
TREASURY LAWS AMENDMENT (MEASURES FOR A LATER SITTING) BILL
2021

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
Bill	Treasury Laws Amendment (Measures for a Later Sitting) Bill 2021
FBT	fringe benefits tax

Chapter 1

Fringe benefits tax exemption to support retraining and reskilling

Outline of chapter

1.1 Schedule 1 to the Bill amends the *Fringe Benefits Tax Assessment Act 1986* to provide employers with an exemption from fringe benefits tax if they provide training or education to a redundant, or soon to be redundant, employee for the purpose of assisting that employee to gain new employment.

1.2 All legislative references in this Chapter are to the *Fringe Benefits Tax Assessment Act 1986* unless otherwise indicated.

Context of amendments

1.3 The increased rate of globalisation and technological change, and the changing nature of work and labour market, are among the forces driving the need for continued upgrading of skills throughout life. Retraining and reskilling plays an important role in allowing Australia's labour force to benefit from the ongoing transformation of jobs and workplaces.

1.4 Against this background, the Government is supporting employers to retrain and reskill individuals for future employment opportunities.

1.5 To incentivise employers to retrain and reskill redundant (or soon to be redundant) employees so that they are better prepared to transition to their next career, the new law provides employers an exemption from FBT on benefits provided to these employees for the purpose of enabling them to gain new employment.

Summary of new law

1.6 Schedule 1 to the Bill amends the Act to provide employers with an exemption from FBT if they provide training or education to a redundant, or soon to be redundant, employee for the purpose of assisting that employee to gain new employment.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Employers are exempt from FBT if they provide training or education to a redundant, or soon to be redundant, employee for the purpose of assisting that employee to gain new employment.	No equivalent.

Detailed explanation of new law

New FBT exemption for retraining and reskilling redundant employees

1.7 Under the new law, a benefit is exempt from FBT if all of the following conditions are satisfied:

- the benefit is provided in, or in respect of, the tax year in respect of education or training undertaken by an employee of an employer;
- the employee is redundant;
- the employer has complied with any obligations under the *Fair Work Act 2009* that applies in relation to the redundancy (such as any requirements to consult about the redundancy or, if the employee has been dismissed, any obligations regarding the dismissal);
- the education or training is for the primary purpose of enabling the employee to gain or produce salary or wages in respect of any employment to which the education or training relates.

[Schedule X, item 1, subsection 58ZE(1)]

1.8 A benefit may obtain concessional treatment under the new FBT exemption if it is provided in, or in respect of, a tax year (within the existing meaning under section 138A of the Act).

1.9 The benefit must be provided in respect of education or training undertaken by an employee of the employer. This covers the expenses associated with obtaining the education or training (such as the cost of the education or training or related materials such as textbooks).

1.10 'Employee' is defined under existing section 136 of the Act and includes current employees, former employees and future employees.

1.11 For the purposes of the FBT exemption, an employee is redundant if the employee's employer no longer requires, or reasonably expects to no longer require, the employee's job to be performed by anyone because of changes in the operational requirements of the employer's business or undertaking. [*Schedule X, item 1, subsection 58ZE(2)*]

1.12 The concept of redundancy for the purposes of the new FBT exemption is broad. It covers circumstances where an employee is made redundant in one part of the employer's business but is able to be redeployed to another part of its business (or within an associate's business). It also covers circumstances where the employer reasonably expects the employee to be redundant, but has not yet been made redundant. If circumstances changed, and the employee is not actually made redundant (for example, because the employer restructures its business in such a way so as to retain the employee), the employer will not be denied the FBT exemption for any benefits provided during the period throughout which the redundancy test has been satisfied.

1.13 In addition, as noted above, the employer must also be satisfied that the education or training is being undertaken for the primary purpose of enabling the employee to gain or produce salary or wages in respect of any employment to which the education or training relates. Education or training that is undertaken primarily for personal reasons or interest will not satisfy this test. There must be a close nexus between the education or training and the expected employment the employee is planning to pursue.

1.14 Some benefits are excluded from the new FBT exemption. In particular, the following benefits will continue to be subject to FBT under the existing law:

- benefits provided under a salary packaging arrangement;
- benefits that are a payment or other amount covered by subsection 26-10(1) of the *Income Tax Assessment Act 1997*;
- benefits that involve a primary course or secondary course (as defined under the *A New Tax System (Goods and Services Tax) Act 1999*); and
- relatives of certain employers (or certain individuals who are connected to the employer).

[*Schedule X, item 1, subsection 58ZE(3)*]

Application and transitional provisions

1.15 The new law applies to benefits provided on or after 2 October 2020 – being the date of announcement of the measure. [*Schedule X, item 2*]

1.16 The amendments commence on the first day of the first quarter after Royal Assent.