


# ***CR 2010/7 - Fringe benefits tax: health services provided by Wesley Corporate Health***

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## Class Ruling

### Fringe benefits tax: health services provided by Wesley Corporate Health

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#### **ⓘ This publication provides you with the following level of protection:**

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

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1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

#### **Relevant provision(s)**

2. The relevant provisions dealt with in this Ruling are:

- section 38 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA);
- section 58M of the FBTAA;
- section 58P of the FBTAA;
- subsection 136(1) of the FBTAA;
- section 32-5 of the *Income Tax Assessment Act 1997* (ITAA 1997); and
- section 32-20 of the ITAA 1997.

All subsequent legislative references in the Ruling are to the FBTAA unless otherwise indicated.

## **Class of entities**

3. The class of entities to which this Ruling applies are employers who make available to their employees corporate health services provided by Wesley Corporate Health (WCH).

## **Qualifications**

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 9 to 32 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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## **Date of effect**

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8. This Ruling applies from 1 April 2008. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

## Scheme

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9. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- the application for a Class Ruling (dated 24 May 2008);
- a Service Agreement 2008 sample between Wesley Corporate Health and an employer client;
- a Corporate Brochure 'Better health, better people, better performance';
- a brochure 'The future at work health report';
- a brochure 'The wellbeing book';
- a case study supporting the application;
- additional information provided in a letter dated 10 November 2008; and
- additional information provided in a letter dated 11 December 2008.

10. WCH provides preventative health and wellbeing services to corporations and their employees.

11. When preventative health services are provided to clients (employers) and to their employees, health screening services are offered to all employees. These services are designed with the employers particular needs in mind and can vary depending on the type of work the employee undertakes. These services are intended to reduce the health risks of the individual, and in doing so, improve the performance as an employee and ultimately their quality of life.

12. All services offered by WCH are conducted by experienced, tertiary qualified medical and health professionals including doctors, dieticians, exercise physiologists, physiotherapists and psychologists.

13. WCH has established clinics in numerous locations, and has an on-site service for company employees which is provided in their working environment. The clinics offer comprehensive medical examinations and consultative weight management programs.

14. It is the policy of WCH to encourage all employer clients to make all health and medical services available generally to all employees.

15. The opportunity to receive WCH services will not be provided to employees as:

- a reward for services rendered;
- a reward for specific achievements; or
- a part of a salary sacrifice arrangement.

16. WCH has four key divisions through which health services are offered to employers:

***Executive Health***

***Workplace Health and Wellness***

***Wesley Weight Management Clinic***

***Rehab Dynamics***

## **Services provided by WCH**

### ***Pre-employment medicals and functional evaluations***

17. Pre-employment medicals and functional capacity evaluations are provided through ***Executive Health*** and ***Rehab Dynamics***. These are provided when an employee commences employment with an employer fulfilling the requirements specified by the employer and include vision, audiometry, and spirometry examinations. All initial medicals and evaluations are carried out by a WCH doctor. Further specialist medical examinations are carried out by exercise physiologists, physiotherapists and other medical professionals under the direction of a WCH doctor.

### ***Executive or manager health evaluations***

18. Executive and/or manager health evaluations are conducted through ***Executive Health***. These evaluations involve medical screening to ensure the employee's health is appropriate for their position, to improve and/or maintain work performance, and to prevent illness. The medical screening provided includes the following:

- comprehensive health and lifestyle questionnaire;
- extensive medical examination;
- pathology testing;
- ECG;
- physiological and mental health assessment;
- goal setting and action plan for ongoing prevention; and
- detailed medical assessment report.

19. All initial or general medical examinations and ongoing monitoring are carried out by a WCH doctor. Further specialist medical examinations are carried out by exercise physiologists, physiotherapists and other medical professionals under the direction of a WCH doctor.

***Workplace general medical screening***

20. Workplace general medical screening is conducted by ***Workplace Health and Wellness***. Workplace general medical screening ensures the employee's health is appropriate for their position, and is also designed to improve and/or maintain work performance and prevent illness. Screening normally includes the detailing of a person's:

- age and gender;
- family medical history;
- personal medical history;
- nutrition habits;
- smoking status;
- alcohol consumption;
- stress levels;
- body mass index;
- waist to hip ratio;
- blood glucose levels;
- blood lipids; and
- blood pressure.

21. Advice with relevant information is provided for employees with identified health risks. All participants are presented with a written record of the results. All initial medical examinations are carried out by a WCH doctor. Further specialist medical examinations are carried out by exercise physiologists, physiotherapists and other medical professionals under the direction of a WCH doctor.

***Workcover assessments***

22. Workcover assessments which are conducted by ***Workplace Health and Wellness***, provide assessments to assess and monitor work-related injury or illness, and to determine rehabilitation and return to work strategies. All workcover related initial or general medical examinations are carried out by a WCH doctor. Further specialist medical examinations are carried out by exercise physiologists, physiotherapists and other medical professionals under the direction of a WCH doctor.

***Workplace influenza vaccinations***

23. Workplace influenza vaccinations are conducted through ***Workplace Health and Wellness***. Influenza vaccination programs are a cost effective way to decrease employee illness and therefore absenteeism. The influenza vaccinations are carried out by fully qualified vaccination nurses following an individual health assessment review by a WCH doctor.

***Workplace skin checks***

24. Workplace skin checks are conducted through ***Workplace Health and Wellness***. This program provides a confidential ten minute head to toe skin check in the workplace. Referral to the participant's own doctor will be provided where follow up is necessary. All medical examinations and reporting are carried out by a WCH doctor.

***Weight management programs***

25. Weight management programs are conducted through the ***Wesley Weight Management Clinic*** and include individual and group customised evidence based weight management programs performed at a Wesley Weight Management Clinic or the workplace. The program is delivered weekly via telephone, other electronic methods or face to face. All medical examinations, ongoing monitoring and medical assessment reports are carried out by a WCH doctor. Further specialist medical examinations are carried out by exercise physiologists, physiotherapists and other medical professionals under the direction of a WCH doctor.

**Note:** The progress of an individual participating in weight management clinic and related programs (exercise prescription, personal health record and health consulting) is constantly monitored. Progress through each phase of the program is accompanied and confirmed by further medical examination by a WCH doctor.

***Exercise prescription or personal training***

26. Exercise prescription or personal training is conducted through ***Workplace Health and Wellness***. This involves prescribing exercise programs for employees either remotely via telephone, other electronic methods, face to face in a gymnasium, or in a personal training environment to assist the employees to decrease their health risks. The programs are carried out by exercise physiologists under the direction of a WCH doctor.

***Health coaching***

27. Health coaching is conducted by ***Workplace Health and Wellness***. Health coaching involves a follow up with the employee after they have completed health screening to ensure improved health outcomes and is delivered either remotely by telephone, other electronic methods or face to face. Health coaching is carried out by exercise physiologists and dieticians under the direction of a WCH doctor.

***Wellbeing seminars, workshops and demonstrations***

28. Wellbeing seminars, workshops and demonstrations are conducted through ***Workplace Health and Wellness*** and form part of a company's wellbeing program. Topics can include:

- nutrition;
- back care;
- ergonomics
- work/life balance;
- men's/women's health; and
- stress.

The services provided in these workshops are designed by a WCH doctor. Presenters include exercise physiologists, physiotherapists, occupational therapists, occupational physicians, dieticians, psychologists, other Allied Health practitioners as required and/or medical practitioners.

***Health education***

29. Health education is conducted through ***Workplace Health and Wellness***. Health education is provided to employees to assist in the improvement of their health outcomes and may take many forms. Examples include:

- health newsletters;
- health fact sheets;
- health fairs/expos; and
- provision of health merchandise, that is, screen savers, water bottles, pedometers et cetera.

Health education is provided by exercise physiologists under the direction of a WCH doctor.

## ***Health surveys***

30. Health surveys are conducted through ***Workplace Health and Wellness***. Health surveys are undertaken to ensure the employee's health is appropriate for their position, to help improve and/or maintain work performance and prevent illness. A health survey is carried out by exercise physiologists under the direction of a WCH doctor.

## ***Personal health record***

31. A personal health record is provided through ***Workplace Health and Wellness***. The personal health record is part of an employee's record and follow up after they have completed a form of health screening to ensure improved health management and outcomes.

## ***Health consulting***

32. Health consulting is conducted through ***Workplace Health and Wellness***. Health consulting involves providing practical advice to the employer about the wellbeing initiatives they could implement for their employees. The health consulting program is developed by a WCH doctor and delivered by a WCH doctor and designated medical professionals.

# **Ruling**

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## **Pre-employment medicals and functional capacity evaluations**

33. A pre-employment medical and functional capacity evaluation will be an exempt benefit as 'work-related medical examination' under subparagraph 58M(1)(c)(i) where they are provided by, or on behalf of, an audiometrist or a legally qualified medical practitioner, nurse, dentist or optometrist (listed health professional) for any or all of the purposes as listed within paragraphs (a) to (d) of the definition of 'work-related medical examination' in subsection 136(1).

## **Executive or manager health evaluations**

34. An executive or manager health evaluation will be an exempt benefit as 'work-related medical screening' under subparagraph 58M(1)(c)(ii) where the evaluation is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related medical screening' in subsection 136(1).

**Workplace general medical screenings**

35. A workplace general medical screening will be an exempt benefit as 'work-related medical screening' under subparagraph 58M(1)(c)(ii) where the screening is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related medical screening' in subsection 136(1).

**Workcover assessments**

36. A workcover assessment that is an examination or test will be an exempt benefit as 'work-related medical screening' under subparagraph 58M(1)(c)(ii) where the assessment is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related medical screening' in subsection 136(1).

37. A workcover assessment that is not an examination or test will be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii) where this form of care is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' in subsection 136(1).

**Workplace influenza vaccinations**

38. A workplace influenza vaccination provided by, or on behalf of, a listed health professional will be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii) where the vaccination is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' in subsection 136(1).

**Workplace skin check**

39. A workplace skin check will be an exempt benefit as 'work-related medical screening' under subparagraph 58M(1)(c)(ii) where the check is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related medical screening' in subsection 136(1).

**Weight management program**

40. A weight management program provided by, or on behalf of, a legally qualified medical practitioner, nurse, dentist or optometrist (listed health professional under 'work-related preventative health care') will be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii) where the program is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' in subsection 136(1).

41. Alternatively, where such a weight management program does not qualify as 'work-related preventative health care' it will be an exempt benefit as 'work-related counselling' under subparagraph 58M(1)(c)(iv).

**Exercise prescription and personal training**

42. Exercise prescription and personal training provided by, or on behalf of, a listed health professional under 'work-related preventative health care' will be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii) where the program is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' in subsection 136(1).

43. Alternatively, where the exercise prescription and personal training does not qualify as 'work-related preventative health care' it will be an exempt benefit as 'work-related counselling' under subparagraph 58M(1)(c)(iv).

44. The attendance of an employee of an employer who is wholly or partially exempt from income tax at an exercise prescription or personal training program will be a tax-exempt body entertainment fringe benefit under section 38 of the FBTAA if section 32-5 of the ITAA 1997 would have prevented an employer subject to income tax from claiming a deduction for the expenditure (assuming section 32-20 of the ITAA 1997 had not been enacted).

**Health coaching**

45. Health coaching provided by, or on behalf of, a listed health professional under 'work-related preventative health care' will be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii) where the program is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' in subsection 136(1).

46. Alternatively, where the health coaching does not qualify as 'work-related preventative health care' it will be an exempt benefit as 'work-related counselling' under subparagraph 58M(1)(c)(iv).

**Information and advice provided at wellbeing seminars, workshops and demonstrations**

47. A wellbeing seminar, workshop or demonstration provided by, or on behalf of, a listed medical professional under 'work-related preventative health care' will be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii) where the program is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' in subsection 136(1).

48. Alternatively, where a wellbeing seminar, workshop or demonstration does not qualify as 'work-related preventative health care' it will be an exempt benefit as 'work-related counselling' under subparagraph 58M(1)(c)(iv).

**Health education**

49. Where health educational material is provided to an employee and is required solely for the purposes of a 'work-related medical examination', 'work-related medical screening', or 'work-related preventative health care' of the employee, or in the case of 'work-related counselling' to the employee, or the employee and their associate, the provision of the health educational material will be an exempt benefit under paragraph 58M(1)(b).

50. Health education provided by, or on behalf of, a listed health professional under 'work-related preventative health care' will be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii) where this form of care is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' in subsection 136(1).

51. Alternatively, where health education does not qualify as 'work-related preventative health care' it will be an exempt benefit as 'work-related counselling' under subparagraph 58M(1)(c)(iv).

**Health survey**

52. A health survey will not be the provision of counselling. Accordingly, it will not qualify as 'work-related counselling' as defined by subsection 136(1) and will not be an exempt benefit under section 58M. However, the health survey will be an exempt benefit where the requirements of section 58P are satisfied.

**Personal health record**

53. Where a personal health record is provided to an employee and is required solely for the purposes of a 'work-related medical examination', 'work-related medical screening', 'work-related preventative health care' or 'work-related counselling', it will be an exempt benefit under paragraph 58M(1)(b).

**Health consulting**

54. The health consultancy services provided to an employer by WCH will not be a 'fringe benefit' as defined in subsection 136(1).

## Appendix 1 – Explanation

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**❶** *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

### **Will a fringe benefit arise from the provision of the services?**

55. In general terms, a 'fringe benefit' is a 'benefit' provided to an employee in respect of the employee's employment that is not an exempt benefit.

56. For the purposes of this ruling the relevant exempt benefits to be considered are the exemptions contained in section 58M and section 58P.

57. In some instances however services offered by WCH will be provided to the employer, rather than the employee. As a fringe benefit will not arise where the benefit is provided to the employer, a fringe benefit will not arise from the provision of health consulting to an employer.

### **What benefits may be received by an employee?**

58. An employee may receive a range of services as part of an arrangement between the employer and WCH.

59. The term 'benefit' is defined in subsection 136(1) to include:

any right (including a right in relation to, and an interest in, real or personal property), privilege, service or facility and, without limiting the generality of the foregoing, includes a right, benefit, privilege, service or facility that is, or is to be, provided under:

- (a) an arrangement for or in relation to:
  - (i) the performance of work (including work of a professional nature), whether with or without the provision of property...

60. Divisions 2 to 12 divide benefits into different categories. For the purpose of this Ruling the relevant categories to consider are:

- tax-exempt body entertainment benefits;
- property benefits; and
- residual benefits.

### ***Tax-exempt body entertainment benefits***

61. In general terms, a tax-exempt body entertainment benefit may arise under section 38 from entertainment expenses incurred by an employer who is wholly or partially exempt from income tax, or who does not derive assessable income from the activities to which the entertainment relates.

62. 'Entertainment' is defined in subsection 32-10(1) of the ITAA 1997 to mean:

- (a) entertainment by way of food, drink or recreation; or
- (b) accommodation or travel to do with providing entertainment by way of food, drink or \*recreation.

63. 'Recreation' is defined in subsection 995-1(1) of the ITAA 1997 to include 'amusement, sport or similar leisure-time pursuits.'

64. As part of the scheme the following benefit which comes within this definition of 'recreation' may be provided:

- exercise prescription and personal training.

65. A tax-exempt body benefit will arise from the provision of this entertainment by an employer who is wholly or partially exempt from income tax if section 32-5 of the ITAA 1997 would have prevented an employer subject to income tax from claiming a deduction for the expenditure (assuming section 32-20 of the ITAA 1997 had not been enacted). Entertainment expenditure for which an income tax deduction could have been claimed under sections 32-30, 32-35, 32-40, 32-45 or 32-50 will not be a tax-exempt body entertainment benefit.

66. A benefit which is a tax-exempt body entertainment benefit will not be an exempt benefit under either section 41 or section 58M.

### ***Property benefits***

67. A 'property benefit' is defined in subsection 136(1) as being a benefit referred to in section 40 that is not a benefit by virtue of a provision of Subdivision A of Divisions 2 to 10 (inclusive) of Part III. Section 40 provides that the provision of property to another person will be a benefit. 'Property' is defined in subsection 136(1) to mean 'intangible property' and 'tangible property'. Both of these terms are also defined in subsection 136(1).

68. An employee may receive the following property benefits under an arrangement between WCH and an employer:

- a personal health record
- health merchandise including screen savers, water bottles, pedometers et cetera; and
- a range of hard copy health-related publications including health newsletters and health fact sheets.

## ***Residual benefits***

69. Section 45 provides that a benefit that does not come within Divisions 2 to 11 will be a 'residual benefit'. This may include the provision of a 'service'. In this regard, 'service' is defined by the *Macquarie Dictionary* to mean '2. the supplying or supplier of any articles, commodities, activities, etc., required or demanded.'

70. An employee may receive the following services under an arrangement between WCH and an employer:

- pre-employment medicals and functional capacity evaluations;
- executive or manager health evaluations;
- workplace general medical screening;
- workcover assessments;
- workplace influenza vaccinations;
- workplace skin checks;
- weight management programs;
- exercise prescription and personal training;
- health coaching;
- wellbeing seminars, workshops, demonstrations;
- health education; and
- health surveys.

## **Will the benefits be exempt benefits?**

71. The FBTA specifies certain benefits will be exempt benefits. For the purpose of this Ruling the relevant exempt benefits to be considered are mainly the exemptions for 'work-related medical examination', 'work-related medical screening', 'work-related preventative health care' and 'work-related counselling' in section 58M.

## **The application of section 58M**

72. In general terms section 58M provides an exemption from fringe benefits tax for a 'work related medical examination', 'work-related medical screening', 'work-related preventative health care', 'work-related counselling' and 'migrant language training'.

73. For the purpose of this ruling the relevant section 58M exemptions to be considered are those that apply for 'work-related medical examination', 'work-related medical screening', 'work-related preventative health care' and 'work-related counselling'.

74. In explaining the circumstances in which these exemptions will apply the Explanatory Memorandum to Taxation Laws Amendment (Fringe Benefits and Substantiation) Bill 1987 stated in Part B:

... 'work-related medical examination' is being defined under amendments proposed by clause 48 to mean, broadly, an examination or test carried out by a medical practitioner, nurse, dentist, optometrist or audiometrist where the employee is required to undergo the examination or test in order to commence new employment, to transfer to a different job with the same employer or to gain entry to a superannuation fund.

... 'work-related medical screening' is being defined under amendments proposed by clause 48 to mean, broadly, an examination or test carried out by a medical practitioner, nurse, dentist, optometrist or audiometrist for the purpose of determining whether the employee is suffering from an injury or illness related to the employee's employment. It is also a requirement for exemption that the examination or test is carried out as part of a screening program which applies generally to employees with similar work-related risks.

... 'work-related preventative health care' is being defined under amendments proposed by clause 48 to mean, broadly, any form of care provided by a medical practitioner, nurse, dentist or optometrist for the purpose of preventing the employee from suffering from an injury or illness related to the employee's employment. It is also a requirement for exemption that the care is provided as part of a screening program which applies generally to employees with similar work-related risks. The provision of drugs, vaccines or other medical preparations in connection with the preventative health care will also be exempt.

... 'work-related counselling' is being defined under amendments proposed by clause 48 to mean, broadly, individual or group counselling (e.g., a seminar) related to matters such as safe work practices, stress management, fitness, drug or alcohol abuse or retirement problems. It is also necessary that the benefit is provided by the employer in order to improve or maintain the efficiency of employees or to prepare them for retirement and not as a form of remuneration.

75. In considering whether any of these exemptions apply to the benefits provided as part of the program it is necessary to consider:

- paragraph 58M(1)(c) in relation to the residual benefits, and
- paragraph 58M(1)(b) in relation to the property benefits.

## **Which residual benefits are exempt under paragraph 58M(1)(c)?**

76. Paragraph 58M(1)(c) provides that a residual benefit will be an exempt benefit where it consists of the provision of the 'work-related medical examination', 'work-related medical screening', 'work-related preventative health care' of an employee, or 'work-related counselling' of an employee, or an employee and their associate.

## **'Work-related medical examination', 'work-related medical screening', 'work-related preventative health care' and 'work-related counselling'**

77. The definitions of 'work-related medical examination', 'work-related medical screening', 'work-related preventative health care', and 'work-related counselling' in subsection 136(1) contain a number of conditions that must be satisfied.

## **Identifying the relevant exemption**

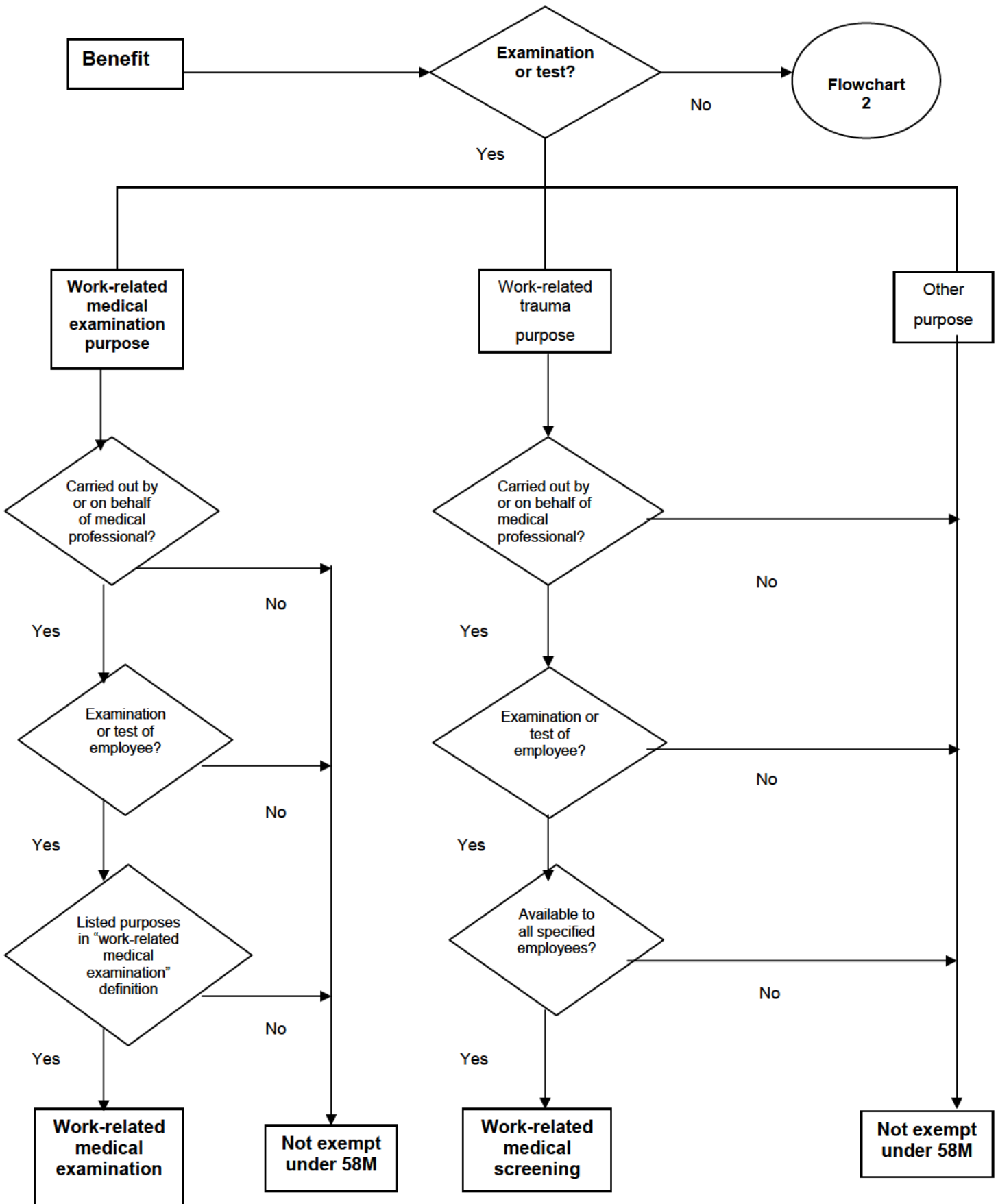
78. As each of the four exemptions has different conditions it is necessary to initially identify the relevant exemption to consider. The process for doing this and the conditions that need to be considered in relation to each of the exemptions are summarised in the flowcharts in paragraphs 81 and 97 of this Ruling.

79. Flowchart 1 in paragraph 81 of this Ruling illustrates that the initial question to be considered is whether the benefit is an examination or test.

## **Examination or test**

80. Neither examination, nor test are defined in the FBTAA. The *Macquarie Dictionary* defines the word 'examination' as '1. the act of examining; inspection; inquiry; investigation. 2. the state of being examined. ...' and 'test' as '1. that by which the presence, quality, or genuineness of anything is determined; a means of trial. 2. ... 5. *Psychology* a standardised procedure for eliciting responses upon which appraisal of the individual can be based ...'

81. Flowchart 1 which follows is a diagrammatic representation of the conditions to be considered where the benefit is an examination or test.



82. Where the benefit is an examination or test it is necessary to determine the purpose of the examination or test.

### **The purpose of the examination or test**

83. As illustrated in flowchart 1 at paragraph 81 of this Ruling the purposes can be categorised into the following three categories:

- (a) to ascertain the physiological or psychological condition of the employee with regards to the four purposes listed in the definition of 'work-related medical examination';
- (c) to ascertain whether the employee has suffered, is suffering or is at risk of suffering from 'work-related trauma'; and
- (d) other purposes.

### ***(a) Purposes listed in the definition of 'work-related medical examination'***

84. Where the examination or test is for one or more of the four purposes listed in the definition of 'work-related medical examination' it is necessary to consider the conditions contained within that definition.

85. To be a 'work-related medical examination' the four purposes that must initially be satisfied relate to the reason the examination is provided. The examination must be wholly or principally conducted for any or all of the following purposes:

- commencement of employment;
- confirmation of probationary employment;
- a change in duties or location; and
- becoming a member of a superannuation fund.

86. Where the benefit is an examination or test for a 'work-related medical examination' the definition of that term requires the examination or test to be carried out by, or on behalf of an audiometrist, a legally qualified medical practitioner, nurse, dentist or optometrist.

*On behalf of*

87. Where the person providing the benefit does not come within one of the listed categories it is necessary to consider whether the benefit is being provided on behalf of a listed medical professional.

88. The phrase 'on behalf of' is not defined for the purposes of the FBTAA. The *Australian Oxford Dictionary*, 1999, Oxford University Press, Melbourne defines the term 'behalf' or 'on behalf of' as:

**behalf** n. **on** (US in) **behalf of** (or **on a person's behalf**) 1 in the interests of (a person, principle, etc.). 2 as representative of (*acting on behalf of my client*).

89. In *Cuthbertson & Richards Sawmills v. Thomas* (1999) 93 FCR 141 the meaning of the phrase 'on behalf of' was discussed. It was stated that the phrase does not have a strict legal meaning. The court referred to *R v. Toohey; Ex parte Attorney General* (N.T.) (1980) 145 CLR 374 at 386 where Stephen, Mason, Murphy and Aickin JJ referred to the phrase in these terms:

...it bears no single and constant significance. Instead it may be used in conjunction with a wide-range of relationships, all however, in some way concerned with the standing of one person as auxiliary to or representative of another person or thing.

...Context will always determine to which of the many possible relationships the phrase 'on behalf of' is in a particular case being applied; 'the context and subject matter' (per Dixon J in *R v. Portus; Ex parte Federated Clerks Union* (1949) 79 CLR 428) will be determinative.

'Auxiliary' is defined in the Macquarie Dictionary:

1. giving support, helping, aiding or assisting

90. In the context of the definitions of 'work-related medical examination', as well as 'work-related medical screening' and 'work-related preventative health care', the phrase 'on behalf of' requires a relationship between the two parties such that one party is acting in place of or as representative of the other. That is, if the person carrying out the examination or test (or providing the care) is not a specified medical person, then that person must be giving support or assisting a specified medical person who is providing the benefit.

***(b) Ascertain if employee has suffered or is at risk of suffering from 'work-related trauma'***

91. Where the purpose of the examination or test is to ascertain if the employee has suffered, is suffering or is at risk of suffering from 'work-related trauma' the relevant conditions to consider are those contained within the definition of 'work-related medical screening'.

*What is 'work-related trauma'?*

92. 'Work-related trauma is defined in subsection 136(1) to mean:

- (a) the injury of the employee (including the aggravation, acceleration or recurrence of an injury of the employee);
- (b) the contraction, aggravation, acceleration or recurrence of a disease of the employee;
- (c) the loss or destruction of, or damage to:
  - (i) an artificial limb or other artificial substitute;
  - (ii) a medical, surgical or similar aid or appliance used by the employee; or
  - (iii) clothing worn by the employee; or
- (d) the coming into existence, the aggravation, acceleration or recurrence of any other physiological or psychological condition in relation to the employee that is or may be harmful or disadvantageous to, or result in harm or disadvantage to, the employee;

that is related to any employment of the employee.

*The tests that apply to 'work-related medical screening'*

93. As illustrated by flowchart 1 at paragraph 81 of this Ruling an examination or test that is carried out principally to ascertain whether the employee has suffered, is suffering or is at risk of suffering from 'work-related trauma' will be 'work-related medical screening' if the following requirements are met:

- (a) the examination or test is carried out by, or on behalf of a medical professional listed in the definition of 'work-related medical screening';
- (b) the examination or test is carried out on an employee; and
- (c) the examination or test is available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related medical screening' in subsection 136(1). These are employees:
  - who are likely to have suffered, be suffering or be at risk of suffering from similar 'work-related trauma';
  - who perform their duties of employment at or near the place where the employee performs their duties of employment; and
  - whose duties are similar to those of the employee.

*Who is a medical professional for the purpose of 'work-related medical screening'?*

94. Where the benefit is an examination or test for 'work-related trauma' the definition of 'work-related medical screening' requires the examination or test to be carried out by, or on behalf of an audiometrist, a legally qualified medical practitioner, nurse, dentist or optometrist.

*On behalf of*

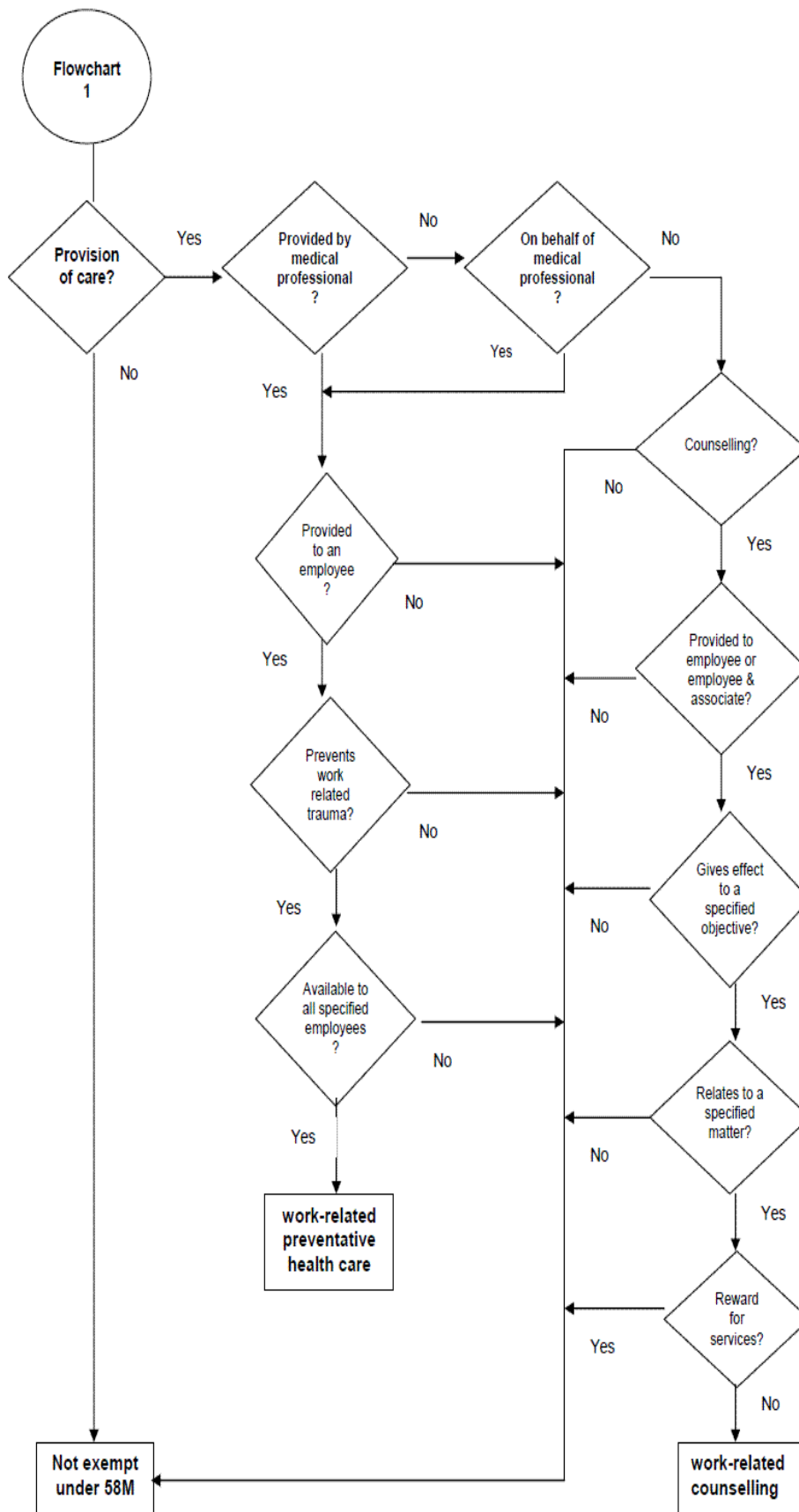
95. Where the person providing the benefit does not come within one of the listed categories it is necessary to consider whether the benefit is being provided on behalf of a listed medical professional as discussed at paragraphs 87 to 90 of this Ruling.

***(c) Other purposes***

96. Where the purpose of the examination or test is not for purposes set out in the definitions of 'work-related medical examination' or 'work-related medical screening' the examination or test will not be an exempt benefit under section 58M.

**Conditions when the benefit is not an examination or test**

97. The conditions to be considered when the benefit is not an examination or test are illustrated below in flowchart 2.



98. The initial question to be considered when the benefit is not an examination or test is whether the benefit constitutes the provision of care.

### ***Provision of care***

99. The word 'care' is not defined within the FBTAA. However, 'health care' is defined in subsection 136(1) to mean 'any examination, test or form of care (whether therapeutic, preventative or rehabilitative) that is related to the physiological or psychological health of a person'. It includes the provision of drugs, vaccines or other medical preparations in connection with the care.

100. The *Macquarie Dictionary* defines the word 'care' as '1...4. protection; charge: *under the care of a doctor.*' Care for is defined as 'a ... c to look after; make provision for'.

101. In applying these definitions it can be concluded that 'care' is wider than just health care and can include counselling or other activities that are provided either by, or as a result of a referral by a medical professional listed in the definition of 'work-related preventative health care'.

102. Where the benefit consists of the provision of care it may be either 'work-related preventative health care' or 'work-related counselling'. As illustrated by flowchart 2 at paragraph 97 of this Ruling the relevant conditions that need to be considered will depend upon whether the care is provided by or on behalf of a medical professional listed in the definition of 'work-related preventative health care'.

103. If the care is provided by or on behalf of a medical professional listed in the definition of 'work-related preventative health care' the relevant conditions to consider are those listed in the definition of 'work-related preventative health care'. By contrast, if the care is not provided by or on behalf of a listed medical professional the relevant conditions to consider are those contained in the definition of 'work-related counselling'.

### ***Who is a medical professional for the purpose of 'work-related preventative health care'?***

104. The definition of 'work-related preventative health care' requires the care to be provided by or on behalf of a legally qualified medical practitioner, nurse, dentist or optometrist.

## **The other tests that apply to ‘work-related preventative health care’**

105. As illustrated by flowchart 2 at paragraph 97 of this Ruling, care that is provided by or on behalf of a listed health professional under work-related preventative health care will be ‘work-related preventative health care’ where it satisfies the following tests:

- (a) the care is provided to an employee;
- (b) the principal purpose of the care is to prevent the employee suffering from ‘work-related trauma’; and
- (c) the form of care is available generally to all employees who come within paragraphs (a) to (c) of the definition of ‘work-related preventative health care’. These are employees:
  - who are likely to be at risk of suffering from similar ‘work-related trauma’;
  - who perform their duties of employment at or near the place where the employee performs their duties of employment; and
  - whose duties are similar to those of the employee.

## **The other tests that apply to ‘work-related counselling’**

106. As illustrated by flowchart 2 at paragraph 97 of this Ruling, care that is not provided by or on behalf of a listed health professional under work-related preventative health care will be ‘work-related counselling’ where the following tests are satisfied:

- (a) the care is counselling;
- (b) the counselling is attended by either an employee, or an employee and their associate;
- (c) the attendance of the employee, or the employee and associate, gives effect to an objective, purpose, plan or policy devised, adopted or required to be followed by the employer to improve or maintain the quality of performance of employees’ duties, or prepare employees for retirement;
- (d) the counselling relates to any of the following matters:
  - safety;
  - health;
  - fitness;
  - stress management;
  - personal relationships;

- retirement problems;
  - drug or alcohol abuse;
  - rehabilitation or prevention of work-related trauma or of other disease or injury;
  - first aid; or
  - any similar matter; and
- (e) the benefit is not provided wholly or principally as a reward for services rendered or to be rendered by the employee.

### ***What is counselling?***

107. In understanding the meaning of this term it is helpful to refer to the ordinary dictionary meanings.

108. The *Macquarie Dictionary* defines the word 'counsel' as 'advice; opinion or instruction given in directing the judgment or conduct of another'. The *Australian Concise Oxford Dictionary* defines 'counselling' as the act or process of giving counsel' and relevantly the noun 'counsel' as 'advice, esp. formally given', and the verb as '1 ... advise (a person) **2a** give advice to (a person) on social or personal problems, esp. professionally' and '**b** assist or guide (a person) in resolving personal difficulties'.

109. The wording of these definitions indicates 'counselling' involves a suitably qualified person providing advice or guidance to someone else in relation to their established area of expertise.

110. The Explanatory Memorandum to Taxation Laws Amendment (Fringe Benefits and Substantiation) Bill 1987 indicates the advice or information can be given either on an individual basis, or in a group situation such as a seminar. This is reflected in the definition of 'counselling' in subsection 136(1) which states that 'counselling' 'includes the giving of advice or information in a seminar'.

111. The advice or information can be in relation to a wide range of matters. For example, the Explanatory Memorandum to Taxation Laws Amendment (Fringe Benefits and Substantiation) Bill 1987 indicates it can be related to matters such as safe work practices, stress management, fitness, drug or alcohol abuse or retirement problems. This list of examples is extended by Taxation Determination TD 93/153 to include outplacement services such as assistance in writing a resume and job application, guidance on seeking new employment or training for employment interviews and selection tests.

112. Although the advice or information provided can be in relation to a wide range of areas a benefit will not be considered to be 'counselling' unless the provision of advice is the principal purpose for the benefit being provided to the employee. For example, although 'counselling' can include training or advice about how to undertake various physical activities, a physical activity session with limited instruction undertaken by an employee for the purpose of keeping fit will not constitute 'counselling'.

### ***The meaning of 'relate'***

113. Paragraph (d) of the definition of 'work-related counselling' requires the counselling to 'relate' to certain specified matters. The word 'relate' is not specifically defined in the FBTAA and therefore has its ordinary meaning. The *Concise Oxford Dictionary* defines 'relate' to mean '...establish relation between; connected; allied'. The *Macquarie Dictionary*, in so far as is relevant, defines 'relate' to mean 'to bring into or establish association, connection, or relation'. In applying these definitions the counselling will 'relate' to a listed matter if it is connected to or associated with the listed matter.

### **Which property benefits are exempt under paragraph 58M(1)(b)?**

114. Paragraph 58M(1)(b) provides that a property benefit will be an exempt benefit where the recipients property is **required solely** for the purposes of a 'work-related medical examination' of the employee, 'work-related medical screening' of the employee, 'work-related preventative health care' of the employee, or 'work-related counselling' of the employee, or of the employee and their associate.

115. Neither 'required', nor 'solely' are defined within the FBTAA. Therefore, it is necessary to consider the ordinary meanings of these words.

### ***Required***

116. The *Macquarie Dictionary* defines the word 'require' to mean amongst other things:

1. to have need of; need: *he requires medical care.*

117. This meaning corresponds to the Administrative Appeals Tribunal decision in *Compass Group (Vic) Pty Ltd (as Trustee for White Roche & Associates Hybrid Trust) v. FC of T (Compass Group)* [2008] AATA 845; 2008 ATC 10-051. Here, SA Forgie (Deputy President) at paragraph 65 referred to the judgment of Hill J in *Roads and Traffic Authority of New South Wales v. Federal Commissioner of Taxation* (1993) 43 FCR 223; (1993) 26 ATR 76; 93 ATC 4508 and said 'the word 'require' does not contemplate choice'.

118. The presence of the word 'required' was also discussed in *Dingwall v. Federal Commissioner of Taxation* (1995) 57 FCR 274; 30 ATR 498; 95 ATC 4345. At ATC 4351; ATR 504 O'Loughlin J said:

It [required] must take its meaning from the context in which it is found; so much is clear from the decision of the House of Lords in *Smith v. National Coal Board* [1967] 2 All ER 593 per Lord Guest at 599.

119. In the context of paragraph 58M(1)(b) the property must be required or needed 'solely' for one of the listed purposes.

### ***Solely***

120. The presence of the word 'solely' was discussed in *Randwick Corporation v. Rutledge* (1959) 102 CLR 54. At page 94 Windeyer J. said:

When such words [as 'exclusively' or 'solely'] are present, it is a question of fact whether the land is being used for any purpose outside the stipulated purpose . . . As Kitto J. said in *Lloyd v. Federal Commissioner of Taxation* (1955) 93 CLR 645, at p 671, such words confine the use of the property to the purpose stipulated and prevent any use of it for any purpose, however minor in importance, which is collateral or independent, as distinguished from incidental to the stipulated use.

### ***Required solely***

121. In combining these discussions in the context of paragraph 58M(1)(b), the medical examination, screening, health care or counselling must be the only reason for the property being provided.

### **The application of section 58P**

122. A benefit provided under the scheme which is not an exempt benefit under section 58M may be an exempt benefit under section 58P where:

- the notional value of the minor benefit is less than \$300; and
- it can be concluded that it would be unreasonable, having regard to the specified criteria in paragraph 58P(1)(f), to treat the minor benefit as a fringe benefit.

123. However, where the benefit is a tax-exempt body entertainment benefit paragraph 58P(1)(d) limits the application of the minor benefit exemption to two limited circumstances which are unlikely to apply in relation to a benefit provided under the scheme.

124. The five criteria which paragraph 58P(1)(f) requires to be considered in determining whether it would be unreasonable to treat the benefit as a fringe benefit are:

- the infrequency and irregularity with which associated identical or similar benefits are provided;
- the sum of the notional taxable values of the benefit and any associated benefits which are identical or similar to the minor benefit;
- the sum of the notional taxable values of any associated benefits;
- the practical difficulty in determining the notional taxable values of the benefit and any associated benefits; and
- the circumstances surrounding the provision of the benefit and any associated benefits.

### **Will the residual benefits be an exempt benefit?**

125. As discussed at paragraph 70 of this Ruling an employee may receive the following residual benefits:

- (i) pre-employment medicals and functional capacity evaluations;
- (ii) executive or manager health evaluations;
- (iii) workplace general medical screening;
- (iv) workcover assessments;
- (v) workplace influenza vaccinations;
- (vi) workplace skin checks;
- (vii) weight management programs;
- (viii) exercise prescription or personal training;
- (ix) health coaching;
- (x) wellbeing seminars, workshops, demonstrations;
- (xi) health education; and
- (xii) health surveys.

### **(i) Will a pre-employment medical and functional capacity evaluation constitute an exempt benefit?**

126. Applying the tests summarised in flowchart 1 at paragraph 81 of this Ruling, pre-employment medicals and functional evaluations may be exempt benefits as work-related medical examinations.

127. In order to be a work-related medical examination the benefit will:

- be carried out by, or on behalf, of a listed medical professional;
- consist of an examination or test; and
- be carried out for one or more of the listed purposes.

***(a) Is the pre-employment medical and functional capacity evaluation carried out by or on behalf of a listed medical professional?***

128. The initial medical examinations are carried out by a medical practitioner. Any further specialist examinations are carried out by exercise physiologists, physiotherapists and other medical professionals under the direction of the medical practitioner.

***(b) Is the benefit an examination or test?***

129. The pre-employment examination and functional capacity evaluation will be an examination or test that ascertains the physiological or psychological condition of the future employee.

***(c) Is the pre-employment medical and functional capacity evaluation carried out for one or more of the purposes listed under the definition of 'work-related medical examination'?***

130. The pre-employment medical and functional capacity evaluation is carried out for the purpose of the commencement of the employment of the employee.

131. Accordingly, as all of the requirements of subparagraph 58M(1)(c)(i) are met, the pre-employment medical and functional capacity evaluation will constitute an exempt benefit.

***(ii) Will an executive or manager health evaluation constitute an exempt benefit?***

132. Applying the tests summarised in flowchart 1 at paragraph 81 of this Ruling, an executive or manager health evaluation may be an exempt benefit as work-related medical screening.

133. A work-related medical screening benefit is an examination or test that is carried out principally to ascertain whether the employee has suffered, is suffering or is at risk of suffering from 'work-related trauma' and where the examination or test is;

- carried out by, or on behalf of, a listed medical professional;
- performed on the employee; and
- made generally available.

134. The executive or manager health evaluation will be an examination or test that is carried out to ensure the employee's health is appropriate for their position, to improve and/or maintain work performance, and to prevent illness. It is principally to ascertain whether the employee has suffered, or is at risk of suffering, from 'work-related trauma'.

***(a) Is an executive or manager health evaluation carried out by or on behalf of a listed medical professional?***

135. All initial or general medical examinations and ongoing monitoring are carried out by a medical practitioner. Any further specialist examinations are carried out by exercise physiologists, physiotherapists and other medical professionals under the direction of the medical practitioner.

***(b) Who is examined or tested?***

136. The executive or manager health evaluation is an examination of the employee.

***(c) Is the examination made available to all the specified employees?***

137. As all the other conditions are satisfied an executive or manager health evaluation will be an exempt benefit as 'work-related medical screening' under subparagraph 58M(1)(c)(ii) where the evaluation is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related medical screening' in subsection 136(1).

***(iii) Will the workplace general medical screening be an exempt benefit?***

138. Applying the tests summarised in flowchart 1 at paragraph 81 of this Ruling, the workplace general medical screening will be an examination or test that is carried out to ensure the employee's health is appropriate for their position, and is also designed to improve and/or maintain work performance and prevent illness. It is principally to ascertain whether the employee has suffered, or is at risk of suffering, from 'work-related trauma' that is related to employment of the employee.

***(a) Is the workplace general medical screening carried out by or on behalf of a listed medical professional?***

139. All initial or general medical examinations are carried out by a medical practitioner. Any further specialist examinations are carried out by exercise physiologists, physiotherapists and other medical professionals under the direction of the medical practitioner.

***(b) Who is examined or tested?***

140. The workplace general medical screening involves an examination of the employee.

***(c) Is the examination made available to all the specified employees?***

141. As all the other conditions are satisfied a workplace general medical screening that is conducted by a qualified medical practitioner will be an exempt benefit as 'work-related medical screening' under subparagraph 58M(1)(c)(ii) where the evaluation is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related medical screening' in subsection 136(1).

***(iv) Will the workcover assessment be an exempt benefit?***

142. A workcover assessment will assess and monitor a work-related injury or illness and determine rehabilitation and return to work strategies.

***Workcover assessment as 'work-related medical screening'***

143. Applying the tests summarised in flowchart 1 at paragraph 81 of this Ruling a workcover assessment may involve an examination or test carried out to ascertain whether the employee has suffered or is suffering from 'work-related trauma'.

***(a) Is the workcover assessment carried out by or on behalf of a listed medical professional?***

144. All initial or general medical examinations are carried out by a medical practitioner. Any further specialist examinations are carried out by exercise physiologists, physiotherapists and other medical professionals under the direction of the medical practitioner.

***(b) Who is examined or tested?***

145. The workcover assessment involves an examination of the employee.

*(c) Is the examination made available to all the specified employees?*

146. As all the other conditions are satisfied a workcover assessment of this type will be an exempt benefit as 'work-related medical screening' under subparagraph 58M(1)(c)(ii) where the evaluation is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related medical screening' in subsection 136(1).

147. A workcover assessment may qualify as an exempt benefit as work-related preventative health care. The scope of the activities undertaken will be more than simply work-related medical screening if the form of care is in order to prevent the employee suffering from work-related trauma. Where the assessment involves a level of care that is not included in work-related medical screenings, work-related preventative health care may result.

***Workcover assessment as 'work-related preventative health care'***

148. The requirements listed at paragraph 105 of this Ruling should be considered.

*(a) Is the care provided to an employee?*

149. The workcover assessment involves the care of an employee through an examination or test or other form of care.

*(b) Is the principal purpose of the care to prevent the employee from suffering 'work-related trauma'?*

150. 'Work-related trauma' includes an injury to an employee and other trauma such as disease and harmful or disadvantageous physiological or psychological conditions. The principal purpose of this type of workcover assessment will be to prevent such trauma.

*(c) Is the care made available to all the specified employees?*

151. As all the other conditions are satisfied a workcover assessment of this type will be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii) where this form of care is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' in subsection 136(1).

**(v) Will the workplace influenza vaccination be an exempt benefit?**

152. A workplace influenza vaccination may qualify as an exempt benefit as work-related preventative health care. A vaccination will be a form of care that is preventative in nature.

153. The requirements listed at paragraph 105 of this Ruling should be considered.

***(a) Is the care provided to an employee?***

154. A workplace influenza vaccination is provided to the employee.

***(b) Is the principal purpose of the care to prevent the employee from suffering 'work-related trauma'?***

155. Work-related trauma includes the contraction of a disease of the employee and the principal purpose of a workplace influenza vaccination is to prevent such trauma.

***(c) Is the care made available to all the specified employees?***

156. As all the other conditions are satisfied a workplace influenza vaccination provided by, or on behalf of, a listed health professional will be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii) where vaccination is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' in subsection 136(1).

**(vi) Will the workplace skin check be an exempt benefit?**

157. Applying the tests summarised in flowchart 1 at paragraph 81 of this Ruling a workplace skin check may qualify as an exempt benefit as work-related medical screening. A workplace skin check will be an examination or test that is carried out to ascertain whether the employee has suffered, is suffering or is at risk of suffering, from a skin disease. It is principally to ascertain whether the employee has suffered, or is at risk of suffering, from 'work-related trauma'. Any member of the workforce is susceptible to contracting such a disease and it would therefore qualify as 'work-related trauma'.

***(a) Is the workplace skin check carried out by or on behalf of a listed medical professional?***

158. All workplace skin checks are carried out by a medical practitioner.

***(b) Who is examined or tested?***

159. The workplace skin check examination is an examination of the employee.

***(c) Is the examination made available to all the specified employees?***

160. As all the other conditions are satisfied a workplace skin check will be an exempt benefit as 'work-related medical screening' under subparagraph 58M(1)(c)(ii) where the check is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related medical screening' in subsection 136(1).

***(vii) Will the weight management program be an exempt benefit?***

161. The weight management program is a personalised program that supports individual employees in addressing their health problems and risk profile. It may be an exempt benefit as either work-related preventative health care or work-related counselling. In order to be work-related preventative health care the program must be provided by, or on behalf of, a listed medical professional under 'work-related preventative health care'.

***Weight management program as 'work-related preventative health care'***

162. The requirements listed at paragraph 105 of this Ruling should be considered.

***(a) Is the care provided to an employee?***

163. A weight management program is provided to the employee.

***(b) Is the principal purpose of the care to prevent the employee from suffering 'work-related trauma'?***

164. A personalised weight management program is principally provided to prevent the employee suffering from work-related trauma. 'Work-related trauma' will include the coming into existence, the aggravation, acceleration or recurrence of a physiological or psychological condition in relation to the employee that is or may be harmful or disadvantageous to, or result in harm or disadvantage to, the employee that is related to any employment of the employee. A weight management program will help prevent the employee from developing such trauma.

*(c) Is the care made available to all the specified employees?*

165. As all the other conditions are satisfied a weight management program provided by, or on behalf of, a listed health professional under 'work-related preventative health care' will be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii) where this form of care is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' in subsection 136(1).

166. Where the weight management program is not provided by, or on behalf of, a listed health professional under work-related preventative health care, the program may qualify as an exempt benefit as work-related counselling.

***Weight management program as 'work-related counselling'***

167. The requirements listed at paragraph 106 of this Ruling should be considered.

168. In order to satisfy the definition in subsection 136(1) of 'work-related counselling' a number of requirements must be met. These requirements include that:

- (a) counselling be provided;
- (b) the counselling is attended by the employee, or an employee and their associate;
- (c) attendance of the employee, or the employee and their associate, gives effect to an objective, purpose, plan or policy devised, adopted or required to be followed by the employer to improve or maintain the quality of the performance of employee's duties, or prepare employees for retirement;
- (d) the counselling must relate to the specified matters; and
- (e) the benefit is not wholly or principally provided as a reward for services rendered or to be rendered by the employee.

*(a) Is counselling provided?*

169. Counselling is defined in subsection 136(1) as including the giving of advice or information at a seminar.

170. The weight management program constitutes the giving of advice or information.

*(b) Is the counselling attended by the employee or the employee's associate?*

171. The program is provided weekly via telephone, other electronic methods, or through face to face delivery. It is considered that under those circumstances, that counselling has been attended by the employee or associate.

*(c) Does the attendance of the employee give effect to an objective, purpose, plan or policy devised, adopted or required to be followed by the employer?*

172. This condition will be satisfied where the weight management program is provided as part of a plan or policy of the employer.

*(d) Does the counselling relate to the specified matters?*

173. In order to be work-related counselling the counselling must relate to specified matters. One of these matters is to ensure improved health outcomes. Hence, the counselling will relate to the specified matters.

*(e) Is the benefit provided wholly or principally as a reward for services rendered or to be rendered by the employee?*

174. As the benefit is not salary packaged, and the benefit is not provided wholly or principally as a reward for services rendered or to be rendered by the employee, the weight management program will qualify as 'work-related counselling' as defined by subsection 136(1).

**(viii) Will exercise prescription and personal training be exempt benefits?**

175. Exercise prescription and personal training involves providing exercise programs to employees through a variety of methods.

176. These may be exempt benefits as 'work-related preventative health care'. In order to be 'work-related preventative health care' the benefit must be provided by, or on behalf of, a listed medical professional under 'work-related preventative health care'.

***Exercise prescription and personal training as 'work-related preventative health care'***

177. The requirements listed at paragraph 105 of this Ruling should be considered.

*(a) Is the care provided to an employee?*

178. Exercise prescription and personal training will be provided to the employee.

*(b) Is the principal purpose of the care to prevent the employee from suffering 'work-related trauma'?*

179. The exercise prescription and personal training have been principally provided to prevent the employee from suffering 'work-related trauma'. 'Work-related trauma' will include the coming into existence, the aggravation, acceleration or recurrence of a physiological or psychological condition in relation to the employee that is or may be harmful or disadvantageous to, or result in harm or disadvantage to, the employee that is related to any employment of the employee. Exercise prescription and personal training will help prevent the employee from developing such trauma.

*(c) Is the care made available to all the specified employees?*

180. As all the other conditions are satisfied an exercise prescription and personal training provided by, or on behalf of, a listed health professional under 'work-related preventative health care' will be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii) where the program is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' in subsection 136(1).

181. Where the exercise prescription and personal training is not provided by, or on behalf of, a listed medical professional, the program may qualify as an exempt benefit as work-related counselling.

***Exercise prescription and personal training as 'work-related counselling'***

182. The requirements listed at paragraph 106 of this Ruling should be considered.

*(a) Is counselling provided?*

183. Counselling is defined in subsection 136(1) as including the giving of advice or information at a seminar.

184. Exercise prescription and personal training will include the giving of advice or information.

*(b) Is the counselling attended by the employee or the employee's associate?*

185. The exercise programs can be provided to employees either remotely via the telephone, through other electronic methods, face to face in a gymnasium, or in a personal training environment. It is considered that under such circumstances a counselling session has been attended by the employee or associate.

*(c) Does the attendance of the employee give effect to an objective, purpose, plan or policy devised, adopted or required to be followed by the employer?*

186. This condition will be satisfied where the exercise prescription or personal training is provided as part of a plan or policy of the employer.

*(d) Does the counselling relate to the specified matters?*

187. In order to be 'work-related counselling' the counselling must relate to specified matters. One of these matters is to ensure improved health outcomes. Hence, the counselling will relate to the specified matters.

*(e) Is the benefit provided wholly or principally as a reward for services rendered or to be rendered by the employee?*

188. As the benefit is not salary packaged, and the benefit is not provided wholly or principally as a reward for services rendered or to be rendered by the employee, the exercise prescription and personal training will qualify as 'work-related counselling' as defined by subsection 136(1).

### **(ix) Will the health coaching be an exempt benefit?**

189. Health coaching is designed as part of the employee's follow up after health screening has been provided. These coaching sessions are provided face-to-face or remotely via the telephone or other electronic means.

190. These coaching sessions may be exempt benefits as either 'work-related preventative health care' or 'work-related counselling'. In order to be work-related preventative health care the benefit must be provided by, or on behalf of, a listed health professional under 'work-related preventative health care'.

### ***Health coaching as 'work-related preventative health care'***

191. The requirements listed at paragraph 105 of this Ruling should be considered.

*(a) Is the care provided to an employee?*

192. Health coaching will be provided to the employee.

*(b) Is the principal purpose of the care to prevent the employee from suffering 'work-related trauma'?*

193. The health coaching appears principally to be provided to prevent the employee from suffering work-related trauma. Work-related trauma will include the coming into existence, the aggravation, acceleration or recurrence of a physiological or psychological condition in relation to the employee that is or may be harmful or disadvantageous to, or result in harm or disadvantage to, the employee that is related to any employment of the employee. The health coaching will help prevent the employee from developing such trauma.

*(c) Is the care made available to all the specified employees?*

194. As all the other conditions are satisfied health coaching provided by, or on behalf of, a listed health professional under 'work-related preventative health care' will be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii) where the program is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' in subsection 136(1).

195. Where the health coaching is not provided by, or on behalf of, a listed health professional under 'work-related preventative health care', the program may qualify as an exempt benefit as 'work-related counselling'.

***Health coaching as 'work-related counselling'***

196. The requirements listed at paragraph 106 of this Ruling should be considered.

*(a) Is counselling provided?*

197. Counselling is defined in subsection 136(1) as including the giving of advice or information at a seminar.

198. Health coaching will provide the giving of advice or information.

*(b) Is the counselling attended by the employee or the employee's associate?*

199. The health coaching is provided to employees either remotely via the telephone, through other electronic methods or face to face. It is considered that a counselling session can be attended via a telephone or other electronic conference or meeting.

*(c) Does the attendance of the employee give effect to an objective, purpose, plan or policy devised, adopted or required to be followed by the employer?*

200. This condition will be satisfied where the health coaching is provided as part of a plan or policy of the employer.

*(d) Does the counselling relate to the specified matters?*

201. In order to be work-related counselling the counselling must relate to specified matters. One of these matters is to ensure improved health outcomes. Hence, the counselling will relate to the specified matters.

*(e) Is the benefit provided wholly or principally as a reward for services rendered or to be rendered by the employee?*

202. As the benefit is not salary packaged, and the benefit is not provided wholly or principally as a reward for services rendered or to be rendered by the employee, the health coaching will qualify as 'work-related counselling' as defined by subsection 136(1).

**(x) Is the information and advice provided at wellbeing seminars, workshops and demonstrations an exempt benefit?**

203. A wellbeing seminar, workshop or demonstration can involve the presentation of a variety of topics to employees. These may be on nutrition, back care, ergonomics, work/life balance, men's/women's health and stress.

204. The wellbeing seminar, workshop or demonstration may be an exempt benefit as either 'work-related preventative health care' or 'work-related counselling'. In order to be 'work-related preventative health care' the benefit must be provided by, or on behalf of, a listed health professional under 'work-related preventative health care'.

***Wellbeing seminars, workshops and demonstrations as 'work-related preventative health care'***

205. The requirements listed at paragraph 105 of this Ruling should be considered.

*(a) Is the care provided to an employee?*

206. A wellbeing seminar, workshop or demonstration will be provided to the employee.

*(b) Is the principal purpose of the care to prevent the employee from suffering 'work-related trauma'?*

207. The wellbeing seminar, workshop or demonstration appears principally to be provided to prevent the employee from suffering 'work-related trauma'. 'Work-related trauma' will include the coming into existence, the aggravation, acceleration or recurrence of a physiological or psychological condition in relation to the employee that is or may be harmful or disadvantageous to, or result in harm or disadvantage to, the employee that is related to any employment of the employee. The wellbeing seminar, workshop or demonstration will help prevent the employee from developing such trauma.

*(c) Is the care made available to all the specified employees?*

208. As all the other conditions are satisfied a wellbeing seminar, workshop or demonstration provided by, or on behalf of, a listed health professional under 'work-related preventative health care' will be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii) where the program is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' in subsection 136(1).

209. Where the wellbeing seminar, workshop or demonstration is not provided by, or on behalf of, a listed health professional under work-related preventative health care, the seminar, workshop or demonstration may qualify as an exempt benefit as 'work-related counselling'.

***Wellbeing seminars, workshops and demonstrations as 'work-related counselling'***

210. The requirements listed at paragraph 106 of this Ruling should be considered.

*(a) Is counselling provided?*

211. Counselling is defined in subsection 136(1) as including the giving of advice or information at a seminar.

212. A wellbeing seminar, workshop or demonstration will provide the giving of advice or information.

*(b) Is the counselling attended by the employee, or the employee and the employee's associate?*

213. The wellbeing seminar, workshop or demonstration will be attended by the employee, or the employee and the employee's associate.

*(c) Does the attendance of the employee give effect to an objective, purpose, plan or policy devised, adopted or required to be followed by the employer?*

214. This condition will be satisfied where the wellbeing seminar, workshop or demonstration is provided as part of a plan or policy of the employer.

*(d) Does the counselling relate to the specified matters?*

215. In order to be 'work-related counselling' the counselling must relate to specified matters. One of these matters is to ensure improved health outcomes. Hence, the wellbeing seminar, workshop or demonstration will relate to the specified matters.

*(e) Is the benefit provided wholly or principally as a reward for services rendered or to be rendered by the employee?*

216. As the benefit is not salary packaged, and the benefit is not provided wholly or principally as a reward for services rendered or to be rendered by the employee, the well-being seminar will qualify as 'work-related counselling' as defined by subsection 136(1).

## **(xi) Will the health education be an exempt benefit?**

217. The health education is provided to employees to assist in the improvement of their health outcomes. This may include providing health newsletters, health fact sheets, health fairs or expos and the provision of health merchandise such as screen savers, water bottles, and pedometers. Except for the health fairs or expos these items will involve the provision of property.

218. As discussed at paragraphs 114 to 121 of this Ruling a property benefit will be an exempt benefit where the recipients property is **required solely** for the purposes of a 'work-related medical examination' of the employee, 'work-related medical screening' of the employee, 'work-related preventative health care' of the employee, or 'work-related counselling' of the employee, or the employee and their associate.

219. Where the property is required solely for the purposes of the above mentioned activities, the provision of the property to the employee, will be an exempt benefit under one of those headings.

220. Where this condition is not satisfied it is necessary to consider whether the provision of the educational material will satisfy the conditions relevant to 'work-related preventative health care' or 'work-related counselling'. The requirements listed at paragraphs 105 and 106 of this Ruling should be considered.

221. In order to be 'work-related preventative health care' a form of care must be provided. The provision of care will not be provided where only general health information is provided to employees in the context of WCH products and services.

222. Where the information provided gives more than the general information and results in the provision of care, 'work-related preventative health care' may result.

***Health education as 'work-related preventative health care'***

223. The requirements listed at paragraph 105 of this Ruling should be considered.

*(a) Is the care provided to an employee?*

224. The health education is provided to the employee.

*(b) Is the principal purpose of the care to prevent the employee from suffering 'work-related trauma'?*

225. Health education appears principally to be provided to prevent the employee suffering from 'work-related trauma'. 'Work-related trauma' will include the coming into existence, the aggravation, acceleration or recurrence of a physiological or psychological condition in relation to the employee that is or may be harmful or disadvantageous to, or result in harm or disadvantage to, the employee that is related to any employment of the employee. Health education that is more than just the giving of general health information will help prevent the employee from developing such trauma.

*(c) Is the care made available to all the specified employees?*

226. As all the other conditions are satisfied, health education of the type mentioned in the above paragraph that is provided by, or on behalf of, a listed health professional under 'work-related preventative health care' will be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(ii) where this form of care is made available generally to all employees who come within paragraphs (a) to (c) of the definition of 'work-related preventative health care' in subsection 136(1).

227. Where the health education is not provided by, or on behalf of, a listed medical professional under 'work-related preventative health care', the health education may qualify as an exempt benefit as 'work-related counselling'.

### ***Health education as 'work-related counselling'***

228. The requirements listed at paragraph 106 of this Ruling should be considered.

*(a) Is counselling provided?*

229. What counselling is has been considered at paragraphs 107 to 112 of this Ruling. Counselling includes the giving of advice, and it is defined in subsection 136(1) to include the giving of advice and information at a seminar. The giving of advice through the provision of the health information products that is more than just the giving of general health information will result in counselling.

*(b) Is the counselling attended by the employee, or the employee and the employee's associate?*

230. There is a requirement that some type of meeting, presentation, or session be involved where counselling is to occur. Where health education material is merely provided to the employee without some such session taking place this requirement will not be satisfied. Where the health education is provided at some such session this requirement will be satisfied where it is attended by the employee, or the employee and the employee's associate.

*(c) Does the attendance of the employee give effect to an objective, purpose, plan or policy devised, adopted or required to be followed by the employer?*

231. This condition will be satisfied where the health education is provided at an appropriate session attended by the employee, or the employee and the employee's associate, as part of a plan or policy of the employer.

*(d) Does the counselling relate to the specified matters?*

232. In order to be 'work-related counselling' the counselling must relate to specified matters. One of these matters is to ensure improved health outcomes. Hence, the counselling will relate to the specified matters.

*(e) Is the benefit provided wholly or principally as a reward for services rendered or to be rendered by the employee?*

233. As the benefit is not salary packaged, and the benefit is not provided wholly or principally as a reward for services rendered or to be rendered by the employee, the health education will qualify as 'work-related counselling' as defined by subsection 136(1).

**(xii) Will the health survey be an exempt benefit?**

234. Health surveys ensure the employee's health is appropriate for their position, improve and/or maintain work performance and prevent illness. A health survey is carried out by exercise physiologists under the direction of a WCH doctor.

235. A health survey does not meet the requirement of being 'wholly or principally' in order to prevent work-place trauma. The reason this is provided is to ensure the employee's health is appropriate for their position, to help improve and/or maintain work performance and to prevent illness.

236. The health survey may however satisfy the requirements of work-related counselling.

237. The requirements listed at paragraph 106 of this Ruling should be considered.

***(a) Is counselling provided?***

238. Counselling is defined in subsection 136(1) as including the giving of advice or information at a seminar.

239. The acquiring of information through a health survey from an employee will not involve the provision of advice to an employee or employee associate.

240. Hence, a health survey will not be the provision of counselling and will not qualify as 'work-related counselling' as defined by subsection 136(1).

241. The health survey may be an exempt benefit as a minor benefit under section 58P. The requirements for a minor benefit have been listed at paragraphs 122 to 124 of this Ruling.

## **Will the personal health record be an exempt benefit?**

242. A personal health record is provided to an employee after they have completed health screening. It is provided to assist the employee improve their health management. The record is provided to an employee by exercise physiologists.

243. The type of benefit which is provided to the employee will be a property benefit as discussed at paragraphs 114 to 121 of this Ruling.

244. The personal health record is provided to the employee to assist with the management of their health. Where this is provided to the employee only because of an exempt work-related medical examination, exempt work-related medical screening, exempt work-related preventative health care or exempt work-related counselling, it will be an exempt benefit under paragraph 58(1)(b).

## **Will the provision of health consulting be a fringe benefit?**

245. The health consulting is providing practical advice to the employer about the wellbeing initiatives they should implement for their employees. This may include gymnasium advice.

246. The health consulting is provided to the employer and not the employee. Therefore the health consultancy services provided to an employer by WCH will not be a 'fringe benefit' as defined in subsection 136(1).

## **Appendix 2 – Detailed contents list**

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