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## ***General outline and financial impact***

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### **Phase-out of net medical expenses tax offset**

Schedule # of this Bill amends the tax law to phase-out the net medical expenses tax offset by the end of the 2018-19 income year. During the income years 2013-14 to 2018-19 the tax offset will be subject to transitional arrangements.

***Date of effect:*** The amendments will apply from 1 July 2013 with the transitional arrangements and the tax offset ceasing on 1 July 2019.

***Proposal announced:*** This measure was initially announced by the former Government as part of the 2013-14 Budget. The current Government announced that it would proceed with the measure in the Treasurer's and Assistant Treasurer's Joint Media Release of 6 November 2013.

***Financial impact:*** In the 2013-14 Budget, this measure was estimated to have the following financial implications:

<b><i>2012-13</i></b>	<b><i>2013-14</i></b>	<b><i>2014-15</i></b>	<b><i>2015-16</i></b>	<b><i>2016-17</i></b>
-\$0.1m	-\$4.9m	\$174.2m	\$284.5m	\$509.8m

This measure was estimated to provide savings to the Budget of \$963.5 million over the forward estimates. Proceeding with this measure as announced has no additional impact over the forward estimates period.

***Human rights implications:*** This Schedule is compatible with human rights. See *Statement of Compatibility with Human Rights* — Chapter [#], paragraphs [## to ##].

***Compliance cost impact:*** Nil.



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# **Chapter 1**

## **Phase-out of the net medical expenses tax offset**

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### **Outline of chapter**

1.1 Schedule # of this Bill amends the tax law to phase-out the net medical expenses tax offset by the end of the 2018-19 income year. During the income years 2013-14 to 2018-19 the tax offset will be subject to transitional arrangements. The rebate for medical expenses is commonly referred to as the net medical expenses tax offset (NMETO).

1.2 References in this chapter are to the *Income Tax Assessment Act 1936* (ITAA 1936) unless otherwise indicated.

### **Context of amendments**

1.3 The NMETO provides taxpayers with a non-refundable tax offset for eligible out-of-pocket medical expenses (that is, medical expenses less available reimbursements, such as those through the Medicare Benefits Schedule, the Pharmaceutical Benefits Scheme, the Repatriation Pharmaceutical Benefits Scheme, Government aged care subsidies and private health insurance refunds) above the NMETO claim threshold.

1.4 Eligible medical expenses are defined in section 159P of the ITAA 1936 and broadly include an expense related to an illness or operation which has been paid to a legally qualified doctor, nurse, pharmacist or hospital. The cost of the purchase and maintenance of medical aids and artificial limbs, artificial eyes and hearing aids are also eligible expenses for NMETO. However, expenses incurred as a result of cosmetic operations are considered to be ineligible medical expenses.

1.5 There is no monetary limit to the total offset a taxpayer is eligible for, but the amount of offset received is limited by the taxpayer's tax liability. That is, a taxpayer cannot receive a greater amount of offset than their basic income tax liability.

1.6 Where a taxpayer has paid eligible medical expenses for themselves or their Australian resident dependants, the taxpayer totals those expenses to reach the claim threshold.

1.7 From 1 July 2012, the threshold above which a taxpayer may claim the offset and the rate at which the offset applies was means tested.

1.8 In 2012-13, the offset was 20 per cent of net medical expenses over \$2,120 for single taxpayers with adjusted taxable income for rebates of \$84,000 or less, and families with a combined adjusted taxable income for rebates of \$168,000 or less. For taxpayers with adjusted taxable income for rebates over these income thresholds, the offset was 10 per cent of net medical expenses over \$5,000.

1.9 The 2013-14 Budget included a measure phasing out NMETO, with transitional arrangements for those currently claiming the offset.

1.10 The NMETO is being phased out as it has a number of shortcomings. First, as it can only be claimed at the end of the financial year, it does not provide financial assistance when the medical expense is incurred. Secondly, only taxpayers who have a tax liability receive a benefit from the offset. Individuals with high out-of-pocket medical expenses and little or no tax liability gain no benefit from this offset as it is not refundable.

1.11 The Government will continue to provide a range of subsidies for medical expenses via the Medicare Safety Net as the primary support mechanism, supplemented by Medicare, the National Disability Insurance Scheme and other benefits, rebates and safety nets through the health care system.

## Summary of new law

1.12 Under this measure the NMETO will be phased out between the 2013-14 and 2018-19 income years and ultimately be repealed on 1 July 2019.

1.13 During that period there will be two sets of transitional arrangements in place:

- **Category A transitional arrangements:**

The NMETO will continue to be available for out-of-pocket medical expenses (as defined currently) from the 2012-13 income year until the end of the 2018-19 income year, *but only* for those medical expenses relating to disability aids, attendant care or aged care.

- **Category B transitional arrangements:**

Taxpayers who receive an amount of the NMETO for the 2012-13 income year will be eligible to claim the full range of medical expenses (as defined currently) for the 2013-14 income year.

Taxpayers who receive an amount of the NMETO for both the 2012-13 and 2013-14 income years will then also be eligible to claim the full range of medical expenses (as defined currently) for the 2014-15 income year.

1.14 This measure will also make a number of consequential amendments to the income tax law as well as the fringe benefits tax law to facilitate the phase-out of the NMETO.

### Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>From the 2013-14 income year until the end of the 2018-19 income year the NMETO will be phased out through two sets of transitional arrangements.</p> <ul style="list-style-type: none"> <li>• From the 2013-14 income year until the end of the 2018-19 income year taxpayers can only claim the NMETO for medical expenses that both meet the current definition and eligibility requirements <i>and</i> relate to disability aids, attendant care or aged care.</li> <li>• For the 2013-14 income year and 2014-15 income year, taxpayers will be eligible to claim the full range of medical expenses (as defined currently) but only if they have received an amount of the NMETO in the previous income year (or in both 2012-13 and 2013-14 in respect to claims in the 2014-15 income year).</li> </ul> <p>From 1 July 2019 the NMETO will be repealed.</p>	<p>Taxpayers can claim the NMETO for medical expenses that meet the definition and eligibility requirements.</p>

## Detailed explanation of new law

1.15 The phase-out of the NMETO will apply from the 2013-14 income year and be fully phased-out by the end of the 2018-19 income year. The phase-out will involve two categories of transitional arrangements that operate during different periods and apply differently in respect to which eligible medical expenses can be claimed.

### Category A transitional arrangements

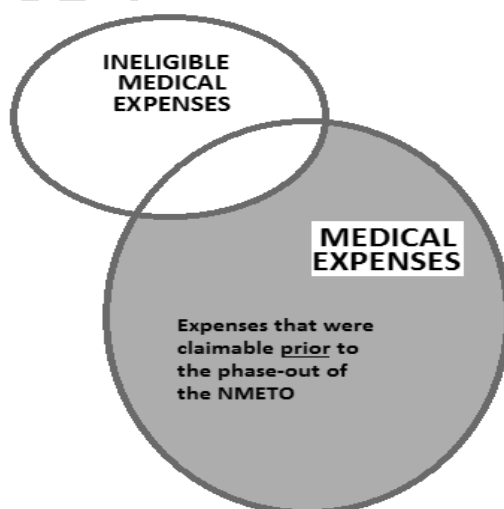
1.16 Under the Category A transitional arrangements, from 1 July 2013 to 30 June 2019, NMETO is only available for out-of-pocket expenses that meet the definition of ‘medical expenses’ (as defined currently in section 159P) and relate to certain types of medical care and support (broadly, disability aids, attendant care or aged care). *[Schedule #, item 1, subsection 159P(1B)]*

1.17 These arrangements limit which medical expenses can be used to claim NMETO during the phase-out period. This measure tightens what can be claimed for the NMETO by adding further conditions that must also be met before a medical expense can be claimed.

1.18 Under Category A transitional arrangements a medical expense may only be claimed under the NMETO if it:

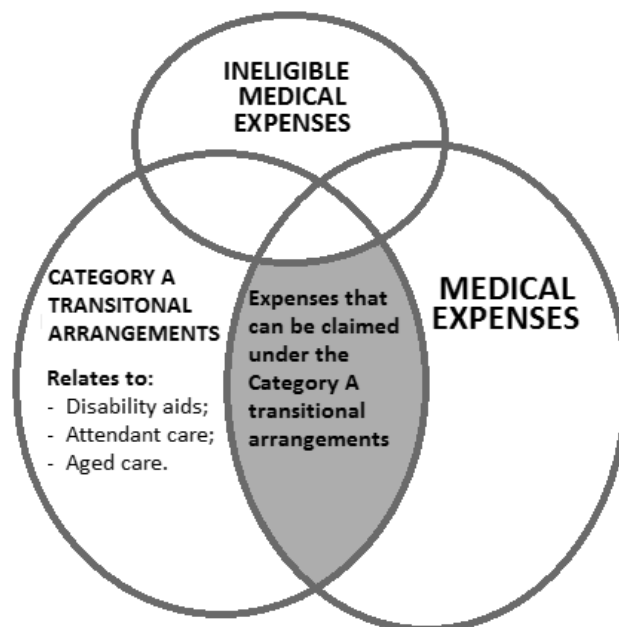
- would be an eligible medical expense under the existing section 159P; and
- relates to disability aids, attendant care or aged care.

Diagram 1.1



1.19 As illustrated in Diagram 1.1, prior to the phase-out of the NMETO all medical expenses that were not ineligible medical expenses as defined in section 159P were potentially claimable under the NMETO.

**Diagram 1.2**



1.20 Diagram 1.2 illustrates that the Category A transitional arrangements limit what can be claimed by adding the additional requirement that those ordinarily eligible medical expenses need to be related to either disability aids, attendant care or aged care in order to be claimed under the NMETO.

***Is the expense an eligible medical expense under existing section 159P?***

1.21 'Medical expenses' is currently defined in subsection 159P(4). A medical expense is a payment falling under one of the categories listed in that definition, unless it is an 'ineligible medical expense', also defined in that subsection. Ineligible medical expenses generally relate to cosmetic operations and treatment.

1.22 For the purpose of determining when a payment is made, the meanings of medical expenses and ineligible medical expenses are modified by subsections 159P(5) to (8).

1.23 Given the history of case law and administrative decisions issued by the Commissioner of Taxation on the definition of what constitutes a 'medical expense', the Category A transitional arrangements do not alter the existing meaning, modifications or limitations within section 159P.

***Does the expense relate to disability aids, attendant care or aged care?***

1.24 In determining whether a medical expense can be claimed for NMETO under the Category A transitional arrangements, it will be necessary to consider whether the expense is related to:

- an aid for a person with a disability [*Schedule #, item 1, paragraph 159P(1B)(a)*];
- services rendered by a person as an attendant of a person with a disability [*Schedule #, item 1, paragraph 159P(1B)(b)*]; or
- care provided by an approved provider (within the meaning of the *Aged Care Act 1997*) of a person who is a care recipient or continuing care recipient (within the meaning of that Act) [*Schedule #, item 1, paragraph 159P(1B)(c)*].

1.25 Whether an expense is related to disability aids, attendant care or aged care will largely be a matter of fact and circumstance. During the phase-out period, additional guidance will be provided by the Australian Taxation Office to assist people with determining whether their expense is eligible to be claimed under the NMETO.

1.26 The words used in the amendments to describe disability aids, attendant care and aged care take their commonly understood meaning within the context of section 159P and the existing history of case law and administrative decisions. However, to provide additional clarity on the policy intent underlining these concepts, further explanation is provided at paragraphs #.27 to #.34.

Disability aids

1.27 The concept of a ***disability aid***, for the purpose of these amendments, is intended to mean an instrument, apparatus, assistance device or any other item of property that is manufactured as, distributed as, or generally recognised to be, an aid to the function or capacity of a person with a disability.

**Example 1.1: Purchase of a wheelchair**

A person is a paraplegic and purchases a wheelchair to assist with mobility. The wheelchair is a disability aid as it is an assistance device that is manufactured to aid the capacity of people with a disability.



### Example 1.2: Maintenance of a Guide Dog

A person that is blind maintains a Guide Dog to achieve independence through access and mobility. The expenses associated with maintaining that Guide Dog, assuming they are eligible medical expenses under section 159P, would be related to an aid for a person with a disability.

This is because the Guide Dog would be considered an item of property that is generally recognised to be an aid to the function and capacity of a person that is blind.

1.28 A disability aid would be considered to be an ***aid to function or capacity*** if it helps a person in performing activities of daily living or provides assistance to alleviate the effect of the disability. However, generally speaking, an ordinary or general household or commercial appliance is not a disability aid, even if it helps a disabled person.

### Example 1.3: Purchase of an air conditioner

A person that is bed ridden with a disability has a particular sensitivity to heat (that is unrelated to the disability) and purchases an air conditioner for their house.

Even though the air conditioner would help the person and relieve discomfort it is not a disability aid as it does not alleviate the effect of the disability and is not manufactured as, distributed as, or generally recognised to be, an aid to the function or capacity of a person with a disability.

### Attendant care

1.29 The concept of attendant care, for the purpose of this measure, is explained in the amendments as services rendered by a person as an attendant of a person with a disability. [*Schedule #, item 1, paragraph 159P(1B)(b)*]

1.30 The concept includes services and care provided to a person with a disability who needs personal assistance to complete activities of daily living, who is able to manage living in the community and who lives in their own home or in their own leased accommodation.

1.31 Attendant care services provide assistance with everyday tasks and include, for example, personal assistance, home nursing, home maintenance and domestic services.

#### **Example 1.4: Attendant care services**

A person has an acquired brain injury and pays for an attendant to come to their home to assist with grooming, clothing and feeding activities during the day.

The expenses for the services provided by the attendant would be considered related to attendant care under this measure.

#### Aged care

1.32 The concept of aged care, for the purpose of these amendments, predominantly takes its meaning from the *Aged Care Act 1997* which regulates the provision of aged care and provides Government subsidies to approved aged care providers.

1.33 To that end, under these amendments, medical expenses related to aged care means care provided by an approved provider (within the meaning of the *Aged Care Act 1997*) of a person who is a care recipient or continuing care recipient (within the meaning of that Act). [*Schedule #, item 1, paragraph 159P(1B)(c)*]

1.34 The term *care* takes its ordinary meaning and is consistent with the definition in the *Aged Care Act 1997* wherein care means ‘services, or accommodation and services, provided to a person whose physical, mental or social functioning is affected to such a degree that the person cannot maintain himself or herself independently’.

#### **Category B transitional arrangements**

1.35 The Category B transitional arrangements are intended to act as an exception to the Category A transitional arrangements and allow taxpayers to claim the NMETO for medical expenses unrelated to disability aids, attendant care or aged care until the end of the 2014-15 income year.

1.36 Under the Category B transitional arrangements, taxpayers who receive an amount of the NMETO for the 2012-13 income year will be eligible to claim the NMETO for the full range of medical expenses (as defined currently in section 159P) for the 2013-14 income year. [*Schedule #, item 1, paragraph 159P(1C)(a)*]

**Example 1.5: Claiming in 2013-14 income year**

In respect of the 2012-13 income year, Jemma received the NMETO to the value of \$3,000 as part of her income tax assessment relating to various types of medical expenses incurred over the income year including expenses for pharmaceuticals, surgery costs for having her wisdom teeth removed and for expenses relating to IVF treatment.

As Jemma had received an amount of NMETO for the 2012-13 income year, she will be able to claim NMETO in the 2013-14 income year for the entire range of medical expenses that are eligible under section 159P, not just those for disability aids, attendant care or aged care.

1.37 Additionally, taxpayers who receive an amount of the NMETO for both the 2012-13 and 2013-14 income years will also be eligible to claim the NMETO for the full range of medical expenses (as defined currently in section 159P) for the 2014-15 income year. [*Schedule #, item 1, paragraph 159P(1C)(b)*]

**Example 1.6: Unable to claim in 2014-15 income year**

When completing his tax return for the 2014-15 income year Ross determines that he is unable to claim the NMETO for that year because he did not receive an amount of the NMETO in the 2013-14 income year (as his expenses were under the relevant thresholds for that year) and because his medical expenses for the 2014-15 income year were for major dental work and not related to disability aids, attendant care or aged care.

Even though he received an amount of NMETO in 2012-13, he did not receive an amount in the 2013-14 income year and is therefore not eligible to claim the NMETO in the 2014-15 income year.

1.38 The amendments also make it clear that where a trustee has received an amount of the NMETO in respect to a beneficiary in the 2012-13 income year (or both 2012-13 and 2013-14 income years if the claim is for the 2014-15 year), the Category B transitional arrangements will extend to the trustee as well in respect of a particular beneficiary. [*Schedule #, item 1, paragraph 159P(1D)*]

1.39 The last income year for which medical expenses can be claimed under the Category B transitional arrangements using the current definition of medical expenses in section 159P will be 2014-15.

## Consequential amendments

### Consequential amendments to the *Fringe Benefits Tax Assessment Act 1986*

1.40 Subsection 58L(2) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) refers to the definition of medical expenses as currently defined in section 159P. However, as section 159P will be significantly altered as part of the transitional arrangements and ultimately repealed from 1 July 2019, the current definitions of ‘medical expense’ and ‘ineligible medical expense’ are preserved by rewriting them into section 58L of the FBTAA. [*Schedule #, item 2*]

1.41 The definitions of ‘medical expense’ and ‘ineligible medical expense’ have been modified slightly to improve readability but continue to have the exact same meaning as they did in section 159P.

1.42 Accordingly, the intent of this consequential amendment is to preserve the current operation of subsection 58L(2) of the FBTAA.

### Consequential amendments that apply from 1 July 2019

1.43 From 1 July 2019 the NMETO will be repealed as the transitional arrangements will have concluded.

1.44 Accordingly a number of consequential amendments will be required to facilitate the repeal of the NMETO provisions. [*Schedule #, items 3 to 8*]

## Commencement and application date

1.45 The Category A transitional amendments apply from 1 July 2013 until 30 June 2019 and the Category B transitional arrangements apply from 1 July 2013 until 30 June 2015. Both the transitional amendments and the consequential amendments to the FBTAA commence on Royal Assent.

1.46 The amendments repealing the NMETO provisions and associated consequential amendments will commence and apply on 1 July 2019.

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## **Chapter 2**

# **Statement of Compatibility with Human Rights**

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

### ***Phase-out of the net medical expenses tax offset***

2.1 This Schedule 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**

2.2 Schedule # of this Bill amends the tax law to phase-out the net medical expenses tax offset (NMETO) by the end of the 2018-19 income year. During the income years 2013-14 to 2018-19 the tax offset will be subject to transitional arrangements.

### **Human rights implications**

2.3 This Schedule engages the following human rights:

#### *'Right to Health'*

2.4 Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right to the enjoyment of the highest attainable standard of physical and mental health.

2.5 While ICESCR contains no definition of health, the United Nations Committee on Economic Social and Cultural Rights has stated that the right to health is not to be understood as a right to be healthy. The Committee has stated that the right to health contains both freedoms and entitlements, and the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

2.6 The phase-out of the NMETO is consistent with the right to health as it merely removes an ineffective offset that is only really available to particular claimants for particular medical expenses.

Individuals with high out-of-pocket medical expenses and little or no tax liability gain no benefit from this offset as it is not refundable. Individuals remain entitled to the core government health schemes and systems such as the Medicare Safety Net, which is supplemented by Medicare, the National Disability Insurance Scheme and the Pharmaceutical Benefits Scheme to provide an equal opportunity for people to enjoy the highest attainable level of health. The phase-out and eventual repeal of this offset will allow for further funding of other Government priorities, including health care.

*'Rights of people with a disability'*

2.7 Articles 9 and 19 of the Convention on the Rights of Persons with Disabilities (CRPD) recognise the need to allow persons with a disability to live independently and participate fully in all aspects of life.

2.8 The phase-out of the NMETO is consistent with this right as the transitional arrangements allow for taxpayers to claim medical expenses under the NMETO where they relate to disability aids and attendant care.

## **Conclusion**

2.9 The Schedule is compatible with human rights because it is consistent with the right to health and the rights of people with a disability by removing an ineffective offset to allow for further funding of other Government priorities, including health care. Through the main health schemes individuals are still provided equal opportunity for people to enjoy the highest attainable level of health.

**Senator the Hon Arthur Sinodinos AO**  
**Assistant Treasurer**