

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INCOME TAX LAWS AMENDMENT (MEDICARE LEVY) BILL 1983

MEDICARE LEVY BILL 1983

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,
the Hon. P.J. Keating, M.P.)

GENERAL OUTLINE

Income Tax Laws Amendment (Medicare Levy) Bill 1983

This Bill will amend the income tax law to -

- . provide for the imposition of a Medicare levy, based on taxable income, to be assessed and collected together with, but separately identified from, income tax;
- . exempt from levy veterans, war widows, Defence Force personnel - and those holders of pensioner health benefits cards, health benefits cards and health care cards who receive their cards on a non-income-tested basis - who do not have dependants or whose dependants are also eligible for free health care.

The Bill also amends the tax sharing legislation to make it clear that receipts of levy are not part of the revenue pool in which the States and local government share.

Medicare Levy Bill 1983

This Bill will -

- . declare the basic rate of levy for 1983-84 of 0.416%, that is, 5/12ths of the full year rate of 1%, reflecting the introduction of the Medicare arrangements from 1 February 1984, and establish 1% as the rate for the subsequent year;
- . exempt from levy individuals with taxable incomes of \$6698 or less and families and sole parents with family income of \$11,141 or less; the family or sole parent threshold to be raised by a further \$1100 for each dependent child or student;
- . place a maximum of \$700 (\$291.20 in 1983-84) on the annual amount of levy that is payable by an individual or a married couple;
- . reduce by one-half the levy payable by those veterans, war widows, Defence Force personnel, and holders on a non-income tested basis of pensioner health benefits cards, health benefits cards and health care cards, who are required to pay levy because they have dependants eligible for Medicare benefits.

Main features of the Medicare levy

The Medicare levy will be payable on taxable incomes for 1983-84 and subsequent years. Main features of the levy arrangements are :

- . the levy will be payable on the taxable income of an individual who at any time during the income year - for 1983-84 the period 1 February 1984 to 30 June 1984 - is, for income tax purposes, a resident of Australia (new section 251S in conjunction with new section 251R(7) of the Income Tax Assessment Act);
- . the levy will be payable on trust income to which a resident individual is presently entitled, and on trust income (except trust income of a deceased estate) to which no beneficiary is presently entitled (new section 251S);
- . the basic rate of levy will be 0.416 per cent of the taxable income of the individual or trustee for 1983-84 and 1 per cent for the subsequent year (clauses 6 and 12 of the Medicare Levy Bill 1983 - the "Levy Bill");
- . the maximum amount of levy payable by any person or "family" (as defined) will be \$291.20 for 1983-84 and \$700 for the subsequent year (clauses 8 and 12 of the Levy Bill);
- . no levy will be payable by :-
 - . a person whose taxable income is below \$6699 (clause 7 of the Levy Bill); or
 - . a married couple where the sum of the couple's taxable incomes is less than \$11,142 or by a sole parent where his or her taxable income is less than \$11,142; for each dependent child or student maintained by a married couple or sole parent, the threshold for payment of the levy to be increased by \$1100 (clause 9 of the Levy Bill);
- . relief from levy will also be provided as follows :-
 - . veterans and war widows entitled under repatriation arrangements to full free medical treatment, and who have no dependants other than dependants who are also so entitled, will be exempt from the levy (new sections 251T and 251U of the Income Tax Assessment Act);
 - . a veteran or war widow who is entitled under repatriation arrangements to full free medical treatment, but who has one or more dependants who are not so entitled, will pay levy of one-half the amount otherwise payable (new section 251U of the Income Tax Assessment Act and clause 10 of the Levy Bill);

- . relief corresponding with that for veterans and war widows is to be granted to members of the Defence Forces and to those persons who receive pensioner health benefits cards, health benefits cards or health care cards on other than an income tested basis (new sections 251T and 251U of the Income Tax Assessment Act and clause 10 of the Levy Bill);
- . where a person is entitled to relief from levy in one of these ways for part only of the year of income, an appropriate part of the full year relief will be granted (clause 10 of the Levy Bill);
- . Medicare levy will be collected in conjunction with, and in the same way as, income tax (including provisional levy and PAYE deductions) and taxation notices of assessment will specify the amount of Medicare levy that is involved (new section 251R(6) and new section 251X of the Assessment Act);
- . for the general purposes of the income tax law the Medicare levy will be treated as income tax so that, for example, a person who receives income from overseas that is included in his taxable income will be entitled to a credit for any foreign tax on that income against his Australian liability to income tax and Medicare levy (new sub-section 251R(6) of the Assessment Act and the amendments to the Income Tax (International Agreements) Act proposed by clause 4 of the Income Tax Laws Amendment (Medicare Levy) Bill).

A more detailed explanation of each clause of the Bills is provided below.

INCOME TAX LAWS AMENDMENT (MEDICARE LEVY) BILL 1983

Clause 1 : Short title and citation

By sub-clause (1) of this clause the amending Act is to be cited as the Income Tax Laws Amendment (Medicare Levy) Act 1983.

Sub-clause (2) facilitates references to the Income Tax Assessment Act 1936 which, in the Bill, is referred to as the Principal Act.

Clause 2 : Commencement

By this clause, the amending Act will come into operation on the day on which it receives the Royal Assent. But for this clause the amending Act would, by reason of sub-section 5(1A) of the Acts Interpretation Act 1901 come

into operation on the twenty-eighth day after the date of Royal Assent. This clause will allow the carrying out of administrative and other arrangements necessary to bring the levy into effect from 1 February 1984.

Clause 3 : Medicare levy

Clause 3 repeals present Part VIIB of the Principal Act dealing with health insurance levy and inserts a new Part VIIB dealing with the Medicare levy in its place. The sections in the new part are sections 251R to 251Y. A detailed explanation of each of these new sections follows.

Section 251R : Interpretation

Sub-section (1) of the new section contains two draft definitions. One of these provides that references in Part VIIB to "Medicare levy" or "levy" are to mean Medicare levy imposed as such under another Act as assessed under the Principal Act. The Medicare Levy Bill 1983 will impose for 1983-84 the Medicare levy payable under Part VIIB.

The other definition, "Repatriation Acts", is used in new section 251U, which specifies the categories of people (including certain veterans and war widows receiving repatriation benefits) who are to be given relief from Medicare levy. The definition refers to the various Acts under which repatriation benefits are provided to the beneficiaries in question.

Sub-section (2) of section 251R sets out the circumstances in which, for purposes of the relief from levy that is to be given to veterans, war widows, Defence Force personnel and certain health benefits card holders, etc., a person is to be taken to be a dependant of a taxpayer. A feature of this arrangement is that a taxpayer of the kind in question who has a dependant will be given relief from levy only if each of his or her dependants are also entitled to free health care, e.g., under repatriation arrangements.

Subject to sub-sections (3), (4) and (5), a person will be a dependant of a taxpayer if the person is an Australian resident to whose maintenance the taxpayer contributes, and is the spouse of the taxpayer, a child under 16 or a full-time student child 16 years of age or over but less than 25 years. Under section 6 of the Principal Act, which will apply in the interpretation of section 251R, a child of the taxpayer includes an adopted child, a step-child or an ex-nuptial child.

Sub-section (3) qualifies the earlier rule under which a student child aged 16 to 25 may be taken to be a dependant of a taxpayer. It will have the effect that such a child will not be taken to be a dependant of the taxpayer for levy purposes if, although the taxpayer contributes to the maintenance of the child, the taxpayer would not have been entitled to a taxation rebate for the child but for the replacement of such rebates by family allowances. In practical

terms, a taxpayer who contributes to the maintenance of a student child who has a separate net income in excess of \$1785 will not be taken to have that child as a dependant.

Sub-section 251R(4) provides, in effect, that where the parents of a child are divorced or separated (paragraph (a) of the sub-section) and the child would otherwise be taken to be a dependant for levy purposes of each of those parents during a period after they became divorced or were separated (paragraph (b)) then the child is to be taken as being a dependant during the period concerned solely of the parent who was entitled, in that period, to family allowances for the child.

Sub-section 251R(5) picks up a concept expressed in section 159J(5) of the Principal Act. It sets out, as a prima facie rule, that where the taxpayer and one of the persons mentioned in sub-section (2) are residing together, the taxpayer is to be regarded as contributing to the maintenance of that person.

Sub-section (6) is designed to enable the general provisions of the income tax law governing the determination of liability to income tax, and providing for its assessment and collection (including collection through PAYE and provisional tax arrangements), to apply for Medicare levy purposes. With stated exceptions, references in the Principal Act to income tax or tax are to be read as including the levy. The stated exceptions have the purpose of ensuring that the income tax provisions that are mentioned operate in the same way as now, i.e., unchanged by the existence of the proposed levy.

Sub-section (7) of section 251R is related to the proposal that the Medicare arrangements are to apply from 1 February 1984. The term "prescribed person" that it refers to is defined in section 251U and refers to a person who by reason of being, for example, a member of the Defence Forces, is to be free from levy. The determination of whether a person is to be relieved from paying levy is, by section 251T, to be made in relation to the year of income concerned and, as the new arrangements are to apply from 1 February 1984, sub-section (7) specifies that for 1983-84 this determination is to be on the basis of the 5 months period from 1 February 1984.

Section 251S : Medicare levy

This is the basic section providing for the payment of levy. Levy will first be payable for the financial year 1983-84 that is, on the taxable income of the 1983-84 and subsequent years of income.

Sub-section (1) sets out three circumstances in which a person may be liable to the levy.

Paragraph (a) is the main provision. It applies to an individual who at any time during the year of income is a resident of Australia for income tax purposes. Subject to other provisions, the levy is to be payable on the individual's taxable income as determined for income tax purposes. A person is, basically, to be subject to levy if he or she was a resident of Australia for any part of the year. However, paragraph 251U (1)(d) will effectively relieve a person from levy that is attributable to the part of the year for which the person was not a resident.

The reference to sub-section 7A(2) concerns people who are residents of Norfolk Island, Cocos (Keeling) Islands and Christmas Island. These people are not to be treated as residents of Australia for purposes of the levy and will thus be exempt from it.

Paragraph (b) of sub-section (1) relates to beneficiaries who are presently entitled to trust income but who are under a legal disability, e.g., infancy. The Principal Act, in section 98, provides for the trustee to be assessed on the beneficiary's share of trust income in these circumstances. By reason of paragraph (b), the trustee will be liable to pay Medicare levy in an assessment under section 98 if the beneficiary would, having regard to all the proposed levy arrangements, be liable to pay the levy if he or she were personally assessed on the income.

Paragraph (c) relates to assessments in which the trustee is called upon to pay tax in respect of trust income to which no beneficiary is presently entitled. These assessments may be raised under either section 99 or section 99A of the Principal Act, and the income concerned is normally destined to be paid to individuals who are residents of Australia. Paragraph (c) requires that Medicare levy be payable on this income except where the trust estate is a deceased estate.

Sub-section (2) makes it clear that any levy payable by a person is in addition to any income tax payable.

Section 251T : Levy not payable by prescribed persons or by certain trustees

This section has the important function of conferring an exemption from the levy on a person who, for the whole of the year of income (in 1983-84 the whole of the period of 5 months from 1 February 1984) falls within a category referred to in sub-section 251U and who during the whole of the period had no dependants or whose dependants also fall within one of those categories.

Section 251U refers to a person who is entitled to levy relief in this way as a "prescribed person".

Paragraph (a) of section 251T achieves the purpose of exempting "prescribed persons" in relation to assessments against the "prescribed person" concerned while paragraph (c) has a corresponding function where the assessment in respect of a person under a legal disability is made against a trustee who is to be assessed in respect of the income of that person.

Paragraph (b) alters the effect of section 251S(1)(c) in relation to trustees of certain trusts for persons in Norfolk Island, Cocos (Keeling) Islands and Christmas Island. The trustees of these trusts, that qualify as "Territory Trusts" for purposes of provisions that give exemption from Australian tax for foreign source income, will thus be freed from Medicare levy. As noted elsewhere, residents of the territories mentioned are not to be liable to pay the levy.

Section 251U : Prescribed persons

The purpose of this section is to identify the classes of persons who, if the relevant tests are met, will be entitled to freedom from the levy by reason of coverage under repatriation or Defence Force conditions of service arrangements or for other specified reasons. For this purpose it ascribes a meaning to the expression "prescribed person".

Sub-section (1) sets out, subject to the section, six situations in which a person may be a "prescribed person" entitled to relief from the levy.

Paragraph (a) treats as a "prescribed person" someone who is entitled to full free medical treatment as a member of the Defence Forces or as a relative of, or a person otherwise associated with, a member of the forces.

Paragraph (b) similarly treats as a "prescribed person" a person entitled under the repatriation legislation to full free medical treatment.

By paragraph (c) those people who are at present entitled to coverage for health care by reason of being entitled to a Health Care Card, a Pensioner Health Benefits Card or a Health Benefits Card on a non-income-tested basis will be treated as prescribed persons. (A person who is entitled to one of these cards on an income-tested basis for the whole year will only be liable to pay levy, of course, if his or her taxable income or family income, as relevant, exceeds the low income thresholds described in the notes on clause 7 of the Levy Bill.)

Paragraph (d) covers the situation of a person who takes up residence in Australia during an income year, or who ceases to be an Australian resident during the course of a year. For the period of the year that the person is not an Australian resident, he or she will be regarded as a "prescribed person". Residents of Norfolk Island, Cocos (Keeling) Islands and Christmas Island are not to be treated as residents of Australia for the purposes of the levy and will thus be exempt from it.

Paragraph (e) has the effect that foreign government representatives and their staff and families will, in general, be taken to be prescribed persons for the purposes of the Medicare levy provisions and, accordingly, as exempt from the levy. Such a person would not be exempt from levy under paragraph (e) or under that paragraph when it is read in conjunction with the other provisions of section 251U, where the person, or his dependants, if any, are Australian citizens or ordinarily reside in Australia.

Under the Medicare arrangements visitors to Australia whose approved length of stay is less than 6 months are not to be entitled to Medicare benefits. If such visitors fall to be treated as residents for income tax purposes they will, upon certification by the Minister for Health, be exempt from levy in respect of the period of time that they and their dependants, if any, were not entitled to Medicare benefits. Paragraph (f) when read in conjunction with the other provisions of section 251U is to that effect.

Sub-section (3) has the purpose of providing relief, from one-half of the levy that would otherwise be payable, to a repatriation beneficiary, or a serviceman or woman who has dependants not themselves entitled under repatriation or defence force arrangements to full free medical treatment. It also provides relief from levy to those holders - on a non-income-tested basis - of Pensioner Health Benefits, Health Benefits and Health Care Cards who have dependants who are not themselves covered for full free medical treatment in one or other of the ways in question.

Sub-section (3) achieves these objectives by specifying that if, but for the sub-section, a repatriation beneficiary or serviceman or woman or relevant card holder would not be regarded as a "prescribed person" and, but for the requirement in sub-section (2), that each dependant be a "prescribed person", the person would be a "prescribed person", the person is to be taken to be such a person for one-half of the period concerned. Clause 10 of the Medicare Levy Bill will then apply, with the consequence that the amount of levy for the period will be one-half of the amount otherwise payable.

Sub-section (4) is a drafting measure which provides that expressions used in section 251U that are defined by the Vienna Convention on Diplomatic Relations (paragraph (a)) or the Vienna Convention on Consular Relations (paragraph (b)) are to have the same respective meanings in section 251U as those expressions have in the relevant Convention.

Section 251V - Penalty for false statement

This section is modelled on sub-section 226(2) of the Principal Act. Sub-section 226(2) makes liable to statutory additional tax, equal to double the amount of tax in question, any taxpayer who includes in his or her return a claim for a deduction or rebate for expenditure greater than that incurred, who omits from his or her return any assessable income or who

makes other false claims affecting his or her liability. The Commissioner of Taxation is given authority to remit the additional tax, in whole or in part, where the circumstances are thought to warrant it. Section 251V will correspondingly make liable to statutory additional levy, of double the amount in question, any taxpayer who includes in his or her return a false statement as to a matter affecting his or her liability to pay levy. It will also contain authority for the Commissioner to remit all or part of the additional levy.

Sub-section (1) is the main provision to this general effect. Thus, for example, a person who lodges a return claiming to have been covered by repatriation arrangements throughout the year of income when, in fact, he or she was not so covered and is not otherwise entitled to relief from levy, will be made liable to additional levy of double the amount properly payable on his or her taxable income.

Sub-section (1) is, however, subject to sub-section (2), which authorises the Commissioner to remit the whole or any part of the additional levy where he thinks that to be appropriate. Subject to sub-section (3), a taxpayer will have rights of objection and reference to a Taxation Board of Review should he or she consider that the Commissioner has not sufficiently remitted any additional levy that is made payable by sub-section (1).

Sub-section (3) relates to such references to a Board of Review and corresponds with provisions in the Principal Act dealing with the remission of statutory additional tax under sub-section 226(2). By sub-section 193(2) of the Principal Act, a taxpayer's right to have the question of remission of statutory additional tax under sub-section 226(2) reviewed by a Board of Review is limited to situations where, broadly speaking, the Commissioner does not remit the additional tax to a level lower than 10 per cent per annum for the period from the due date of the return to the date of assessment. Sub-section (3) provides correspondingly in relation to the additional levy under section 251V.

Sub-sections (4) and (5) provide, in effect, that where a taxpayer is prosecuted for a false statement, the making of which led to a liability for statutory additional levy, the additional levy is not to be payable unless and until the taxation prosecution is withdrawn. As is the case for income tax offences of this nature, therefore, additional levy is not payable where a levy offence is punished by a monetary penalty imposed by a Court.

Section 251W : Regulations

This section will authorise the making of regulations requiring persons (defined by sub-section (2) to include authorities and officers of the Commonwealth or a State) to supply information to the Commissioner for purposes of administering the levy. Information that could be the subject

of such regulations is disclosure of the extent to which particular people have, throughout the year of income, been entitled to repatriation benefits, Health Care Cards, etc.

Section 25lX : Notification of Medicare levy on notices of assessment

The broad purpose of this section is to provide a means of notifying people that part of their liability as shown on a taxation notice of assessment is in respect of Medicare levy. This notification will, of course, occur only where a person is not exempt from levy, e.g., through being a serviceman without dependants. The section provides that notices of assessment are to specify the amount of any Medicare levy included in the assessment.

Section 25lY : Calculation of provisional tax on estimated income

This section should be read in conjunction with sub-section 25lR(6). By that sub-section references in the Income Tax Assessment Act, including the provisional tax provisions, include references to levy.

The broad approach is that, so far as reasonably practicable, the levy should be included in the provisional tax liability of taxpayers but only where, on assessment of income of the year for which provisional tax is levied, they will be liable to pay the levy.

Section 25lY concerns people who exercise the rights available to them under section 22lYDA of the Principal Act to have their provisional tax for a year based on their estimated taxable income for the year, rather than on income of the preceding income year. The object of the section is to enable calculation of an appropriate amount of levy having regard to the various circumstances that may affect whether levy is payable and the amount of levy payable.

Sub-clause 3(1) of the Bill provides for the repeal of the existing health insurance levy provisions which applied for the income years that commenced on 1 July 1976, 1977 and 1978. By sub-clause 3(2) of the Bill the repeal of these provisions will not apply to assessments in respect of years of income mentioned.

By sub-clause 3(3) of the Bill new sections 25lR to 25lY of the Income Tax Assessment Act which are being inserted in the Principal Act by sub-clause 3(1) are to apply to assessments in respect of the year of income that commenced on 1 July 1983 and all subsequent years of income.

Clause 4 : Consequential Amendments

By this clause the Income Tax (International Agreements) Act 1953, the Local Government (Personal Income Tax Sharing) Act 1976 and the States (Tax Sharing and Health Grants) Act 1981 are to be amended in consequence of the introduction of the Medicare levy. Sub-clause 4(1) of the Bill provides that the amendments in question are to be as set out in the Schedule to clause 4.

Sub-clause 4(2) when read with the Schedule to clause 4 will amend the definition of "Australian tax" in sub-section 3(1) of the Income Tax (International Agreements) Act 1953 and the definition of "the average rate of Australian tax" in sub-section 15(1) of that Act for the purposes of assessments in respect of income of the year of income that commenced on 1 July 1979 and all subsequent years of income. These amendments are consequential on the repeal of the existing health insurance levy provisions which repeal is to apply to assessments in respect of the year of income that commenced on 1 July 1979 and all subsequent years of income (see notes on sub-clause 4(2)).

Sub-clause 4(3) when read with the Schedule has the effect that new sub-section 3(10) of the Income Tax (International Agreements) Act 1953 will apply to assessments in respect of income of the year of income that commenced on 1 July 1983 and all subsequent years of income.

New sub-section 3(10) deems the Medicare levy to be income tax for the purposes of Australia's double taxation agreements with other countries. Under the income tax law, Australians who receive income from overseas that is included in their taxable income are entitled to a credit for foreign tax on that income. This amendment will ensure that these arrangements for relief of double taxation apply to both income tax and Medicare levy.

Under present section 4A of the Local Government (Personal Income Tax Sharing) Act 1976 the Commissioner of Taxation is required to determine each year within one month of the close of the income year the amount that, in his opinion, would have been the amount of net personal income tax collections for the year if special surcharges had not been imposed by the Commonwealth and special rebates if any had not been provided for by the Commonwealth. Each State is entitled to a payment in respect of each year by way of financial assistance to local government of a percentage of the figure (the base figure) determined by the Commissioner. Under section 4A as amended by the Schedule the Commissioner will now have to determine the amount that in his opinion would have been the amount of net personal income tax collections for the year if Medicare levy and special surcharges (if any) had not been imposed and special rebates (if any) had not been provided for. The effect of this amendment is to exclude the Medicare levy from income tax collections for the purposes of the local government tax sharing arrangements.

The amendments being made by the Schedule to the States (Tax Sharing and Health Grants) Act 1981 correspond to those being made by the Schedule to the Local Government (Personal Income Tax Sharing) Act 1976. The effect of the amendments will be to exclude from the collections of revenue in which the States are to share collections of Medicare levy.

MEDICARE LEVY BILL 1983

Clause 1 : Short title

By this clause the Act imposing Medicare levy for 1983-84 will be cited as the Medicare Levy Act 1983.

Clause 2 : Commencement

This clause, in providing for the Medicare Levy Act to come into operation on the day on which it receives the Royal Assent, parallels clause 2 of the Income Tax Laws Amendment (Medicare Levy) Bill which provides that the Medicare levy provisions in the Income Tax Assessment Act are to come into operation on the date of Assent to that Bill.

Clause 3 : Interpretation

Sub-clause (1) contains formal drafting definitions providing shorthand references to the Income Tax Assessment Act and the Medicare levy.

Sub-clause (2) is also a formal provision that relates references to taxable income or net income in the Bill to taxable income or net income of the relevant year of income.

Under the levy arrangements a legally married couple whose combined taxable incomes do not exceed a certain amount are not to be required to pay levy. There is also to be a ceiling on the combined amount of levy payable by a legally married couple. The relevant time for determining whether a couple are legally married for these purposes is the last day of the year of income.

Sub-clause (3) modifies the classes of people who would otherwise be taken as legally married for these purposes. By paragraph (a) of the sub-clause a couple who have separated will not be taken to be legally married for these purposes.

By paragraph (b) of sub-clause 3(3) a person whose spouse has died during the year and who has not re-married at year's end will be taken as legally married for the purposes in question.

By sub-clause 3(4) expressions in the Bill that are also used in the Medicare levy provisions of the Income Tax Assessment Act are to have the meaning they have in those provisions.

Clause 4 : Incorporation

This clause provides for the Levy Bill to operate in conjunction with the relevant Medicare levy provisions of the Income Tax Assessment Act.

Clause 5 : Imposition of Medicare levy

This clause formally imposes a Medicare levy that is payable in accordance with proposed new Part VIIB of the Income Tax Assessment Act. Subsequent clauses deal with the rate of levy and with various circumstances affecting the amount, if any, of levy payable.

Clause 6 : Rate of levy

This clause fixes the rate of Medicare levy for 1983-84. The rate is to be 0.416 per cent of the taxable income of the entire year from 1 July 1983 to 30 June 1984. Where a person is entitled to relief from levy for part of the year abatement of the amount of levy payable is provided for by clause 10.

Sub-clause (1) will apply in relation to individual taxpayers. By section 251S of the Principal Act levy is payable by an individual who is a resident of Australia for any part of the income year.

Sub-clause (2) declares the rate of levy payable by the trustee of a trust estate assessable under section 98 of the Income Tax Assessment Act. Trustees are liable to be assessed to income tax under section 98 in respect of trust income to which a beneficiary who is under a legal disability, e.g., infancy, is presently entitled and may, by section 251S of the Act, be subject to the levy. The liability of such a trustee to pay levy may be affected by clause 11 of the Bill.

Sub-clause (3) declares for 1983-84 the rate of 0.416 per cent on income assessable to a trustee other than a trustee of a deceased estate under section 99 or section 99A of the Income Tax Assessment Act. Assessments under sections 99 and 99A are those in respect of trust income to which no beneficiary is presently entitled, and a liability for levy in these circumstances is also created by section 251S of the Income Tax Assessment Act.

Clause 7 : Levy in case of small income

The purpose of this clause is to grant relief from Medicare levy to people deriving low incomes.

By sub-clause 7(1) a taxpayer whose taxable income for 1983-84 is \$6698 or less is not to be required to pay levy.

Where a taxpayer's taxable income for 1983-84 exceeds \$6698 but does not exceed \$7050, levy is to be payable but the amount of levy payable is by sub-clause 7(2) to be limited to 8.32% of the amount of the excess of the taxable income over \$6698. The amount of levy ascertained in this way is to be further reduced by any reduction to which the person is entitled under clause 9 of the Bill or if the person was a prescribed person for part of the year of income.

Clause 8 : Maximum amount of levy

The purpose of this clause is to set a limit or "ceiling" on the amount of levy payable by a taxpayer or a legally married couple. For 1983-84 the ceiling (before any reduction to which the taxpayer is entitled by reason of being a prescribed person for part of the year) is to be \$291.20. Sub-clause 8(1) is to that effect.

Where a couple are legally married at the last day of the year of income they are, by sub-clause 8(2) to be eligible to share in the one "family" ceiling of \$291.20. This ceiling will come into operation where the sum of the taxable incomes of the husband and wife exceed \$70,000. Once the provision is triggered by the combined taxable income of the couple exceeding \$70,000 the amount of levy payable by each of the couple will be limited to \$145.60 (one-half the ceiling) plus the amount by which his or her spouse's levy liability (before any reduction to which the spouse is entitled by reason of being a prescribed person for part of the year of income) is less than \$145.60.

Under section 251S levy is to be payable in an assessment under section 99 of the Income Tax Assessment Act (other than in respect of a deceased estate) where the trustee is liable to pay tax on that income. This occurs where the income is \$417 or more. Against that background sub-clause 8(3) "shades in" the amount of levy where the income assessable under section 99 is marginally in excess of the levy-free amount of \$416. It also sets, for assessments under both sections 99 and 99A, a limit of \$291.20 on the amount of levy payable for 1983-84 (equivalent to a full year ceiling of \$700).

Clause 9 : Amount of levy - person who has spouse
or dependants

Very broadly stated the purpose of this clause is to grant relief from Medicare levy to a person who has a family if the "family's" income is not greater than a threshold amount.

Sub-clause (1) specifies two conditions for exemption from levy under this provision. The first is that the person be legally married at the last day of the year of income or that the person be entitled to a rebate in his or her assessment in respect of the year of income for a daughter-housekeeper, or a housekeeper or as a sole parent. The second condition is that the income of the person's family (i.e. the taxable income of the person plus that of his or her spouse, if any) does not exceed the family income threshold in relation to the person (i.e., \$11,141 plus \$1100 for each dependent child or student of the taxpayer or his or her spouse).

Sub-clause (2) in effect "shades-in" the amount of levy payable by a couple, or a sole parent, where the couple or sole parent is not entitled to exemption from levy by sub-clause (1), because the "family" income exceeds the relevant family income threshold by a small or moderate amount. In such circumstances the amount of levy payable by the taxpayer is to be reduced in accordance with a formula specified in the clause. The effect of the clause is to limit the levy payable by the taxpayer (before the application of any reduction to which the taxpayer is entitled as a part year prescribed person) to 8.32% (7.904% "shading-in" rate plus 0.416% levy rate) of the excess of the "family" income over the "family" income threshold.

Sub-clause 9(3) applies in the situation where both of a married couple are levy payers. In that situation each of the couple would, but for sub-clause (3), be entitled to have his or her levy liability reduced by the amount calculated under sub-clause 9(2). Sub-clause (3) avoids that result by providing, in effect, that where each of a legally married couple are levy payers, any reduction in levy calculated in accordance with sub-clause (2) is to be apportioned between the couple on the basis of their taxable incomes.

For sub-clause (4) to operate two circumstances must be met. The first is that sub-clause (3) must operate to apportion the reduction in levy - ascertained in accordance with sub-clause 9(2) - between the married couple (paragraph (a) of the clause). The second is that one of a couple's share of the reduction amount ascertained in accordance with sub-clauses 9(2) and 9(3) exceeds the amount of levy he or she would be required to pay but for clause 10 (paragraph (b)). Where those circumstances are met the clause will operate to reduce the levy payable by the spouse of the person by the excess.

clause 9. Sub-clause (5) defines two of the terms used in

"Family income" is defined by the sub-clause to mean for each of a legally married couple the taxable income of the taxpayer plus that of his or her spouse, and for a person other than a legally married person (generally these will be sole parents), his or her taxable income.

"Family income threshold" is defined by the sub-clause to mean \$11,141 increased by \$1100 for each dependent child or student in respect of whom the taxpayer or his or her spouse, if any, would have been entitled to an income tax dependant rebate if those rebates had not been replaced by family allowances.

Sub-clause (6) provides that in determining the "family income threshold" of a person who is not a legally married person at the last day of the year of income, a child or student shall not be taken into account in calculating the family income threshold of that person unless the person is receiving family allowances for the child or student. This will avoid each of a separated couple being able to increase their threshold on account of the child or student.

Clause 10 : Reduction of levy - person who is prescribed person for part of the year of income

The purpose of this clause is to give a reduction in the amount of levy that would otherwise be payable under preceding provisions where the taxpayer is, by reason of entitlement to free medical treatment (see notes on page 7) eligible for relief from the levy during part only of the year.

People entitled to relief from the levy for such reasons are referred to in the legislation as "prescribed persons" and the meaning of that expression is fixed by section 251U of the Income Tax Assessment Act. By section 251T of that Act, a taxpayer is freed entirely from the levy if he or she was a prescribed person during the whole of the year of income.

Clause 10 will apply, for example, where a person is a member of the Defence Force during part only of the year.

Another situation in which clause 10 will apply is where a person who, throughout the year is entitled to free medical treatment, has dependants who are not so entitled. The legislation will give that person relief from one-half of the levy by deeming him or her to be a prescribed person for one-half of the year - section 251U(3).

Clause 11 : Levy payable by a trustee assessable under section 98 of the Assessment Act

The purpose of this clause is to calculate the levy liability of a trustee assessed under section 98 of the Income Tax Assessment Act in respect of the share of trust income of a beneficiary who is under a legal disability (e.g., a minor) in the same way as if that income were assessed to the beneficiary concerned.

Levy is imposed on the trustee by clause 6(2) of the Bill and the effect of clause 11 is that if the beneficiary were to have the benefit of one of the ceilings, or were to have relief from the levy by reason of, for example, being a child or a member of the Diplomatic Corps, if he or she were to be assessed on the income, the same rules are to apply where the income is assessed to the trustee.

Clause 12 : Financial years for which levy is payable

By sub-clause (1) the Medicare levy is payable for the 1983-84 financial year upon taxable income of that year.

Sub-clause (2) provides as an interim measure that, until the Parliament formally otherwise declares, the levy imposed by the Bill is also to apply for the 1984-85 year. A provision of this kind is needed for cases where it is

necessary early in the financial year to make an assessment in respect of income of that year, e.g., where a person is leaving Australia.

Because the provisions of the Bill in its application for 1983-84 are constructed on the basis that the levy is notionally to apply for only 5 months of 1983-84, sub-clause (3) provides that for the interim operation of sub-clause (2) in 1984-85, relevant percentages and amounts in the Bill are to be read as increased to the appropriate full year percentage or amount.

