



Fringe Benefits Tax (Application to the Commonwealth) Act 1986

No. 42, 1986 as amended

Compilation start date: 1 July 2014

Includes amendments up to: Act No. 62, 2014

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About this compilation

This compilation

This is a compilation of the *Fringe Benefits Tax (Application to the Commonwealth) Act 1986* as in force on 1 July 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 7 August 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

Uncommenced amendments

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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An Act to provide for the notional application of fringe benefits tax, and for the application of the reportable fringe benefits system, in relation to benefits provided in respect of the employment of Commonwealth employees

1 Short title

This Act may be cited as the *Fringe Benefits Tax (Application to the Commonwealth) Act 1986*.

2 Commencement

This Act shall come into operation on the day on which the *Fringe Benefits Tax Assessment Act 1986* comes into operation.

2A Objects

The objects of this Act are to provide for:

- (a) the notional application of fringe benefits tax in relation to benefits provided in respect of the employment of Commonwealth employees; and
- (b) the calculation of the reportable fringe benefits totals of those employees; and
- (c) the calculation of the reportable fringe benefits amounts of those employees in respect of that employment.

3 Interpretation

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

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

Commonwealth employee means an employee of the Commonwealth.

Department means:

- (a) a Department of State;
- (b) a Department of the Parliament established under the *Parliamentary Service Act 1999*; or
- (c) an Executive Agency or Statutory Agency (within the meaning of the *Public Service Act 1999*).

Entitlements Act means the *Veteran's Entitlements Act 1986*.

Finance Department means the Department that is administered by the Finance Minister.

Finance Minister has the meaning given by the *Income Tax Assessment Act 1997*.

responsible Department, in relation to the employment of a Commonwealth employee, means:

- (a) where the remuneration in respect of that employment is or was paid wholly or principally out of money appropriated under an annual Appropriation Act—the Department in respect of which the money was appropriated; and
 - (b) where the remuneration in respect of that employment is or was paid wholly or principally out of money appropriated under an Act other than an annual Appropriation Act:
 - (i) if the employee performs or performed the duties of that employment in, or in respect of, a Department—that Department; or
 - (ii) in any other case—the Department of State administered by the Minister who administers the Act under which that money was appropriated, insofar as the Act appropriated that money; and
 - (c) where the remuneration in respect of that employment is or was paid wholly or principally out of money appropriated by the Constitution—the Finance Department.
- (2) Unless the contrary intention appears, an expression that is used in this Act and in the Assessment Act has the same meaning in this Act as it has in the Assessment Act.

4 Application of Assessment Act in relation to Commonwealth employment

Subject to this Act and to such modifications as are prescribed, the Assessment Act applies, in respect of any matter or thing in respect of the employment of a Commonwealth employee, as if:

- (a) the employee were employed by the responsible Department and not by the Commonwealth;
- (b) the responsible Department were a company and each other Department, and each authority of the Commonwealth, were a company related to the responsible Department; and
- (c) the responsible Department were a government body.

5 Application of Act to certain Commonwealth authorities

Subject to such modifications as are prescribed, this Act applies in relation to an authority of the Commonwealth referred to in paragraph (e) of the definition of *employer* in subsection 136(1) of the Assessment Act in like manner as it applies in relation to a Department.

5A Modified objection, review and appeal provisions

If, apart from this section, Part IVC of the *Taxation Administration Act 1953* would apply to an objection made under the Assessment Act in its application in accordance with this Act, then that Part applies as if subsection 14ZX (4), section 14ZZ and Divisions 4 and 5 of that Part were omitted.

6 Exemption of certain benefits provided under the Defence Service Homes Act

For the purposes of the application of the Assessment Act in accordance with this Act, where a benefit is provided under the *Defence Service Homes Act 1918* in respect of the employment of a Commonwealth employee by reason of the employee being an eligible person within the meaning of that Act otherwise than by virtue of paragraph (h) or (i) of the definition of *Australian Soldier* in subsection 4(1) of that Act, the benefit is an exempt benefit.

6AA Exemption of benefits provided to certain people

For the purposes of the application of the Assessment Act in accordance with this Act, if a benefit (other than a benefit referred to in section 6) is provided, in respect of the employment of a Commonwealth employee, because of the employee being:

- (a) a veteran as defined by subsection 5C(1) of the Entitlements Act to whom, or in respect of whom, a pension is payable under Part II of that Act; or
- (b) a veteran as defined by subsection 5C(1) of the Entitlements Act who is eligible to receive a service pension, or in respect of whom a service pension is payable, under Part III of that Act; or
- (c) a member of the Forces, or a member of a Peacekeeping Force, as defined by subsection 68(1) of the Entitlements Act to whom, or in respect of whom, pension is payable under Part IV of that Act; or
- (d) a person who has received a lump sum under Part 2 of Chapter 4 of the *Military Rehabilitation and Compensation Act 2004* or who is receiving payments under that Part; or
- (e) a person who is receiving a Special Rate Disability Pension under Part 6 of Chapter 4 of the *Military Rehabilitation and Compensation Act 2004*;

the benefit is an exempt benefit.

6AB Exemption of benefits provided to Commonwealth employees under the Entitlements Act and the Military Rehabilitation and Compensation Act

For the purposes of the application of the Assessment Act in accordance with this Act, if a benefit is provided under the Entitlements Act or the *Military Rehabilitation and Compensation Act 2004*, in respect of the employment of a Commonwealth employee, the benefit is an exempt benefit.

6AC Exemption of health care benefits provided to certain members of the Defence Force

- (1) For the purposes of the application of the Assessment Act in accordance with this Act, if a benefit that consists of the provision of health care and is not otherwise an exempt benefit is provided, in respect of the employment of a Commonwealth employee, because of the employee being a member of the Defence Force, the first-mentioned benefit is an exempt benefit.
- (2) In this section, a reference to an employee being a member of the Defence Force is a reference to an employee who is, was formerly, or will become, a member of the Defence Force.

6A No entitlement to rebate of tax

For the purposes of the application of the Assessment Act in accordance with this Act, it is to be assumed that section 65J of that Act (which deals with rebates) had not been enacted.

7 Directions by Finance Minister

- (1) The Finance Minister may give such directions in writing as are necessary or convenient to be given for carrying out or giving effect to this Act and, in particular, may give directions in relation to the transfer of money within the Public Account.
- (2) Directions under subsection (1) have effect, and shall be complied with, notwithstanding any other law of the Commonwealth.

8 Annual report

The report by the Commissioner under section 4 of the Assessment Act shall include a report on the working of this Act, including any breaches or evasions of this Act of which the Commissioner has notice.

9 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Endnotes

Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

- Endnote 1—About the endnotes
- Endnote 2—Abbreviation key
- Endnote 3—Legislation history
- Endnote 4—Amendment history
- Endnote 5—Uncommenced amendments
- Endnote 6—Modifications
- Endnote 7—Misdescribed amendments
- Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

Abbreviation key—Endnote 2

The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

Uncommenced amendments—Endnote 5

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.

Endnotes

Endnote 1—About the endnotes

Modifications—Endnote 6

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

Misdescribed amendments—Endnote 7

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

Miscellaneous—Endnote 8

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

Endnote 2—Abbreviation key

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)	

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Fringe Benefits (Application to the Commonwealth) Act 1986	42, 1986	24 June 1986	24 June 1986 (s. 2)	
Taxation Boards of Review (Transfer of Jurisdiction) Act 1986	48, 1986	24 June 1986	s 31 and Parts VII and VIII (s 45–56): 24 June 1986 (s. 2(2)) Remainder: 1 July 1986	—
Taxation Laws Amendment Act (No. 3) 1991	216, 1991	24 Dec 1991	s 113, 114 and 116: 1 Mar 1992 (<i>Gazette</i> 1992, No. GN7) (a)	s 114 and 116
Taxation Laws Amendment (Fringe Benefits Tax Measures) Act 1992	223, 1992	24 Dec 1992	1 Apr 1994	s. 4
Veterans' Affairs Legislation Amendment (1995-96 Budget Measures) Act (No. 2) 1995	146, 1995	12 Dec 1995	s 3(5) and Sch 13: Royal Assent (b)	Sch 13 (item 3)
A New Tax System (Fringe Benefits Reporting) Act 1999	17, 1999	19 Apr 1999	Sch 1 (items 17, 18): Royal Assent (c)	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (item 494): 5 Dec 1999 (<i>Gazette</i> 1999, No. S584) (d)	—
Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004	52, 2004	27 Apr 2004	Sch 3 (items 22, 23): 1 July 2004 (s. 2)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Tax Laws Amendment (2009 Measures No. 4) Act 2009	88, 2009	18 Sept 2009	Sch 5 (items 14–18): Royal Assent	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 6 (item 129): 19 Apr 2011	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 636–640) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch 2 (item 640) and Sch 3 (items 10, 11)
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 9 (item 91) and Sch 14 (items 1–4): 1 July 2014 (s 2(1) items 6, 14)	Sch 14 (items 1–4)

- (a) The *Fringe Benefits Tax (Application to the Commonwealth) Act 1986* was amended by section 113 only of the *Taxation Laws Amendment Act (No. 3) 1991*, subsection 2(10) of which provides as follows:
- (10) Subject to subsection (11), sections 112 to 117 (inclusive) commence on a day to be fixed by Proclamation.
- (b) The *Fringe Benefits Tax (Application to the Commonwealth) Act 1986* was amended by the *Veterans' Affairs Legislation Amendment (1995-96 Budget Measures) Act (No. 2) 1995*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (c) The *Fringe Benefits Tax (Application to the Commonwealth) Act 1986* was amended by Schedule 1 (items 17 and 18) only of the *A New Tax System (Fringe Benefits Reporting) Act 1999*, subsection 2(1) of which provides as follows:
- (1) This Act commences on the day on which it receives the Royal Assent.
- (d) The *Fringe Benefits Tax (Application to the Commonwealth) Act 1986* was amended by Schedule 1 (item 494) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:

Endnotes

Endnote 3—Legislation history

- (1) In this Act, *commencing time* means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Title	am. No. 17, 1999
s. 2A	ad. No. 17, 1999
s. 3	am. No. 146, 1995; No. 146, 1999; No. 88, 2009; No. 5, 2011; No 62, 2014
s. 4	am. No. 48, 1986; No. 216, 1991; No. 46, 2011
s. 5	am. No. 46, 2011
s. 5A	ad. No. 216, 1991
s. 6A	ad. No. 223, 1992
s. 6AA	ad. No. 146, 1995 am. No. 52, 2004
Heading to s. 6AB	am. No. 52, 2004
s. 6AB	ad. No. 146, 1995 am. No. 52, 2004
s. 6AC	ad. No. 146, 1995
Heading to s. 7	am. No. 88, 2009
s. 7	am. No. 88, 2009

Endnotes

Endnote 5—Uncommenced amendments [none]

Endnote 5—Uncommenced amendments [none]

Endnote 6—Modifications [none]

Endnote 7—Misdescribed amendments [none]

Endnote 8—Miscellaneous [none]