



A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999

No. 18, 1999



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**An Act to implement A New Tax System by
imposing Medicare levy surcharge on reportable
fringe benefits totals of some employees without
private hospital insurance**

Contents

| | |
|---|----|
| Part 1—Preliminary | 2 |
| 1 Short title | 2 |
| 2 Commencement | 2 |
| 3 Definitions | 2 |
| 4 When does an insurance policy <i>provide</i> private patient hospital cover? | 3 |
| 5 Who is a <i>dependant</i> of a person? | 3 |
| 6 What is the <i>family surcharge threshold</i> ? | 3 |
| 7 When are people <i>married</i> ? | 4 |
| 8 Who is a <i>prescribed person</i> ? | 5 |
| 9 What is a person's <i>taxable income</i> for a year of income? | 5 |
| Part 2—Imposition of surcharge | 6 |
| 10 Imposition of Medicare levy surcharge | 6 |
| Part 3—Amount of surcharge payable | 7 |
| Division 1—General rule | 7 |
| 11 Amount of surcharge payable | 7 |
| Division 2—Amount of surcharge for single person without dependants | 8 |
| 12 Amount of surcharge for single person without dependants | 8 |
| Division 3—Amount of surcharge for single person with dependants | 9 |
| 13 Amount of surcharge for single person with dependants | 9 |
| Division 4—Amount of surcharge for married person | 11 |
| 14 Who does this Division apply to? | 11 |
| 15 Amount of surcharge if this Division applies for whole year | 12 |
| 16 Amount of surcharge if this Division applies for part of the year | 12 |



A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999

No. 18, 1999

**An Act to implement A New Tax System by
imposing Medicare levy surcharge on reportable
fringe benefits totals of some employees without
private hospital insurance**

[Assented to 19 April 1999]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*.

2 Commencement

This Act commences on the day on which the *A New Tax System (Fringe Benefits Reporting) Act 1999* receives the Royal Assent.

3 Definitions

- (1) In this Act, unless the contrary intention appears:

Assessment Act means the *Income Tax Assessment Act 1936*.

dependant of a person has the meaning given by section 5.

family surcharge threshold for a person for a year of income has the meaning given by section 6.

married has a meaning affected by section 7.

prescribed person has the meaning given by section 8.

provides private patient hospital cover has the meaning given by section 4.

reportable fringe benefits total of a person for a year of income has the meaning given by subsection 6(1) of the Assessment Act.

resident of Australia has the meaning given by section 10.

surcharge means Medicare levy surcharge imposed by section 10.

taxable income of a person for a year of income has the meaning given by section 9.

- (2) Subject to subsection (1) and any other contrary intention, an expression used in both this Act and Part VIIB of the Assessment Act has the same meaning in this Act as it has in that Part.

4 When does an insurance policy *provide* private patient hospital cover?

- (1) An insurance policy *provides* private patient hospital cover if the policy is an applicable benefits arrangement, within the meaning of section 5A of the *National Health Act 1953*, to which paragraph 5A(1)(a) of that Act applies.
- (2) An insurance policy also *provides* private patient hospital cover if:
- (a) the policy is issued by a person to whom subsection 67(3) of the *National Health Act 1953* applies; and
 - (b) if the person referred to in paragraph (a) were a registered organization within the meaning of that Act—the policy would be an applicable benefits arrangement, within the meaning of section 5A of that Act, to which paragraph 5A(1)(a) of that Act would apply.

5 Who is a *dependant* of a person?

A person is a *dependant* of another person for a period if the person would be a dependant of the other person for the period for the purposes of Part VIIB of the Assessment Act, disregarding subsections 251R(4), (5), (6B), (6C) and (6D) of that Act.

6 What is the *family surcharge threshold*?

- (1) The *family surcharge threshold* for a person for a year of income is \$100,000.
- (2) However, if the person has 2 or more dependants who are children, the *family surcharge threshold* for the person for the year of income is the amount worked out using the formula:

Section 7

$$\$100,000 + \left(\$1,500 \times \left(\begin{array}{c} \text{Number of dependants} \\ \text{who are children} \end{array} - 1 \right) \right)$$

Example: If a person has 3 dependants who are children, the family surcharge threshold is:

$$\$100,000 + \left(\$1,500 \times \left(3 - 1 \right) \right) = \$103,000$$

7 When are people *married*?

De facto couples treated as if married

- (1) This Act applies to a man and a woman who have lived together as husband and wife on a bona fide domestic basis for a period, although not legally married to each other, as if:
 - (a) they were married to each other for the period; and
 - (b) neither of them were married to anyone else for the period.

Persons living separately taken not to be married

- (2) A person is taken not to be married to another person if they are living separately and apart.

New widows and widowers taken to be married until end of year

- (3) If:
 - (a) the last person (the *deceased*) to whom another person was married during a year of income died during the year of income; and
 - (b) the death occurred while they were married;the living person is taken to be married to the deceased during the period starting on the day the deceased died and ending on 30 June of the year of income.

8 Who is a *prescribed person*?

A person is a *prescribed person* for a period if the person would be a prescribed person for the purposes of Part VIIB of the Assessment Act during the period, disregarding subsection 251U(3) of that Act.

9 What is a person's *taxable income* for a year of income?

- (1) A person's *taxable income* for a year of income is the amount that would be the person's taxable income for the purposes of the Assessment Act apart from subsection 271-105(1) of Schedule 2F to that Act.
- (2) However, if a person is entitled under subsection 159SA(1) of the Assessment Act to a rebate for a year of income to ensure that the rate of tax on one or more rebatable amounts specified in Table 1 in that subsection is 0%, the person's *taxable income* for the year of income is the amount worked out under subsection (1), reduced by the total of the rebatable amounts.

Part 2—Imposition of surcharge

10 Imposition of Medicare levy surcharge

Surcharge imposed on reportable fringe benefits total

- (1) Medicare levy surcharge is imposed on the reportable fringe benefits total for a year of income of a person who is a resident of Australia at any time during the year of income.

Who is a resident of Australia—general rule

- (2) A person is a **resident of Australia** if he or she is a resident of Australia as defined in subsection 6(1) of the Assessment Act.

Exception for Norfolk Island

- (3) However, a person is not a **resident of Australia** for the purposes of this Act if he or she is a resident of Australia as defined in subsection 6(1) of the Assessment Act merely because subsection 7A(2) of that Act treats Norfolk Island as part of Australia.

Application: 1999-2000 year of income onwards

- (4) Subsection (1) applies to the 1999-2000 year of income and later years of income.

Part 3—Amount of surcharge payable

Division 1—General rule

11 Amount of surcharge payable

General rule

- (1) The amount of surcharge payable by a person on the person's reportable fringe benefits total for a year of income is the total of the amounts worked out under whichever of Divisions 2, 3 and 4 apply to the person for a period in the year of income.

No surcharge payable if taxable income is \$13,389 or less

- (2) However, no surcharge is payable by the person if the person's taxable income for the year of income is \$13,389 or less.

Reduced surcharge if taxable income is \$14,474 or less

- (3) If the person's taxable income for the year of income is more than \$13,389 but not more than \$14,474, the amount of surcharge payable by the person is not more than 20% of the amount by which the person's taxable income exceeds \$13,389. This subsection has effect despite subsection (1).

Part 3 Amount of surcharge payable

Division 2 Amount of surcharge for single person without dependants

Section 12

Division 2—Amount of surcharge for single person without dependants

12 Amount of surcharge for single person without dependants

- (1) This Division applies to a person for a period in a year of income if:
- (a) the sum of the following is more than \$50,000:
 - (i) the person's taxable income for the year of income;
 - (ii) the person's reportable fringe benefits total for the year of income; and
 - (b) during the whole of the period:
 - (i) the person is not a married person; and
 - (ii) the person does not have any dependants; and
 - (iii) the person is not covered by an insurance policy that provides private patient hospital cover; and
 - (iv) the person is not a prescribed person.
- (2) The amount of surcharge payable on the person's reportable fringe benefits total for the year of income is 1% of that total if this Division applies to the person for the whole of the year of income.
- (3) If this Division applies to the person for only some of the days of the year of income, the amount of surcharge payable on the person's reportable fringe benefits total for the year of income includes the amount worked out using the formula:

$$\left(\begin{array}{l} 1\% \text{ of the person's reportable} \\ \text{fringe benefits total for the} \\ \text{year of income} \end{array} \right) \times \frac{\text{Number of those days}}{\text{Number of days in the year of income}}$$

Division 3—Amount of surcharge for single person with dependants

13 Amount of surcharge for single person with dependants

Application

- (1) This Division applies to a person for a period in a year of income if:
 - (a) the sum of the following is more than the family surcharge threshold for the person for the year of income:
 - (i) the person's taxable income for the year of income;
 - (ii) the person's reportable fringe benefits total for the year of income; and
 - (b) during the whole of the period:
 - (i) the person is not a married person; and
 - (ii) the person has one or more dependants; and
 - (iii) the person, or at least one of the person's dependants, is not covered by an insurance policy that provides private patient hospital cover; and
 - (iv) the person is not a prescribed person.

Special rules for applying subparagraph (1)(b)(iii)

- (2) For the purposes of subparagraph (1)(b)(iii):
 - (a) the person is taken to be covered during the whole of the period by an insurance policy that provides private patient hospital cover if, apart from subsection 251U(2) of the Assessment Act, the person would be a prescribed person for the period because of paragraph 251U(1)(a), (b), (c), (ca), (caa) or (cb) of that Act; and
 - (b) disregard each of the person's dependants who:
 - (i) is a prescribed person for the period; or

Part 3 Amount of surcharge payable

Division 3 Amount of surcharge for single person with dependants

Section 13

- (ii) would be a prescribed person for the period apart from subsection 251U(2) of the Assessment Act.

Note: Paragraphs 251U(1)(a), (b), (c), (ca), (caa) and (cb) of the Assessment Act provide that the following are prescribed persons:

- defence personnel and members of their families who can get free medical treatment;
- people who can get free medical treatment under the *Veterans' Entitlements Act 1986*;
- people who receive certain payments under the *Social Security Act 1991* or the *Veterans' Entitlements Act 1986*.

Subsection 251U(2) of the Assessment Act provides that a person who would otherwise be a prescribed person is not a prescribed person if one or more of his or her dependants are not prescribed persons.

Amount of surcharge payable for whole year

- (3) The amount of surcharge payable on the person's reportable fringe benefits total for the year of income is 1% of that total if this Division applies to the person for the whole of the year of income.

Amount of surcharge payable for part of year

- (4) If this Division applies to the person for only some of the days of the year of income, the amount of surcharge payable on the person's reportable fringe benefits total for the year of income includes the amount worked out using the formula:

$$\left(\begin{array}{l} 1\% \text{ of the person's reportable} \\ \text{fringe benefits total for the} \\ \text{year of income} \end{array} \right) \times \frac{\text{Number of those days}}{\text{Number of days in the year of income}}$$

Division 4—Amount of surcharge for married person

14 Who does this Division apply to?

Application

- (1) This Division applies to a person for a period in a year of income if, during the whole of the period:
 - (a) the person is a married person; and
 - (b) the person, or at least one of the person's dependants, is not covered by an insurance policy that provides private patient hospital cover; and
 - (c) the person is not a prescribed person.

Special rules for applying paragraph (1)(b)

- (2) For the purposes of paragraph (1)(b):
 - (a) the person is taken to be covered during the whole of the period by an insurance policy that provides private patient hospital cover if, apart from subsection 251U(2) of the Assessment Act, the person would be a prescribed person for the period because of paragraph 251U(1)(a), (b), (c), (ca), (caa) or (cb) of that Act; and
 - (b) disregard each of the person's dependants who:
 - (i) is a prescribed person for the period; or
 - (ii) would be a prescribed person for the period apart from subsection 251U(2) of the Assessment Act.

Note: Paragraphs 251U(1)(a), (b), (c), (ca), (caa) and (cb) of the Assessment Act provide that the following are prescribed persons:

- defence personnel and members of their families who can get free medical treatment;
- people who can get free medical treatment under the *Veterans' Entitlements Act 1986*;
- people who receive certain payments under the *Social Security Act 1991* or the *Veterans' Entitlements Act 1986*.

Part 3 Amount of surcharge payable

Division 4 Amount of surcharge for married person

Section 15

Subsection 251U(2) of the Assessment Act provides that a person who would otherwise be a prescribed person is not a prescribed person if one or more of his or her dependants are not prescribed persons.

15 Amount of surcharge if this Division applies for whole year

The amount of surcharge payable on the person's reportable fringe benefits total for the year of income is 1% of that total if:

- (a) this Division applies to the person for the whole of the year of income; and
- (b) the sum of the following exceeds the family surcharge threshold for the person for the year of income:
 - (i) the person's taxable income for the year of income;
 - (ii) the person's reportable fringe benefits total for the year of income;
 - (iii) the person's spouse's taxable income for the year of income;
 - (iv) the person's spouse's reportable fringe benefits total (if any) for the year of income; and
- (c) the sum of the person's taxable income and reportable fringe benefits total for the year of income is more than \$13,389.

16 Amount of surcharge if this Division applies for part of the year

When this section applies

- (1) The amount of surcharge payable on a person's reportable fringe benefits total for a year of income includes the amount worked out using the formula in subsection (4) if:
 - (a) this Division applies to the person for only part of the year of income; and
 - (b) either subsection (2) or (3) applies to the person.

Person married for whole year of income

- (2) This subsection applies to the person if:

- (a) the person is married for the whole of the year of income;
and
- (b) the sum of the following is more than the family surcharge threshold for the person for the year of income:
 - (i) the person's taxable income for the year of income;
 - (ii) the person's reportable fringe benefits total for the year of income;
 - (iii) the person's spouse's taxable income for the year of income;
 - (iv) the person's spouse's reportable fringe benefits total (if any) for the year of income; and
- (c) the sum of the person's taxable income and reportable fringe benefits total for the year of income is more than \$13,389.

Person married for part of the year of income

- (3) This subsection applies to the person if:
 - (a) the person is married for only part of the year of income; and
 - (b) the sum of the person's taxable income and reportable fringe benefits total for the year of income is more than \$13,389.

Amount of surcharge

- (4) The amount of surcharge payable on the person's reportable fringe benefits total for the year of income includes the amount worked out using the formula:

$$\left(\begin{array}{l} 1\% \text{ of the person's reportable} \\ \text{fringe benefits total for the} \\ \text{year of income} \end{array} \right) \times \frac{\text{Number of applicable days}}{\text{Number of days in the year of income}}$$

where:

number of applicable days is the number of days in the year of income for which this Division applies to the person.

Part 3 Amount of surcharge payable

Division 4 Amount of surcharge for married person

Section 16

Special rule if person's spouse is presently entitled beneficiary

- (5) Work out whether subsection (2) applies to a person whose spouse is a beneficiary presently entitled to a share in the net income of a trust estate in respect of which the trustee is liable to be assessed under section 98 of the Assessment Act assuming that:
- (a) the spouse's taxable income included that share; and
 - (b) subsection 271-105(1) of Schedule 2F to that Act did not apply in working out the net income of the trust estate.
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*[Minister's second reading speech made in—
House of Representatives on 2 December 1998
Senate on 10 December 1998]*

(206/98)
