

Fringe Benefits Tax Amendment Regulations 2004 (No. 1) 2004 No. 28

EXPLANATORY STATEMENT

STATUTORY RULES 2004 No. 28

Issued by authority of the Minister for Revenue and Assistant Treasurer

Fringe Benefits Tax Assessment Act 1986

Fringe Benefits Tax Amendment Regulations 2004 (No. 1)

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 amending Regulations is to prescribe nine funds for the purposes of paragraph 58PB(2)(a) of the Act as approved worker entitlement funds. A worker entitlement fund is a fund that provides for the protection and portability of employee entitlements, such as unused leave or redundancy payments.

Sections 58PA and 58PB of the Act provide an exemption from fringe benefits tax for certain payments to approved worker entitlement funds. This exemption is designed to ensure that certain payments to approved worker entitlement funds are not taxed twice - once as a fringe benefit when paid into the fund and again when paid out of the fund to the employee.

The Regulations commenced on 1 April 2003, and apply for the 2003-2004 fringe benefits tax year and later years. Subsection 48(2) of the *Acts Interpretation Act 1901* (AIA 1901) prohibits the retrospective operation of regulations, or a provision of regulations, which adversely affect the rights of, or impose liabilities on, a person other than the Commonwealth in respect of anything done or omitted to be done before the date of notification. The retrospective commencement of the amending Regulations does not contravene subsection 48(2) of the AIA 1901. This is because the regulations confer a benefit, in that payments which would otherwise be subject to fringe benefits tax are now exempt from that tax.