

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 34

Issued by authority of the Assistant Treasurer

Fringe Benefits Tax Assessment Act 1986

Fringe Benefits Tax Amendment Regulations 2011 (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.

These Regulations amend the *Fringe Benefits Tax Regulations 1992* (the Principal Regulations) to prescribe an additional fund (John Holland Group Worker Entitlement Fund) for the purposes of paragraph 58PB(2)(a) of the Act as an approved worker entitlement fund. 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 (FBT) 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 are a legislative instrument for the purposes of the Legislative Instruments Act 2003 (LIA 2003).

The Regulations commence on the start date for the specified fund: 24 May 2010. The Regulations apply for the corresponding FBT year and later years.

Subsection 12(2) of the LIA 2003 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 does not contravene subsection 12(2) because the Regulations confers a benefit, in that payments which would otherwise be subject to FBT are exempt from that tax.

Consultation was not undertaken in relation to this instrument because it was minor or machinery in nature and did not substantially change the law.