



Fringe Benefits Tax Assessment Regulations 2018

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 13 September 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

Stuart Robert
Assistant Treasurer

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Part 1—Preliminary

1 Name

This instrument is the *Fringe Benefits Tax Assessment Regulations 2018*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 October 2018.	1 October 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Fringe Benefits Tax Assessment Act 1986*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Definitions

In this instrument:

Act means the *Fringe Benefits Tax Assessment Act 1986*.

census population has the same meaning as in subsection 140(3) of the Act.

Commonwealth overseas living allowance means a payment by:

- (a) the Commonwealth; or
- (b) a Commonwealth entity, or Commonwealth company, within the meaning of the *Public Governance, Performance and Accountability Act 2013*;

to compensate an employee for the additional living expenses of employment outside Australia.

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Department of Defence means the Department administered by the Minister administering the *Defence Act 1903*.

dependant, of a member of the Defence Force, has the same meaning as in the *Defence Determination 2016/19, Conditions of service*.

Note: The *Defence Determination 2016/19, Conditions of service* could in 2018 be viewed on the Federal Register of Legislation website (<https://www.legislation.gov.au>).

disabled persons' car parking permit means a permit, label or other document:

- (a) issued by the appropriate authority in a State or Territory; and
- (b) authorising the parking of a car in a disabled persons' car parking space.

disabled persons' car parking space means a car parking space:

- (a) in a public car parking area; and
- (b) designated for the exclusive use of disabled persons.

eligible urban area has the same meaning as in section 140 of the Act.

household effects has the same meaning as in paragraph 58B(2)(a) of the Act.

medicare benefit has the same meaning as in the *Health Insurance Act 1973*.

member of the Defence force means a member of the Defence force to whom the *Defence Force Discipline Act 1982* applies.

permanent resident, of Australia, has the same meaning as in the *Australian Citizenship Act 2007*.

Part 2—Excluded fringe benefits

6 Excluded fringe benefit—health care services

- (1) Each fringe benefit covered by a subsection of this section is prescribed for the purposes of paragraph 5E(3)(i) of the Act.
- (2) A fringe benefit is covered by this subsection if:
 - (a) the benefit is a payment to a person who provides an emergency or other essential health care service outside Australia; and
 - (b) the payment is for the provision of an emergency or other essential health care service to an employee or an associate of an employee; and
 - (c) the employee, or associate, to whom the service was provided is an Australian citizen or a permanent resident of Australia; and
 - (d) the employee's place of employment is outside Australia when the service was provided; and
 - (e) a medicare benefit is not payable in respect of the service.
- (3) A fringe benefit is covered by this subsection if:
 - (a) the benefit is reimbursement of a payment by an employee, or an associate of an employee, for the cost of an emergency or other essential health care service provided to the employee or associate outside Australia; and
 - (b) the employee, or associate, to whom the service was provided is an Australian citizen or a permanent resident of Australia; and
 - (c) the employee's place of employment is outside Australia when the service was provided; and
 - (d) a medicare benefit is not payable in respect of the service.

7 Excluded fringe benefit—Defence Force

- (1) Each fringe benefit covered by a subsection of this section is prescribed for the purposes of paragraph 5E(3)(i) of the Act.
- (2) A fringe benefit is covered by this subsection to the extent that:
 - (a) the benefit is assistance for the removal or storage of the household effects of a member of the Defence Force who is a resident of Australia; and
 - (b) the member is directed to change residence by the Department of Defence; and
 - (c) the removal or storage arises from the direction.
- (3) Each of the following fringe benefits provided to a member of the Defence Force who is a resident of Australia is covered by this subsection:
 - (a) a housing fringe benefit;
 - (b) a fringe benefit, to the extent that it relates to an accommodation expense in the form of rental allowance;
 - (c) if the member is serving in Australia away from where the member's dependants are located—a fringe benefit to the extent that it is for travel for reunion with those dependants at their place of residence;

Section 8

- (d) a fringe benefit to the extent that it is assistance to the member:
 - (i) in accordance with a determination made under section 58B of the *Defence Act 1903*; and
 - (ii) in relation to support for families with special needs;
- (e) if the member has a child who is a student in year 9, 10, 11 or 12, or an equivalent year of schooling, away from where the member is serving—a fringe benefit to the extent that it is assistance for:
 - (i) education in that year of schooling in accordance with a determination made under section 58B of the *Defence Act 1903*; or
 - (ii) travel by the child for reunion with the member, or other dependants of the member, where the member is serving;
- (f) a fringe benefit to the extent that it is removal and travel assistance:
 - (i) as a result of the breakdown of the member's relationship with the member's spouse; and
 - (ii) if the member's spouse is not a member of the Defence Force—for the spouse and the spouse's accompanying dependants; and
 - (iii) paid in accordance with a determination made under section 58B of the *Defence Act 1903*;
- (g) a fringe benefit to the extent that it is child tuition assistance for a child of the member if:
 - (i) the member is directed to change residence by the Department of Defence; and
 - (ii) the child must be enrolled in a different school because of the direction.

8 Excluded fringe benefit—police

- (1) Each fringe benefit:
 - (a) provided to a member (the **member**) of a police force or police service of the Commonwealth, a State or Territory; and
 - (b) covered by a subsection of this section;is prescribed for the purposes of paragraph 5E(3)(i) of the Act.

Note: Section 9 sets out other excluded fringe benefits arrangements that may be available relating to members of a police force or service.

- (2) A fringe benefit is covered by this subsection if:
 - (a) the benefit is the application of a car, by the member, for travel between the member's place of residence and a place where the member is required to carry out the member's duties; and
 - (b) the car is used by the employer of the member; and
 - (c) the member has the car at or near the member's place of residence to enable the member to respond to an event involving the possible commission of a crime or a possible threat to public safety; and
 - (d) the car is fitted with:
 - (i) a police radio, or a radio for use with the member's duties; and
 - (ii) concealed or portable warning lights; and
 - (iii) concealed or portable sirens; and

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- (e) the application of the car to a private use is taken to constitute a benefit within the meaning of subsection 7(1) of the Act.
- (3) A fringe benefit is covered by this subsection to the extent that:
- (a) the benefit is assistance for the removal or storage of the household effects of the member who is a resident of Australia; and
 - (b) the member is directed to change residence by the police force or service that provides the benefit; and
 - (c) the removal or storage arises from the direction.
- (4) A fringe benefit is covered by this subsection if:
- (a) the benefit is a housing fringe benefit; and
 - (b) the housing to which the benefit relates is attached to or adjacent to a police station that is being used for that purpose; and
 - (c) the member resides in that housing.
- (5) A fringe benefit is covered by this subsection if:
- (a) the benefit is an expense payment fringe benefit that is housing rent connected with a unit of accommodation; and
 - (b) the member's usual place of residence is at least 100 kilometres from an eligible urban area with a census population of not less than 130,000.
- (6) A fringe benefit is covered by this subsection if:
- (a) the benefit is the payment or reimbursement of costs incidental to the purchase of a new dwelling; and
 - (b) the benefit is provided because the member is required to change their usual place of residence in order to perform the duties of the member's employment; and
 - (c) the new dwelling is purchased within 4 years after the member commences duties after the change.

9 Excluded fringe benefit—car benefits

A fringe benefit is prescribed for the purposes of paragraph 5E(3)(i) of the Act if:

- (a) the benefit is the application of a car, by an employee, for travel between the employee's place of residence and a place where the employee is required to carry out the employee's duties; and
- (b) the car is covered by subsection 7(2A) of the Act; and
- (c) the application of the car to a private use is taken to constitute a benefit within the meaning of subsection 7(1) of the Act.

Note: Subsection 7(2A) of the Act describes cars that are used by an ambulance service, a firefighting service or a police service, and that are marked and fitted for those uses.

10 Excluded fringe benefit—pooled or shared cars

- (1) A fringe benefit is prescribed for the purposes of paragraph 5E(3)(i) of the Act if:
- (a) the benefit is a car fringe benefit; and
 - (b) the car to which the benefit relates is applied to or available for the private use of more than one employee under subsection 7(1) of the Act.

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Example: An employer makes one car available to 3 employees, for private use, at different times during the year of tax.

- (2) The fringe benefit is so prescribed for each employee to whom the benefit is provided.

11 Excluded fringe benefit—various benefits to Commonwealth employees

- (1) Each fringe benefit covered by a subsection of this section is prescribed for the purposes of paragraph 5E(3)(i) of the Act.
- (2) A fringe benefit provided to an employee of the Commonwealth is covered by this subsection if the benefit:
 - (a) is a living-away-from-home allowance fringe benefit; or
 - (b) is an expense payment fringe benefit that:
 - (i) is not exempt under section 21 of the Act; and
 - (ii) relates to accommodation that is required solely because the duties of the employee's employment require the employee to live away from the employee's normal residence; or
 - (c) is a residual fringe benefit that:
 - (i) is not exempt under subsection 47(5) of the Act; and
 - (ii) relates to accommodation that is required solely because the duties of the employee's employment require the employee to live away from the employee's normal residence.
- (3) A fringe benefit that is a payment of a Commonwealth overseas living allowance is covered by this subsection to the extent that the payment includes any of the following adjustments, allowances or supplements:
 - (a) a cost of living adjustment;
 - (b) a post adjustment;
 - (c) a cost of posting allowance;
 - (d) a child supplement;
 - (e) a child supplement allowance;
 - (f) a child reunion allowance.

12 Car parking benefits—excluded car parking facilities

For the purposes of paragraph 39A(1)(h) of the Act, the provision of parking facilities for a car during a period referred to in section 39A of the Act is taken to be excluded from that section if:

- (a) the parking facilities are provided to an employee who:
 - (i) is entitled under the law of a State or Territory to the use of a disabled persons' car parking space; and
 - (ii) is the driver of, or is a passenger in, the car; and
- (b) a valid disabled persons' car parking permit is displayed on the car.

Part 3—Variation of employer's notional tax amount

13 Variation of employer's notional tax amount

- (1) For the purposes of item 4 of the table in subsection 110(1) of the Act:
- (a) this section provides for varying the notional tax amount of employers for the current year; and
 - (b) the prescribed day is 1 April 2006; and
 - (c) the amount worked out under item 1 of the table in subsection 110(1) of the Act for the employer is varied by applying the formula in subsection (2).
- (2) The formula is as follows:

$$\frac{\text{Amount of the employer's fringe benefits tax for the base year} \times \text{Current year rate of tax}}{\text{Base year rate of tax}}$$

where:

base year rate of tax means the rate of tax, specified in section 6 of the *Fringe Benefits Tax Act 1986*, in respect of the employer's fringe benefits taxable amount for the base year.

current year rate of tax means the rate of tax, specified in section 6 of the *Fringe Benefits Tax Act 1986*, in respect of the employer's fringe benefits taxable amount for the current year.

Note: For the **base year** and **current year**, see subsection 110(1) of the Act.

Part 4—Other matters

14 Eligible car parking expense payment benefit

For the purposes of subparagraph (c)(v) of the definition of *eligible car parking expense payment benefit* in subsection 136(1) of the Act, the provision of parking facilities for a car during a period referred to in that definition is taken to be excluded from that definition if:

- (a) the parking facilities are provided to an employee who:
 - (i) is entitled under the law of a State or Territory to the use of a disabled persons' car parking space; and
 - (ii) is the driver of, or is a passenger in, the car; and
- (b) a valid disabled persons' car parking permit is displayed on the car.

15 Supplementary car rate

For the purposes of the definition of *supplementary car rate* in subsection 136(1) of the Act, the rate of 0.63 cents per kilometre travelled is prescribed.

Part 5—Application and transitional matters

16 Application of this instrument etc.

- (1) This instrument applies in relation to years of tax starting on or after 1 April 2018.
- (2) Despite the repeal of the *Fringe Benefits Tax Regulations 1992* by this instrument, those regulations continue to apply in relation to years of tax starting before 1 April 2018.

Schedule 1—Repeals

Fringe Benefits Tax Regulations 1992

1 The whole of the instrument

Repeal the instrument.