole period, is not a prescribed person and does not have any private patient hospital insurance.

As the sum of Bill's taxable income and reportable fringe benefits total for the period exceeds \$50,000, the amount of surcharge payable on the reportable fringe benefits total in accordance with Division 2 is:

$$1\% \text{ of } \$15,000 = \$150.$$

Amount of surcharge if Divisions apply for only part of the year

1.155 The amount of the surcharge is calculated on a pro-rata basis if the person satisfies the conditions of a Division for only part of the year. The amount payable is calculated in accordance with the following formula *[New subsections 12(3) & 13(4), and 16(4)]*:

(1% of the person's reportable fringe benefits total for the year of income) x $\frac{\text{Number of days the division applies}}{\text{Number of days in the year of income}}$

Example 1 – Single person without dependants, and private patient hospital cover for only part of the period

Bill has a taxable income of \$36,000 and a reportable fringe benefits total of \$15,000 during the 1999-2000 year of income. Bill is not married and

does not have any dependants for the whole period. If Bill purchases private patient health insurance on 10 January 2000, the amount of surcharge payable on the reportable fringe benefits total for the income year ending 30 June 2000 is calculated as:

$$(1\% \text{ of } \$15,000) \times \frac{194}{365} = \$79.72$$

Example 2 – Single person without dependants for part of the year, and married for part of the year

Bill has a taxable income of \$14,000 and a reportable fringe benefits total of \$45,000 during the 1999-2000 year of income. On 5 February 2000, Bill marries Julia who has a taxable income of \$45,000. If Bill is not a prescribed person, does not have any dependants who are children, and does not have private patient hospital insurance, the amount of surcharge payable for the income year ending 30 June 2000 is calculated as follows:

Step 1 – Calculate the surcharge amount for the period Bill was a single person without dependants. As the sum of Bill's taxable income and reportable fringe benefits total is greater than \$50,000, Bill is liable for surcharge on the reportable fringe benefits total of the following amount:

$$(1\% \times 45,000) \times \frac{220}{365} = \$271.23$$

Step 2 – Calculate the surcharge amount for the period Bill was married. As Bill does not have 2 or more dependant children, the family surcharge threshold applicable is \$100,000. As the total amount of Bill's and Julia's combined taxable incomes and reportable fringe benefits totals exceeds this threshold (that is, \$14,000 + \$45,000 + \$45,000 = \$104,000) and the sum of Bill's taxable income and reportable fringe benefits total is greater than \$13,389, Bill is liable to pay the following surcharge amount on his reportable fringe benefits total for the period that he was married:

$$(1\% \times 45,000) \times \frac{145}{365} = \$178.77$$

Step 3 – Bill's total surcharge liability on his reportable fringe benefits total for the 1999-2000 year of income is the sum of the surcharge payable when Bill was a single person without dependants and the surcharge amount applicable to the period when Bill was married. That is:

$$\$271.23 + \$178.77 = \$450$$

However, as Bill's taxable income for the year is \$14,000 the application of the general rule in *new subsection 11(3)* requires that the amount of surcharge payable is not more than 20% of the difference between \$14,000 and \$13,389.

Therefore the actual amount of surcharge payable by Bill for the 1999-2000 income year is:

$$20\% \times \$611 = \$122.20$$

Application

1.156 The surcharge is first payable on the reportable fringe benefits total of a person for the 1999-2000 year of income and all subsequent years of income. *[New subsection 10(4)]*

Section 7: Regulation impact statement

Policy objective

1.157 This measure was announced by the Government on 13 August 1998 in *Tax Reform: not a new tax, a new tax system: The Howard Government's Plan for a New Tax System*. The Government's proposals for reform contain a number of elements. This measure deals with one of those elements, the reporting of fringe benefits on group certificates.

1.158 The policy objective of this measure is to enhance the fairness of the taxation and social security systems by enabling the value of fringe benefits to be taken into account in income tests for determining entitlement to government benefits, and liability to tax surcharges and income related obligations. This will minimise the opportunities available to employees to swap cash salary for fringe benefits to avoid surcharges and levies and to access rebates to which they would not otherwise be entitled on the basis of their total remuneration.

1.159 This will be achieved by requiring employers, from the 1999-2000 year of income, to identify on employee group certificates the grossed-up taxable value of certain fringe benefits. The grossed-up taxable value¹ of these fringe benefits will be included in the income tests used to determine liability for various levies and tax surcharges and other income related obligations. The grossed-up taxable value of fringe benefits from a particular employer will only be reported on an employee's group certificate when the taxable value of the fringe benefits for a FBT year exceeds \$1,000.

¹ Since 1 April 1994, FBT has been imposed on the income tax inclusive value of a fringe benefit (the 'grossed-up' amount). Correspondingly, an income tax deduction has been allowed for the amount of FBT paid.

Implementation options

1.160 This measure can be implemented by amending the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) and the *Income Tax Assessment Act 1936*. The consequential amendments will introduce the A New Tax System (Medicare Levy Surcharge – Fringe Benefits) Bill 1998 and will require the following Acts to be amended:

- *Fringe Benefits Tax (Application to the Commonwealth) Act 1986*
- *Medicare Levy Act 1986*
- *Superannuation Contributions Tax (Assessment & Collection) Act 1997*
- *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment & Collection Act 1997*
- *Higher Education Funding Act 1988*.

1.161 Alternatively, the measure could be implemented by amending the group certificate provisions of the *Income Tax Assessment Act 1936* and making references to the FBT legislation. This would result in complex legislation and the effect would be less transparent than the first option. Therefore, the first option is preferred.

1.162 This measure is to apply from the FBT year commencing 1 April 1999 as announced by the Government.

Assessment of impacts (costs and benefits)

Impact group identification

1.163 Around 81,000 employers lodged FBT returns in the 1997-1998 FBT year, and an estimated 23,000 employers currently provide benefits which are exempt from FBT under sections 57A or 58 of the *Fringe Benefits Tax Assessment Act 1986* (eg. public benevolent institutions or live in residential care workers). Employers will be required to calculate the taxable value of fringe benefits provided in respect of each employee's employment, and where the amount exceeds \$1,000, include the grossed-up amount on the employee's group certificate.

1.164 Employees who are currently subject to government surcharges, income-related obligations or who qualify for certain rebates, may have an increased liability as a result of this measure. Some employees may be

subject to government surcharges and/or income-related obligations for the first time as a result of this measure, for example, where employees were avoiding such obligations by receiving remuneration in the form of fringe benefits rather than salary.

1.165 The Government will also be affected by this measure, in particular, the Australian Taxation Office (ATO) and the Department of Family and Community Services. Changes will have to be made to forms and computer systems to accommodate this measure. Training will also have to be provided to staff in the relevant areas to ensure the measure is implemented and to educate the public.

Analysis of the costs and benefits

Compliance costs

1.166 Employers will have to record the reportable fringe benefits amount on employee group certificates. However, in many situations employers would already know the value of fringe benefits provided in respect of an employee's employment, as would often be the case in respect of commonly packaged fringe benefits such as cars and expense payments. In other situations, employers may have the option of avoiding compliance costs by cashing out fringe benefits. Employers who currently provide certain exempt benefits will have to establish the taxable value of those benefits as if they were fringe benefits and record the grossed-up amount on the employee's group certificate. Generally these employers would also know the dollar value of the benefits being provided. However, they will still need to apply the provisions of the FBTA to determine the taxable value of the benefits provided.

1.167 Where there are multiple recipients the taxable value will have to be apportioned between employees resulting in some additional compliance costs. However, most fringe benefits will not need to be apportioned and details may be ascertained from the employer's normal accounting records.

1.168 It is estimated that the 86% of employers use a computerised system and will be able to automate the process of reporting fringe benefits on group certificates, substantially reducing any compliance costs associated with this measure. The estimated recurrent annual cost of compliance will be \$7 million after tax in the years following the introduction of the measure.

1.169 There will be no cash flow costs or benefits to employers arising from this change.

Administrative costs

1.170 The administrative costs to the ATO of the measure are estimated to be \$2 million: \$1.3 million in the year ended 30 June 1999 and \$700,000 in the year ended 30 June 2000. These costs will include preparing educational material to disseminate to employers, training staff to answer queries regarding the new measure, preparing new stationery, and modifying internal systems to cope with the new measure.

Impact on government revenue

1.171 The gain to revenue associated with this measure will flow from:

- a reduction in the number of taxpayers claiming income-tested concessions and a reduction in the amount of concessions; and
- an increase in the number of taxpayers liable for income-tested surcharges and other obligations and increases in those surcharges and obligations.

1.172 Overall, the measure is expected to raise \$255 million in 2000-2001; \$260 million in 2001-2002; \$265 million in 2002-2003; and \$270 million in 2003-2004.

Consultation

1.173 Limited consultation has been undertaken with representatives of the accounting profession, industry bodies and the taxation profession. Concerns were expressed that there was insufficient time for employers to implement the new system by the commencement date. Concerns were also raised about the practicalities of reporting certain fringe benefits on group certificates. These concerns have been addressed by excluding car parking benefits and benefits that constitute meal entertainment from this measure.

Conclusion

1.174 There is only one feasible option (in terms of cost and complexity of the tax law) for implementing the Government's proposal. Hence, from the 1999-20000 FBT year, employers will be required to report the grossed-up taxable value of certain benefits on employee group certificates.

1.175 The proposed amendments will allow the Government to take fringe benefits into account when determining an employee's liability to tax surcharges, levies and other income tested obligations. This will minimise the opportunities available to employees to swap cash salary for fringe benefits to avoid surcharges and levies and to access rebates to

which they would not otherwise be entitled on the basis of their total remuneration. The proposed amendments are a further step toward salary equivalent treatment of fringe benefits.

1.176 The Treasury and the ATO will monitor this taxation measure, as part of the whole taxation system, on an ongoing basis. In addition, the ATO has consultative arrangements in place to obtain feedback from professional and business associations through other taxpayer forums.