

Chapter 2

Fringe benefits

2.1 The most contentious aspects of the bill are the changes to the rules concerning fringe benefits.

Meal cards

2.2 Schedule 1 of the bill amends the *Fringe Benefits Tax Assessment Act 1986* to exclude food and drink provided as part of a salary sacrifice arrangement from the exemptions from fringe benefits tax applying to goods consumed on an employer's premises.

2.3 This exemption had originally been intended to apply only to meals consumed in staff canteens or other minor benefits such as a ration of beer for brewery workers or bread rolls consumed by workers in a bakery.¹ However, it has increasingly been used for meals provided to employees under salary sacrifice arrangements, including the use of 'meal cards'. Under such arrangements an employer pays for an employee's meals provided by an independent caterer who either operates in the workplace or delivers to it.² Treasury is concerned that the use of meal cards was becoming more prevalent as their use was being promoted in advertising. The committee was shown examples of advertisements headed 'make your lunch break a tax break'. This meant that the unintended use of the exemption is becoming an increasingly large drain on revenue.

2.4 The growing use of meal cards also raises equity issues. An employee with a meal card pays for meals out of pre-tax salary while most workers have to pay out of after-tax income. In other words, ordinary taxpayers are paying for a third or more of the cost of the meals consumed by the card holder. As Treasury put it:

it is hard to justify why one person can get their meals at half price and the other person cannot, simply because of their employment circumstances.³

2.5 Some critics of the bill claim that the majority of beneficiaries of meal cards are low paid workers:

The average participant in the programs offered by our clients is on a salary band of \$55,000 to \$65,000.⁴

1 Mr Tony Coles, Treasury, *Proof Committee Hansard*, 20 June 2008, pp 2–3 and *Explanatory Memorandum*, p. 8.

2 *Explanatory Memorandum*, p. 8.

3 Mr Mark O'Connor, Treasury, *Proof Committee Hansard*, 20 June 2008, p.9.

4 Remunerator, *Submission 3*, p. 1.

Salary sacrificing for lunch is predominately used by busy ordinary workers who have limited lunch breaks...Of the 30 000 employees using the sustenance benefit industry surveys demonstrate that over 60% are in the 30% tax bracket...over 70% work in the manufacturing, hospitality, health and insurance industries.⁵

...people using meal cards to eat at workplace cafeterias aren't high-flying executives on \$150K a year. Generally it's people who work in factories, plants, and other remote locations...⁶

the majority of organisations who allowed their staff to package on-site meals were non-CBD and therefore included a high proportion of lower paid blue-collar workers.⁷

2.6 There were others who placed the emphasis elsewhere:

...a much more significant benefit to a range of presumably higher income earners.⁸

...tax-efficient meal cards, which have become increasingly popular in corporate dining rooms...⁹

You do not see the person who packs their sandwiches at home and goes to work getting any tax benefit out of the meal that they have prepared, and they have prepared it with their own labour. They have already paid tax on the dollars that bought the bread, the ham, the tomatoes and the butter. Why should someone who happens to be the beneficiary of a structured arrangement get a tax benefit?¹⁰

2.7 There were concerns expressed about the impact of the bill on firms' ability to offer attractive salary packages:

A great user of this benefit is in the manufacturing sector. It is a highly competitive industry for staff but to maintain and reduce costs particularly where they are competing with overseas companies and imported goods.¹¹

2.8 As with the removal of any tax anomaly, firms selling the good favoured by the tax concession are likely to suffer:

Certainly there will be a financial impact on the many small businesses that sell food and drink under meal card deals. A great example of that was aired in the media last week. A person who runs a small cafe—for example, on the ground floor of a larger building in one of our major capital cities—

5 EzyBite, *Submission 2*, pp 4–5.

6 Helen, an EzyBite customer, cited in *Submission 2*, p. 22.

7 Fleximeals, *Submission 4*, p. 1.

8 Mr Tony Coles, Treasury, *Proof Committee Hansard*, 20 June 2008, p. 3.

9 Business columnist, Jacob Saulwick, *Sydney Morning Herald*, 14 May 2008, p. 2.

10 Mr David Bradbury MP, *Proof House of Representatives Hansard*, 28 May 2008, p. 82.

11 Remunerator, *Submission 3*, p. 2.

relies on this sort of business to keep their doors open... Those small businesses are going to be casualties of this ill thought out measure.¹²

2.9 Health concerns were also raised:

It is our assertion that it was a small but popular benefit with staff which encouraged productivity and healthy eating.¹³

[Not having EzyBite] makes it harder to get a decent lunch meal and instead I snack on junk food and then feel sick - bring it back!!!¹⁴

The capacity to rely on the sustenance benefit gives workers surety of lunch and avoids the risk that they will skip meals because of time constraints in purchasing lunch outside. This supports the health and well being of workers.¹⁵

The changes will impact me significantly. I had renewed quality of life with EzyBite as it meant that I actually had lunch!¹⁶

2.10 There were also references to loss of productivity and leisure time:

Now that there are no savings benefits I am not eating as often as I was at the cafeteria, and now I have to waste time and go out and get food to eat when usually I would just walk to the cafeteria onsite, its very inconvenient.¹⁷

2.11 The committee is surprised, if the meal card services offer such large benefits in health, convenience and productivity, that they would not continue in the absence of a tax exemption.

2.12 The committee heard conflicting views about the impact of the bill on competition, and hence productivity, in food retailing, although the impact either way is likely to be small:

The measure may also promote greater competition between meal providers. This is because it removes a disincentive for employees to shop around for the best price or quality available for meals.¹⁸

...the provision of the sustenance benefit actually promotes competition amongst food vendors and reduces the stranglehold that café's in the bottom of buildings tend to have on time poor employees seeking a quick take away lunch. The choice of food vendors offered through the EzyBite

12 Mr Michael Keenan MP, *Proof House of Representatives Hansard*, 28 May 2008, p. 75.

13 Fleximeals, *Submission 4*, p. 1.

14 Anna, an EzyBite customer, cited in *Submission 2*, p. 19.

15 EzyBite, *Submission 2*, p. 5.

16 James, an EzyBite customer, cited in *Submission 2*, p. 19.

17 David, an EzyBite customer, cited in *Submission 2*, p. 20.

18 The Hon Wayne Swan MP, Treasurer, *Proof House of Representatives Hansard*, 27 May 2008, p. 45.

system is made following a survey of the needs and wants of employees and employers at each workplace.¹⁹

2.13 While three of the four submissions received which discussed meal cards were from firms providing the service, and were unsurprisingly hostile to the bill, another submission praised the bill for restoring the original intent of the fringe benefits legislation:

They are consistent with the original intent of the FBT, which was to protect the personal income tax base by ensuring that fringe benefits for personal use were brought to tax. ACOSS supports tax...policies that take account of people's ability to pay...in a fair and consistent way.²⁰

2.14 An alternative response suggested to the committee was to cap the amount available to be salary sacrificed, or restrict it to employers providing healthy food choices.²¹ However, this still leaves an inequity between employees of companies offering salary sacrifice and other taxpayers. It also further complicates the tax system and increases compliance costs.

2.15 Treasury estimates the measure will restore an increasing amount to revenue, rising from around \$100 million in 2008–09 to around \$200 million by 2011–12.²² Evidence provided to the committee questioned this estimate:

based on industry data it is estimated that there are no more than 30 000 people currently using this benefit and on average they salary sacrifice \$100 per month. This equates to a total industry annual turnover of about \$36 million. Thus removing the FBT benefit and incentive for salary sacrificing would save less than \$15 million in 2008-09, not the \$110 million estimated by Treasury.²³

...the estimated saving of \$730m over four years is wildly overstated.²⁴

2.16 Questioned on this, Treasury admitted there was no certainty about the estimate and they had the normal constraints on talking to the industry in making their estimate of the revenue currently being lost:

The estimates that appear in the budget papers are calculated by using taxation statistics on the number of taxpayers who are shown as having salary sacrifice arrangements. There is no data specific to meal card arrangements, so a take-up rate assumption has been applied to that... it is applying anecdotal evidence and what you would, I suppose, call reasonable assumptions, drawing on whatever evidence is available—but

19 EzyBite, *Submission 2*, p. 5.

20 Australian Council of Social Service, *Submission 1*, p. 1.

21 EzyBite, *Submission 2*, p. 18.

22 *2008–09 Budget Paper no. 2*, p. 24.

23 EzyBite, *Submission 2*, p. 17.

24 Fleximeals, *Submission 4*, p.1.

there is not a lot... we did not talk to those providers [of meal cards in making the revenue estimates]. There was an issue in developing the measure around budget secrecy and the like, which prevented us from being able to.²⁵

2.17 However, as noted above, Treasury thought that if nothing were done, usage of meal cards could grow rapidly.²⁶ There was an element of pre-emptive action in the measure.

Other work-related items

2.18 Also amended by Schedule 1 are the *Income Tax Assessment Act 1936* and *Income Tax Assessment Act 1997* so as to restrict the fringe benefits tax exemption for 'work-related' items to those 'used primarily for work-related purposes'. In 1995 the former Act had been amended in an effort to reduce compliance costs. Instead of requiring employers to obtain declarations of the proportion of the use of these items that was work-related, it was just assumed they were predominantly used for work.

2.19 Subsequent changes in technology have meant that many of the goods exempted under this provision, such as laptop computers, are now primarily used for private purposes. Some employees are now able to obtain items such as laptops for private use under salary sacrifice arrangements. It is unfair that some people, predominantly higher income earners, are able to buy these items out of pre-tax salary while most workers have to pay for them out of after-tax income.

2.20 The amendments would also limit the exemption to one item a year (other than replacement items) in each of the following groups (so that, for example, a laptop and a palm pilot would not be both exempt) :

- portable electronic device;
- item of computer software;
- item of protective clothing;
- briefcase; and
- tool of trade.

2.21 The bill also restricts the current practice whereby employees can claim deductions for the decline in value of laptop computers even if their effective cost had been less than the purchase price, as it had been provided as part of a salary package. This could mean that the same laptop is being claimed as a tax deduction by both the employer and employee.

25 Mr Colin Brown, Treasury, *Proof Committee Hansard*, 20 June 2008, pp 3, 5 and 9.

26 'The evidence in respect of meal cards is that these things have been very heavily promoted and that they have been growing very rapidly'; Mr Colin Brown, Treasury, *Proof Committee Hansard*, 20 June 2008, p. 3.

2.22 Treasury estimates the measure will restore an increasing amount to revenue, rising from around \$50 million in 2008–09 to around \$200 million by 2011–12.²⁷

2.23 This measure was criticised on the grounds that changes to the treatment of employee purchases of laptop computers will mean significantly fewer will be bought and significantly fewer children have access to them:

It's somewhat counter-intuitive to the government's stated intention of increasing familiarity with computers and technology.²⁸

2.24 On the other hand, the head of a computer wholesaler thought any effect would be small:

...I would expect these FBT changes will only have a minimal impact...²⁹

2.25 As with the meal cards measure, this aspect of the bill was praised for restoring the original intent of the fringe benefits legislation:

They are consistent with the original intent of the FBT, which was to protect the personal income tax base by ensuring that fringe benefits for personal use were brought to tax. ACOSS supports tax...policies that take account of people's ability to pay...in a fair and consistent way.³⁰

27 2008–09 Budget Paper no. 2, p. 22.

28 KPMG partner Andy Hutt, cited in *Australian Financial Review*, 15 May 2008, p. 14.

29 Mark Whittard, General Manager of Toshiba Australia, cited in *Australian Financial Review*, 15 May 2008, p. 14.

30 Australian Council of Social Service, *Submission 1*, p. 1.