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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL
2021: MINOR AND TECHNICAL AMENDMENTS AUTUMN 2022

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and
Community Housing, the Hon Michael Sukkar MP)

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Chapter 1

Miscellaneous and technical amendments

Outline of chapter

- 1.1 Schedule 1 makes a miscellaneous and technical amendment to the *Fringe Benefits Tax Assessment Act 1986*. The amendment is part of the Government's ongoing commitment to the care and maintenance of Treasury portfolio legislation.
- 1.2 The amendment makes a minor and technical change to address an unintended outcome; to ensure that the law gives effect to the original policy intent.

Context of amendments

- 1.3 Minor and technical amendments are periodically made to Treasury legislation to remove anomalies, correct unintended outcomes and generally improve the quality of laws. Making such amendments gives priority to the care and maintenance of Treasury portfolio legislation
- 1.4 The process was first supported by a recommendation of the 2008 Tax Design Review Panel, which was appointed to examine how to reduce delays in the enactment of tax legislation and improve the quality of tax law changes. It has since been expanded to all Treasury portfolio legislation.

Summary of new law

- 1.5 The minor and technical amendment addresses legislative uncertainty by fixing an unintended outcome affecting income tax exempt not-for-profit private health insurers operating hospitals in the *Fringe Benefits Tax Assessment Act 1986*. The legislation replaces the concept of rebatable employer in the case where a Fringe Benefits Tax (FBT) exemption is provided to employees by an employer that is a society or association carrying on a private hospital.

Detailed explanation of new law

Amendments commencing first day of next quarter

Fringe Benefits Tax Assessment Act 1986

1.6 In 2013 the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) was amended by the *Tax Laws Amendment (2013 Measures No. 2) Act 2013* to make minor changes to the FBT regime to ensure it operated as intended and to correct anomalies that resulted from introduction of the *Australian Charities and Not-for-profits Commission Act 2012*.

1.7 The 2013 amendments inserted substantive special conditions contained in Division 50 of the ITAA 1997 and previously in section 65J of the FBTAA and made modifications to improve readability, using a table format and explicitly cross referencing the income tax exemption entity provisions. They also included consequential changes to the FBT exemptions for certain tax exempt not-for-profit employers.

1.8 An unintended consequence of the amendments is that income tax exempt not-for-profit private health insurers operating hospitals had been inadvertently excluded from accessing the exemption in respect of their hospital employees.

1.9 The legislation fixes this unintended consequence by removing the direct link between the eligibility for the FBT rebate and access to elements of the FBT exemption for hospital employees, restoring access to the exemption to certain tax exempt not-for-profit societies and associations. [*Schedule 1, item 2, section 57A of Fringe Benefits Tax Assessment Act 1986*]

1.10 The legislation has been drafted to prevent any overlap between those employees covered by the \$30,000 exemption cap and those covered by the \$17,000 exemption cap as set out in section 5B(1E). The legislation also ensures that the original intent of the amendments made in 2012 and 2013, which extended new special conditions in Division 50 of the *Income Tax Assessment Act 1997*, also applied to FBT. [*Schedule 1, item 1, section 5B of Fringe Benefits Tax Assessment Act 1986*]

1.11 This amendment will apply retrospectively to the 2017-18 FBT year and later FBT years. This retrospective application will align the amendment with the FBT amendment period. The retrospective application is appropriate as it is wholly beneficial to affected stakeholders. [*Schedule 1, item 3*]