

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer

Fringe Benefits Tax Assessment Act 1986

Fringe Benefits Tax Assessment Regulations 2018

Section 135 of the *Fringe Benefits Tax Assessment Act 1986* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Fringe Benefits Tax Assessment Regulations 2018* (the Regulations) is to remake and improve the operation of the *Fringe Benefits Tax Regulations 1992* (the 1992 Regulations) before it ‘sunset’. The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, progressively sunset according to the timetable in section 50 of that Act. Legislative instruments generally cease to have effect after 10 years unless their operation is extended such as by remaking the instrument. The 1992 Regulations are due to be automatically repealed on 1 October 2018.

The Regulations remake and improve the 1992 Regulations by repealing redundant provisions, simplifying language, and restructuring provisions for ease of navigation.

The key changes to the instrument are:

- adopting modern drafting practices such as referring to ‘sections’ rather than ‘regulations’;
- improving the structure from that used in the 1992 Regulations to make the provisions easier to understand and navigate;
- renaming and adding section headings;
- removing and replacing tables with subsections; and
- centralise definitions used throughout the 1992 Regulations to a new ‘definitions’ section in the Regulations.

These changes are not intended to affect the substantive meaning or operation of the provisions.

Further details of the Regulations are set out in [Attachment A](#).

Targeted consultation was conducted on the Legislative Instrument with affected stakeholders, including academics, industry groups and other government agencies. A number of minor technical amendments were made based on consultation to clarify the operation of the Regulations.

The Act does not specify any conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after it is registered on the Federal Register of Legislation.

The Office of Best Practice Regulation considered the Regulations have a minor impact on business, community organisations or individuals and has certified that the remaking of the Regulations do not require a Regulatory Impact Statement (OBPR ID No 23889)

A Statement of Compatibility with Human Rights is at Attachment C. The Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Details of the *Fringe Benefits Tax Assessment Regulations 2018*

This Attachment sets out further details of the *Fringe Benefits Tax Assessment Regulations 2018* (the Regulations). All references are to the Regulations unless otherwise stated. References to a ‘corresponding provision’ are to the corresponding provision in the *Fringe Benefits Tax Regulations 1992* (the 1992 Regulations), as identified by the Finding Table at Attachment B.

Changes of a minor or machinery nature, such as references to section rather than regulation in accordance with modern drafting practices, are generally not specifically identified in this Attachment. Where the Regulations make changes that require further explanation, these are identified and explained in this Attachment.

Part 1—Preliminary

Section 1

This section provides that the title of the Regulations is the *Fringe Benefits Tax Assessment Regulations 2018*.

Section 2

This section provides that the Regulations commence on 1 October 2018.

Section 3

This section provides that the Regulations are made under the *Fringe Benefits Tax Assessment Act 1986* (the Act).

Section 4

This section provides that each instrument identified in a Schedule to the Regulations is amended or repealed in accordance with these Regulations.

Section 5

This section contains defined expressions used in the Regulations. As part of the remake of the 1992 Regulations, wherever an expression was defined in a later section of the 1992 Regulations that expression is now defined in section 5.

All expressions in section 5 have the same meaning throughout the Regulations consistent with modern drafting practice. Because the Regulations use a number of terms that are defined in other Acts, a number of expressions have been added so that the term has that meaning when used throughout the Regulations.

The definition of ‘dependant’ has been updated to reflect the change from *Defence Determination 2000/1* to *Defence Determination 2016/19, Conditions of Service*. The reference to this instrument is intended to be a reference to the definition used in that instrument as in force from time to time, which means that if the instrument is updated, or the definition is changed, amendments will not be required to be made to

the Regulations in order to adopt the new meaning. *Defence Determination 2016/19, Conditions of service* is a disallowable instrument, so the *Legislation Act 2003* allows incorporation of it by reference as in force from time to time, as that instrument is subject to Parliamentary scrutiny.

The definition of Commonwealth overseas living allowance has been updated to reflect the change from the *Commonwealth Authorities and Companies Act 1997* to the *Public Governance, Performance and Accountability Act 2013*.

Part 2 — Excluded fringe benefits

Section 6

This section prescribes the health care service benefits that are excluded benefits and is substantively the same as the corresponding section of the 1992 Regulations. The key changes to this section are:

- removing references to external territories as they are already covered in the definition of Australia;
- removing the application provision which is made redundant by the new application provision in section 16;
- moving several subsections from the corresponding section of the 1992 Regulations to other sections, as the subject matter is more thematically aligned with those sections (see Attachment B); and
- moving definitions to section 5 to ensure all expressions have the same meaning throughout the Regulations, consistent with modern drafting practice.

Section 7

This section replicates respective sections of the 1992 Regulations relating to excluded benefits for the Defence Force (see [Attachment B](#)) but has been updated in accordance with modern drafting practice. The key changes to this section are:

- moving subsection (3) (about benefits provided to members of the Defence Force) from section 6 (subsection 5(5) in the 1992 Regulations) to within this subsection;
- updating the reference in subsection (3) from ‘Defence Instructions (General) mentioned in subsection 9A(2)’ to a determination made under section 58B, as that is the section under which the Minister determines what is provided for in relation to the remuneration of members;
- replacing ‘member’ with ‘member of the Defence Force who is resident of Australia’ in line with the expression used in other legislation, to clarify the interpretation;
- removing the application provision which is made redundant by the new application provision in section 16;

- updating references from ‘marriage’ to a ‘relationship’ for consistency with other provisions of the Regulations; and
- clarifying that, consistent with longstanding practice, a critical year of schooling refers to years 9, 10, 11 and 12.

Sections 8 to 10

These sections replicate respective sections of the 1992 Regulations relating to excluded benefits for police, car benefits and pooled or shared cars (see [Attachment B](#)) but have been updated in accordance with modern drafting practice. The key changes to these sections are:

- moving section 9 to a separate section which deals with car benefits provided to members of the emergency services (see Attachment B);
- removing references to external territories as they are already covered in the definition of Australia;
- clarifying that a benefit is covered by subsection 8(6) where the benefit is ‘the payment or reimbursement of costs’ incidental to the purchase of a new dwelling, rather than ‘costs’ incidental to the purchase of a new dwelling; and
- removing application provisions which are made redundant by the new application provision in section 16.

Section 11

This section replicates the corresponding section of the 1992 Regulations relating to excluded benefits for Commonwealth employees (see [Attachment B](#)) but has been updated in accordance with modern drafting practice. The key changes to this section are:

- referring to the new names of various Commonwealth overseas living allowances or supplements. Defence members that were posted prior to 1 July 2017 are entitled to the allowances that existed on the date they were posted. Accordingly, to avoid doubt that these remain excluded fringe benefits the names of the old allowances that continue for pre-1 July 2017 postings have been retained. The new allowances or supplements listed are: the ‘cost of posting allowance’, the ‘child supplement allowance’ and the ‘child reunion allowance’; and
- removing the application provision which is made redundant by the new application provision in section 16.

Section 12

This section provides that the provision of parking facilities for a car is an excluded benefit in certain circumstances. This section replicates the corresponding section of the 1992 Regulations (see [Attachment B](#)) but has been updated in accordance with modern drafting practice.

Part 3 — Variation of employer’s notional tax amount

Section 13

This section provides for the variation of an employer’s notional tax amount and has been updated in accordance with modern drafting practice. The formula, methodology, and definitions are substantively the same as the corresponding section of the 1992 Regulations (see Attachment B).

Part 4 — Other matters

Section 14

This section prescribes that certain parking facility benefits are excluded from the definition of ‘eligible car parking expense payment benefit’ for the purposes of subsection 136(1) of the Act. This section replicates the corresponding section of the 1992 Regulations (see Attachment B) but has been updated in accordance with modern drafting practice.

Section 15

Section 15 prescribes the rate of the supplementary car rate for the purposes of subsection 136(1) of the Act. This section replicates the corresponding section of the 1992 Regulations (see Attachment B) but has been updated in accordance with modern drafting practice.

Part 5 — Application and transitional matters

Section 16

Section 16 provides for the application of the Regulations, and replaces a range of application provisions that existed in the 1992 Regulations. Those application provisions excluded the relevant fringe benefits from the fringe benefit year of tax listed and later years of tax, depending on when the various exclusions commenced. Accordingly, it is no longer necessary to list separate application years.

The application of the Regulations to years of tax starting on or after 1 April 2018 and the application of the 1992 Regulations are to continue, despite repeal, to years of tax starting before 1 April 2018. Therefore the 1992 Regulations continue to have application to earlier tax years to ensure that the operation of the fringe benefits tax in these years remains unaffected by the repeal.

The Regulations apply before they commence so that they apply to the whole of the year of tax commencing on 1 April 2018. This simplifies compliance for taxpayers.

While this has retrospective effect, no rights of taxpayers are adversely affected and no liabilities are imposed retrospectively as the Regulations generally continue the outcome under the law provided for under the 1992 Regulations. In particular no adverse impacts arise because:

- the changes described above to sections 1 to 5 do not affect individuals rights, and are machinery in nature. These sections cover matters such as commencement and interpretation;

- the changes described above to sections 6 to 11 do not affect whether a fringe benefit is an excluded fringe benefit, as the changes are only minor in nature, and preserve the existing treatment under the 1992 Regulations for the remainder of the year of tax. It is beneficial for an employee's benefit to be an excluded fringe benefit for the whole of the year of tax, as such benefits are excluded from being reported on an employee's payment summary and this also benefits employers by reducing their reporting obligations;
- the changes described above to section 12 do not affect whether the parking facilities described are excluded from being a car parking benefit, as the changes are only minor in nature, and preserves the existing treatment under the 1992 Regulations for the remainder of the year of tax;
- there is no change to the methodology or formula applied under section 13, so no outcome for the year of tax will be adversely affected if the formula under the new Regulations or the 1992 Regulations is applied, as it will produce the same outcome. This preserves the existing treatment under the 1992 Regulations for the remainder of the year of tax;
- the changes described above to section 14 do not affect whether a parking facility fringe benefit is excluded from the definition of 'eligible car parking expense payment benefit', as the changes are only minor in nature, and preserve the existing treatment under the 1992 Regulations for the remainder of the year of tax; and
- the changes described above to section 15 do not change the rate of the supplementary car rate from the rate that applied under the 1992 Regulations, and preserve the existing treatment under the 1992 Regulations for the remainder of the year of tax.

Schedule 1

Schedule 1 repeals the whole of the 1992 Regulations from the commencement of this instrument on 1 October 2018.

Finding table

As a result of some of the changes described at Attachment A, it became necessary to renumber provisions of the old Regulations. This Explanatory Statement includes a finding table to assist in locating provisions in the new Regulations. References to the old regulations are to the *Fringe Benefits Tax Regulations 1992*. References to the new regulations are to the *Fringe Benefits Tax Assessment Regulations 2018*.

In the finding tables ‘*no equivalent*’ means that this is a new provision that has no equivalent in the old regulations. Typically, these provisions are guide material or similar.

Table 1.1: New Regulations to old regulations

<i>New regulations</i>	<i>Old regulations</i>
1	1
2	2
3	<i>No equivalent</i>
4	<i>No equivalent</i>
5	3, 5(6), 6(3), 7(2) and 9(3)
6	5(1) to 5(3)
7	5(5) and 6
8	7
9	5(5A)
10	8
11	5(4) and 9
12	4
13	12
14	13A
15	14
16	<i>No equivalent</i>
Schedule 1	<i>No equivalent</i>

Table 1.2: Old Regulations to new regulations

<i>Old regulations</i>	<i>New regulations</i>
1	1
2	2
3, 5(6), 6(3), 7(2) and 9(3)	5
4	12
5(1) to 5(3)	6
5(4)	11
5(5A)	9
5(5) and 6	7
7	8
8	10
9	11
12	13
13A	14
14	15
<i>No equivalent</i>	16
<i>No equivalent</i>	Schedule 1
<i>No equivalent</i>	3
<i>No equivalent</i>	4

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Fringe Benefits Tax Assessment Regulations 2018

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Fringe Benefits Tax Assessment Regulations 2018* remake and improve the *Fringe Benefits Tax Regulations 1992* by repealing redundant provisions, simplifying language, and restructuring provisions for ease of navigation.

The key changes to the instrument are:

- adopting modern drafting practices such as referring to ‘sections’ rather than ‘regulations’;
- changing the structure from that used in the *Fringe Benefits Tax Regulations 1992* to follow the *Fringe Benefits Tax Assessment Act 1986* more closely;
- renaming section headings;
- removing and replacing tables with subsections; and
- moving expressions used throughout the *Fringe Benefits Tax Regulations 1992* to section 5 of the Regulations.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.