

1990-91-92

THE PARLIAMENT OF THE COMMONWEALTH OF
AUSTRALIA

THE HOUSE OF REPRESENTATIVES

TAXATION LAWS AMENDMENT BILL (NO.6) 1992

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Circulated by the authority of the Treasurer,
the Hon John Dawkins, M.P.)



Division 2 - Expenditure on non-compulsory uniform or wardrobes

General outline and financial impact

The amendments will amend the Taxation Laws Amendment Bill (No.6) to:

- postpone the commencement of the new provisions in relation to non-compulsory uniforms or wardrobes until 1 July 1993.
- enable taxpayers to obtain a deduction for expenditure incurred in relation to non-compulsory occupational clothing where the design of the uniform or wardrobe is entered on the Register of Approved Occupational Clothing.
- set down administrative procedures and arrangements relating to the Register of Approved Occupational Clothing, including the making of decisions in relation to applications for admission to the Register.
- include definitions for the terms 'approved occupational clothing guidelines', 'design', 'Register of Approved occupational Clothing' and 'TCFDA'.

The financial impact of the amendments cannot be estimated at this stage.

Clauses involved in the proposed amendments

Clause 4: Will be amended so that the date of effect of the proposed subsection 51AL(1) will be 1 July 1993.

Clause 4: Will be amended to insert a new subsection 51AL(1A) which will allow a deduction for non-compulsory clothing worn by an employee where the designs of that clothing have been entered on a Register of Approved Occupational Clothing.

Clause 4: Will insert provisions governing the administration of the Register of Approved Occupational Clothing.

Clause 4: Will insert definitions relating to a number of the terms contained in the proposed amendments.

Expenditure on occupational clothing

Summary of proposed amendments

Purpose of amendment:

- to postpone the commencement of the proposed section 51AL until 1 July 1993.
- to enable taxpayers to obtain a deduction for expenditure incurred in relation to non-compulsory occupational clothing where the clothing is entered on the Register of Approved Occupational Clothing (the Register). The Register is to be administered by the Textiles, Clothing and Footwear Development Authority.

Date of Effect: 1 July 1993.

Background to the legislation

In the Budget the Government announced its decision to deny a tax deduction for expenses incurred in relation to certain 'corporate' uniforms or wardrobes where the wearing of the uniform or wardrobe was not made compulsory by the employer. The provisions giving effect to this announcement are contained in the Bill.

The Government has decided to target more closely the areas of potential abuse in relation to occupational clothing. Consequently, the Bill is to be amended to allow a deduction to employers for expenditure on non-compulsory occupational clothing where the clothing is entered on a Register of Approved Occupational Clothing. This Register is to be established and administered by the Textiles, Clothing and Footwear Development Authority (TCFDA).

Explanation of proposed amendments

Change in date of effect

To allow taxpayers and industry time to adjust to the new arrangements, the implementation of the measures in relation to occupational clothing in the Bill will be postponed until 1 July 1993.

As a result, the provisions in the Bill in relation to expenditure on both compulsory and non-compulsory uniforms and wardrobes will now have effect from 1 July 1993. *[Amendment 1]*

Expenditure on non-compulsory uniforms or wardrobes

The proposed subsection 51AL(1), which has the effect of denying a deduction for expenditure incurred in relation to a non-compulsory uniform or wardrobe, will be amended. The amendments will ensure that expenditure on a non-compulsory uniform or wardrobe will be allowable if the designs of the set of one or more items of clothing to which the expense relates have been entered on the Register.

Expenditure on a non-compulsory uniform or wardrobe will only be allowable if:

- (a) at the time the expense was incurred by the employee, the designs of the set of one or more items of clothing to which the expense relates were entered on the Register of Approved Occupational Clothing to be kept under new subsection (3A); and
- (b) the applicant for the entry of the designs was the employer of the employee. *[Amendment 2, new subsection 51AL(1A) and Amendment 3, new subsection 51AL (3G)]*
- (c) the requirements of subsection 51(1) are satisfied.

In relation to requirement (a), the entry of a design onto the Register takes effect on either the day the decision was made to make the entry or alternatively, on an earlier date specified by the TCFDA where this earlier date is required by the employer. *[Amendment 3, new subsection 51AL(3N)]*

Register of Approved Occupational Clothing

The TCFDA will be responsible for keeping the Register. *[Amendment 3, new subsection 51AL(3A)]*

The Register will list those designs of sets of one or more items of clothing which the TCFDA is satisfied meet the criteria set out in the approved occupational clothing guidelines. *[Amendment 3, subsection 51AL(3P)]*

Protective clothing is excluded from the types of designs which have to be submitted for approval to the TCFDA. *[Amendment 3, subsection 51AL(3G)]* This accords with the Budget announcement that the new measures will not apply to protective clothing, as defined in proposed subsection 51AL(5).

The TCFDA must make the Register available for inspection at any reasonable time by any person on request. *[Amendment 3, new subsection 51AL(3B)]*

The TCFDA is also required to provide information relating to entries on the Register to the Commissioner of Taxation, or his authorised officers, when requested to do so. *[Amendment 3, new subsection 51AL(3V)]*

Who may apply for a design to be entered on the Register?

Any employer may apply to the TCFDA for the designs of their particular non-compulsory uniform or wardrobe to be entered on the Register. *[Amendment 3, new subsection 51AL(3G)]* However, failure to have the designs registered will mean that employees will not be able to obtain a deduction for any expenditure incurred in relation to such clothing.

The amendments specifically require that it is an employee's **employer** who must make the application for entry of the design onto the Register. *[Amendment 2, new paragraph 51AL(1A)(b), Amendment 3, new subsection 51AL(3G)]*

Form of Application

The amendments prescribe that any application for entry onto the Register must be made in writing and in an approved form. Additionally, it must include all the information that the TCFDA requires to enable it to make a decision on the application. *[Amendment 3, new subsection 51AL(3H)]*

Guidelines

In entering a design of a set of clothing on the Register, the TCFDA must be satisfied that the design or designs meet the criteria set out in the "**approved occupational clothing guidelines**" (the Guidelines). *[Amendment 3, subsection 51AL(3P)]*

These Guidelines are to be formulated by the Treasurer. They will set out the criteria that must be satisfied before the TCFDA can enter a design onto the Register. *[Amendment 3, new subsection 51AL(3C)]*

The Treasurer must publish the guidelines in the Gazette and make them available to the public free of charge. *[Amendment 3, new subsection 51AL(3D)]*.

The instrument formulating the approved occupational clothing guidelines will be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901* *[Amendment 3, new subsection 51AL(3F)]*.

The amendments give an indication of what matters the Treasurer may have regard to in formulating the guidelines. The Treasurer's consideration is not, however, confined to these matters. The matters identified are:

- (a) the extent to which the clothing, when considered as a set, distinctively identify the wearer as a person associated, directly or indirectly, with:
 - (i) the employer; or
 - (ii) a group consisting of the employer, and one or more associates of the employer (within the meaning of section 26AAB) for the entry of the designs
- and ;
- (b) the nature of the business or activities carried on by the employer.

[Amendment 3, subsection 51AL(3E)]

Consideration of Application by TCFDA

Upon receiving an application the TCFDA must, within 90 days of receiving the application, decide to grant or refuse it. If the TCFDA has not made a decision within 90 days of receiving the application, or within 90 days of receipt of any additional information it may have requested of the applicant, then the TCFDA is deemed to have refused the application. Written notice of any actual decision must be given to the applicant. *[Amendment 3, new subsection 51AL(3J)(3K)(3L) and (3M)]*

The notice of decision must include a statement of the applicant's rights to review of the decision by the AAT and the applicant's entitlements to a statement setting out the findings on material questions on fact, the evidence on which these findings were based and reasons for the decision. *[Amendment 3, new subsection 51AL(3T)]*

Review of decision by AAT

Certain decisions of the TCFDA are reviewable by the AAT on the application of the employer. *[Amendment 3, new subsection 51AL(3S)]*

The reviewable decisions are decisions as to:

- (i) whether to refuse or grant an application for admission to the Register; *[New subsection 51AL(3J)]* or
- (ii) when an entry to the Register takes effect. *[New subsection 51AL(3N)]*

Adjustments to entries on the Register

The TCFDA may make an adjustment or alteration to the Register in two circumstances.

First, the TCFDA **must** remove an entry from the Register if requested to do so by the employer who applied for the entry. *[Amendment 3, new subsection 51AL(3Q)]*

Secondly, the TCFDA may correct a clerical error or an obvious mistake in an entry in the Register. If the TCFDA makes a correction, the correction takes effect on the day on which the entry originally took effect. *[Amendment 3, subsection 51AL(3R)]*

Examples of a clerical error would include where the entry incorrectly spells an applicant's name or misdescribes the design of an item of clothing listed on the Register. An obvious mistake would include where an entry has been admitted to the Register which clearly does not comply with the Treasurer's Guidelines; or a previously approved design is removed from the Register because it was thought that the applicant was seeking the removal of an approved design rather than requesting that a further design be admitted to the Register.

Variation to an approved design

If an employer changes a design which has been entered on the Register then a new application will have to be lodged with the TCFDA. A new application would be required in relation to both substantial changes (for example, if the entire uniform or wardrobe is replaced) and minor changes (for example, if an approved item of clothing such as a shirt or blouse is replaced).

The TCFDA must consider each variation as if it were a new application

The 'old' design would remain on the Register until the employer requests its removal. Employees would therefore still be able to obtain a deduction for expenditure in relation to cleaning and maintenance of the 'old' uniforms entered on the Register during a transition period in which a new uniform or wardrobe is put in place and admitted to the Register.

Glossary of commonly used terms

Term	Definition
Approved Occupational Clothing Guidelines	Guidelines made by the Treasurer <i>[Amendment 4, new subsection 51AL(3C)]</i>
Design	The term 'design' has been given a wide meaning to encompass any 'physical' characteristics in relation to the clothing making up a non-compulsory uniform or wardrobe. Physical aspects which would be contemplated when considering designs include features such as the colour, construction, durability, ornamentation, pattern and shape of the submitted item of clothing. <i>[Amendment 5, proposed subsection 51AL(5)]</i> Clothing is defined in proposed subsection 51AL(5).
Register of Approved Occupational Clothing	The Register required to be kept by the TCFDA under proposed. <i>[Amendment 3, new subsection 51AL(3A)]</i>
TCFDA	Textile Clothing and Footwear Development Authority. <i>[Amendment 6, subsection 51AL(5)]</i>

