


# ***CR 2011/41 - Fringe benefits tax: health services provided by BUPA Wellness Pty Ltd***

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## Class Ruling

### Fringe benefits tax: health services provided by BUPA Wellness Pty Ltd

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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:

- subsection 47(2) *Fringe Benefits Tax Assessment Act 1986* (FBTAA);
- section 58M of the FBTAA;
- section 58P of the FBTAA; and
- subsection 136(1) of the FBTAA.

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

#### **Class of entities**

3. The class of entities to which this Ruling applies is employers who make the services provided by BUPA Wellness Pty Ltd available to their employees.

## 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 41 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 2010. 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 as detailed in:

- the application for Class Ruling (dated 4 October 2010);
- a draft Facility Management Agreement;
- a draft agreement with an employer to provide Lifestyle Health Services;

- a draft Corporate Health Promotion Program Agreement;
- a quote from Peak Health Management to an employer regarding the provision of Executive Medicals;
- a request for proposal document outlining scope of work for an employer client;
- an invitation by an employer for medical contractors to provide skin cancer and wellness assessments for staff of the employer;
- a brochure titled Corporate Health Management Solutions;
- a brochure titled Peak Health Management Corporate Medicals & Health Screening as of January 2010;
- a brochure titled Peak Health Management WorkHealth Health Checks; and
- information provided on the Peak Health Management website.

10. BUPA Wellness Pty Ltd (BUPA) trading as Peak Health Management offers a range of corporate health services with the aim of assisting employers to improve the quality of their employees' work performance.

11. The key features of the proposed arrangement are as follows:

- (i) the employer will enter into a contract with BUPA for the provision of health related services;
- (ii) under the terms of the contract the employer will be liable to pay BUPA for the services provided during the course of the program;
- (iii) the opportunity to participate in any of the services will not be provided to employees as:
  - a reward for services rendered;
  - a reward for specific achievements; or
  - as part of a salary sacrifice arrangement.

12. It will be the responsibility of BUPA to:

- (i) provide a range of services to employees;
- (ii) employ legally qualified doctors, nurses, dieticians, physiotherapists, optometrists and audiometrists to carry out or provide direction in respect of services related to medical examinations, health screening and preventative health care;

- (iii) provide design support, a facility manager, marketing services, health appraisals and exercise prescription, and equipment maintenance in respect of corporate gymnasiums;
  - (iv) report to the employer on program outcomes;
  - (v) provide health screening reports detailing various results including before and after, health surveys and other comparisons such as male versus female, regional versus metropolitan; and
  - (vi) provide answers to any questions relating to the services and give information as required by the client.
13. It will be the responsibility of the client to:
- (i) provide BUPA staff with information on the details of employees enrolling in the program;
  - (ii) meet with BUPA regularly to review reports and the level of service;
  - (iii) provide full, free and unhindered access to all premises and persons considered necessary or desirable to provide those services to; and
  - (iv) provide suitable and adequate physical facilities.
14. The range of services can be divided into the following categories:

Category A	Corporate medicals
Category B	Travel health consultation
Category C	Health checks
Category D	Gymnasium layout, design and equipment advice
Category E	Gymnasium management services
Category F	Group exercise classes
Category G	Health promotion services
Category H	Corporate health profiling
Category I	On-line wellness solutions
Category J	Health coaching
Category K	Flu vaccinations

### **Category A – Corporate medicals**

15. BUPA provides a number of corporate medicals that have the aim of detecting, preventing and optimising the management of cardiovascular disease and cancer. Each corporate medical is conducted by a legally qualified medical practitioner or nurse employed by BUPA.

16. The corporate medicals that may be carried out as part of the scheme are:

- a 'pre-employment medical';
- a 'level 1 medical';
- a 'level 2 medical';
- a 'level 3 medical';
- a 'level 4 medical';
- a 'men's health medical'; and
- a 'women's health medical'.

***'Pre-employment medical'***

17. A 'pre-employment medical' is a 45 minute examination that provides a report as to whether the employee is fit or unfit for work. The examination includes:

- a physical and clinical examination;
- audiometry;
- vision tests for distance and colour; and
- urinalysis.

***'Level 1 medical'***

18. The 'level 1 medical' is a one hour examination that includes:

- a personal health questionnaire;
- a physical and clinical examination;
- three body composition tests;
- five pathology tests;
- a test for cardiovascular disease;
- a test for type 2 diabetes; and
- vision tests for distance and colour.

19. A results report is provided in either a CD or electronic format.

## ***'Level 2 medical'***

20. The 'level 2 medical' is a one hour thirty minute examination that includes:

- a personal health questionnaire;
- a physical and clinical examination;
- audiometry;
- three body composition tests;
- thirteen pathology tests;
- a test for cardiovascular disease;
- a test for type 2 diabetes;
- vision tests for distance and colour;
- a resting ECG; and
- spirometry.

21. A results report is provided in either a CD or electronic format.

## ***'Level 3 medical'***

22. The 'level 3 medical' is a two hour thirty minute examination that includes:

- a personal health questionnaire;
- a physical and clinical examination;
- audiometry;
- three body composition tests;
- thirteen pathology tests;
- a test for cardiovascular disease;
- a test for type 2 diabetes;
- vision tests for distance, near point and colour;
- a resting ECG;
- a stress ECG;
- spirometry;
- depression, anxiety and stress analysis; and
- dietary analysis.

23. A results report is provided in either a CD or electronic format.

***'Level 4 medical'***

24. The 'level 4 medical' is a four hour examination that includes:
- a personal health questionnaire;
  - a physical and clinical examination;
  - audiometry;
  - three body composition tests;
  - thirteen pathology tests;
  - a test for cardiovascular disease;
  - a test for type 2 diabetes;
  - vision tests for distance, near point and colour;
  - a resting ECG;
  - a stress echocardiogram;
  - spirometry;
  - depression, anxiety and stress analysis; and
  - dietary analysis.
25. A results report is provided in either a CD or electronic format.

***'Men's health medical'***

26. The 'men's health medical' is a one hour examination designed to address male health risk factors including cardiovascular health, sexual health, fertility issues, cancer, genital issues, androgen deficiency, gynecomastia and mental health. It includes:
- a personal health questionnaire;
  - a physical and clinical examination;
  - three body composition tests;
  - three pathology tests;
  - a test for cardiovascular disease;
  - a test for type 2 diabetes; and
  - the provision of educational material.
27. A results report is provided in either a CD or electronic format.



## ***'Women's health medical'***

28. The 'women's health medical' is a one hour examination designed to address female health risk factors including menstrual disturbances, pre-menstrual syndrome, sexual health, contraception, fertility issues, pre-pregnancy issues, cancer, pre/post menopausal issues, osteoporosis, post menstrual cardiovascular health and incontinence. It includes:

- a personal health questionnaire;
- a physical and clinical examination;
- three body composition tests;
- two pathology tests;
- a test for cardiovascular disease;
- a test for type 2 diabetes;
- pap smear (if required); and
- the provision of educational material.

29. A results report is provided in either a CD or electronic format.

## **Category B – Travel health consultation**

30. A travel health consultation is designed to provide the corporate traveller with information and required vaccinations before embarking on their trip. It deals with travel specific health issues such as:

- mosquito and other insect-borne illnesses;
- food and water illnesses;
- travel immunisation;
- altitude illnesses;
- air travel illnesses, for example jet lag and deep venous thrombosis;
- avian influenza; and
- SARS.

## **Category C – Health checks**

31. Health checks include health screenings and health appraisals. The health checks enable individual results cards to be provided to participants on the day and a summary report to be provided to the employer.

32. Health screenings are conducted on the employer's premises. They can include:

- blood pressure;
- cholesterol;
- glucose;
- body composition;
- skin checks;
- lung function;
- bone density;
- audiometry;
- vision;
- fitness; and
- drug and alcohol screening.

33. Health appraisals have been developed to provide a packaged solution that encompasses a variety of strategic health screenings within the one appointment. They can include:

- glucose;
- cholesterol;
- blood pressure;
- diabetes risk;
- cardiovascular disease risk;
- body fat percentage;
- fitness test;
- lung function;
- flexibility test;
- abdominal strength; and
- upper body strength.

#### **Category D – Gymnasium layout, design and equipment advice**

34. As part of the scheme BUPA may provide advice to the employer in relation to the layout and design of an onsite corporate gymnasium facility. This may include advice as to the best equipment package for the facility.

## **Category E – Gymnasium management services**

35. The gymnasium management services provided as part of the scheme may include:

- liaising and coordinating a health promotion program;
- creation of rosters and timetables;
- attendance at meetings;
- health and fitness assessment upon joining the gymnasium;
- personalised fitness programs;
- health and fitness assessments during period of gymnasium use;
- preparation of reports and surveys;
- professional and qualified staff;
- internal marketing;
- group exercise programming; and
- incentive and loyalty programs.

## **Category F – Group exercise classes**

36. As part of the scheme BUPA may provide a range of exercise classes that can be conducted on-site by professional instructors. The classes may include:

- aerobics;
- yoga;
- pilates;
- tai chi;
- boot camps;
- boxing;
- self defence;
- stretch and relaxation;
- meditation; and
- running and walking groups.

**Category G – Health promotion services**

37. The health promotion services that may be provided as part of the scheme include:

- a variety of onsite consultations including diet and nutrition consultations, life coaching, fitness and exercise prescription, naturopathy and ‘financially well consultations’;
- a variety of natural therapies including massage, reflexology, cellular age assessments and iridology; and
- a range of seminars/workshops including ‘Diet Myth Busters’, ‘Secret Mens Business’, ‘Sit Right / Lift Right’, ‘Sleep Well’ and ‘The Organic Debate’.

**Category H – Corporate health profiling**

38. Corporate health profiling provides the employer with an assessment of the health status of the employer’s employee base.

**Category I – Online wellness solutions**

39. Six modules have been developed which can be accessed on line either separately or as an entire package. The six modules are:

Module 1	‘My Program’ – which houses all wellness program information and acts as a central hub for all wellness activities. It includes program information, a calendar of events and an online booking system.
Module 2	‘My Magazine’ – which contains a range of articles that are updated monthly. The articles include medical based articles, exercise and fitness articles, diet and nutrition based articles, natural therapy based articles, mental health and motivational based articles, general lifestyle articles and health at work based articles.
Module 3	‘My Tools’ – which houses an array of health and wellness functions for subscribers to access. They include recipe books, a food database, exercise video coach, health calculators, financial health calculators and e-health talk.
Module 4	‘My Health’ – which houses a number of health based assessment modules including health profiler, health risk assessment and self assessments.
Module 5	‘Race Around Australia’ – which is an online virtual fitness challenge designed to encourage employees in physical activity.
Module 6	‘Weight Tracker’ – which is an online weight management program that allows individuals to track and record their weight and girth measurements.

## **Category J – Health coaching**

40. Health coaching is a telephonic health coaching service that is designed to assist those identified as high risk to better manage their health. It involves the development of a one-on-one relationship with a specially trained and qualified nurse.

## **Category K – Flu vaccinations**

41. BUPA provides a nationally co-ordinated corporate flu vaccination program that includes the provision of flu vaccinations by qualified nursing staff.

# **Ruling**

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## **Category A – Corporate medicals**

42. The provision of a 'pre-employment medical' to an employee will be an exempt benefit under subparagraph 58M(1)(c)(i) as a 'work-related medical examination'.

43. The provision of a 'level 1 medical', a 'level 2 medical', a 'level 3 medical' or a 'level 4 medical' will be an exempt benefit under subparagraph 58M(1)(c)(ii) as 'work-related medical screening' where the examination 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).

44. The provision of a 'men's health medical' or a 'women's health medical' will be an exempt benefit under subparagraph 58M(1)(c)(ii) as 'work-related medical screening' where the examination 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).

## **Category B – Travel health consultation**

45. The provision of a travel health consultation to an employee who travels overseas to perform duties of employment will be an exempt benefit under subparagraph 58M(1)(c)(iii) as 'work-related preventative health care' where the consultation 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).

**Category C – Health checks**

46. The provision of a health screening to an employee will be an exempt benefit under subparagraph 58M(1)(c)(ii) as 'work-related medical screening' 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).

47. The provision of a health appraisal to an employee will be an exempt benefit under subparagraph 58M(1)(c)(ii) as 'work-related medical screening' 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).

**Category D – Gymnasium layout, design and equipment advice**

48. The provision of gymnasium layout, design and equipment advice to an employer will not be a fringe benefit as defined in subsection 136(1).

**Category E – Gymnasium management services**

49. The provision of gymnasium management services to an employer will not be a fringe benefit as defined in subsection 136(1). However, a fringe benefit may arise from the provision of a membership, or the use of a gym facility managed by BUPA if the requirements of subsection 47(2) are not satisfied.

**Category F – Group exercise classes**

50. Where the attendance of an employee at a group exercise class as a result of a referral by a legally qualified medical practitioner, nurse, dentist or optometrist constitutes a residual benefit, the benefit will be an exempt benefit under subparagraph 58M(1)(c)(iii) as 'work-related preventative health care' where the class 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. The attendance of an employee at a group exercise class will not be an exempt benefit under section 58M where the employee does not have a referral from a legally qualified medical practitioner, nurse, dentist or optometrist. However, the attendance will be an exempt minor benefit where the requirements of section 58P are satisfied.

## **Category G – Health promotion services**

52. The provision of an on-site consultation to an employee will be an exempt benefit under subparagraph 58M(1)(c)(iv) as ‘work-related counselling’ where the requirements of paragraphs (c) and (e) of the definition of ‘work-related counselling’ in subsection 136(1) are met.

53. The attendance of an employee who has a referral from a legally qualified medical practitioner, nurse, dentist or optometrist at a natural therapy session will be an exempt benefit under subparagraph 58M(1)(c)(iii) as ‘work-related preventative health care’ where the natural therapy session 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).

54. The attendance of an employee at a natural therapy session will not be an exempt benefit under section 58M where the employee does not have a referral from a legally qualified medical practitioner, nurse, dentist or optometrist. However, the attendance will be an exempt benefit where the requirements of section 58P are satisfied.

55. The attendance of an employee at a seminar or workshop will be an exempt benefit under subparagraph 58M(1)(c)(iv) as ‘work-related counselling’ where the requirements of paragraphs (c) and (e) of the definition of ‘work-related counselling’ in subsection 136(1) are met.

## **Category H – Corporate health profiling**

56. The provision of corporate health profiling to an employer will not be a fringe benefit as defined in subsection 136(1).

## **Category I – Online wellness solutions**

57. The provision of a module 4 health assessment to an employee 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).

58. The online advice provided by or on behalf of a legally qualified medical practitioner, nurse, dentist or optometrist to an employee will be an exempt benefit as ‘work-related preventative health care’ under subparagraph 58M(1)(c)(iii) where the advice 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).

59. The online advice provided to an employee that is not provided by or on behalf of a legally qualified medical practitioner, nurse, dentist or optometrist will be an exempt benefit under subparagraph 58M(1)(c)(iv) as 'work-related counselling' where the requirements of paragraphs (c) and (e) of the definition of 'work-related counselling' in subsection 136(1) are met.

#### **Category J – Health coaching**

60. The provision of health coaching to an employee will be an exempt benefit under subparagraph 58M(1)(c)(iii) as 'work-related preventative health care' where the health coaching is provided to prevent the employee from suffering from 'work-related trauma' and 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).

#### **Category K – Flu vaccinations**

61. The provision of a flu vaccination to an employee will be an exempt benefit under subparagraph 58M(1)(c)(iii) as 'work-related preventative health care' where flu vaccinations are 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).

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**Commissioner of Taxation**20 April 2011

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## Appendix 1 – Explanation

**①** *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?**

62. 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.

63. Some of the services offered by BUPA 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 the following services to an employer:

- gymnasium layout, design and equipment advice;
- gymnasium management services; and
- corporate health profiling.

64. However, an employee may receive a benefit in relation to a gym facility managed by BUPA if he or she is provided with a membership, or when he or she uses the facility. This benefit will be a fringe benefit if the requirements of subsection 47(2) are not satisfied. For example, subsection 47(2) will not apply if a tax-exempt body entertainment benefit arises from the use of the facility.

65. The circumstances in which a tax-exempt body entertainment benefit may arise are discussed at paragraphs 69 to 74 of this Ruling.

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

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

67. 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 ...

68. Divisions 2 to 12 of Part III divide benefits into different categories. For the purpose of this ruling the relevant categories to consider are:

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

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

69. 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.

70. 'Entertainment' is defined in subsection 32-10(1) of the *Income Tax Assessment Act 1997* (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.

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

72. As part of the scheme an employee may attend a group exercise class which comes within the definition of 'recreation' in subsection 995-1(1) of the ITAA 1997.

73. A tax-exempt body entertainment 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 of the ITAA 1997 will not be a tax-exempt body entertainment benefit.

74. A benefit which is a tax-exempt body entertainment benefit will not be an exempt benefit under section 58M.

***Residual benefits***

75. Section 45 provides that a benefit that does not come within Divisions 2 to 11 of Part III will be a 'residual benefit'. This may include the provision of a 'service'. In this regard, 'service' is defined by the *Macquarie Dictionary*<sup>1</sup> to mean

- 2. the supplying or supplier of any articles, commodities, activities, etc., required or demanded.

76. An employee may receive the following services under an arrangement between BUPA and an employer:

- (i) a 'pre-employment medical';
- (ii) a 'level 1 medical', a 'level 2 medical', a 'level 3 medical' or a 'level 4 medical' (level 1 to level 4 medical);

<sup>1</sup> 2001, rev. 3<sup>rd</sup> edn, The Macquarie Library Pty Ltd, NSW.

- (iii) a 'men's health medical' or 'women's health medical';
- (iv) a travel health consultation;
- (v) a health screening;
- (vi) a health appraisal;
- (vii) participation in a group exercise class;
- (viii) participation in an on-site consultation;
- (ix) a natural therapy;
- (x) participation in a seminar/workshop;
- (xi) a range of information and advice provided online;
- (xii) health coaching; and
- (xiii) flu vaccinations.

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

77. The FBTA specifies certain benefits will be exempt benefits. For the purpose of this ruling the relevant exempt benefits to be considered are the exemptions for:

- 'work-related medical examination', 'work-related medical screening', 'work-related preventative health care' and 'work-related counselling' under section 58M; and
- minor benefits under section 58P.

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

78. 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'.

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

80. 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.

81. In considering whether any of these exemptions apply to the residual benefits provided as part of the program it is necessary to consider paragraph 58M(1)(c).

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

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

### **Identifying the relevant exemption**

83. As each of the exemptions has different conditions it is necessary to initially identify the relevant exemption to be considered. The process for doing this and the conditions that need to be satisfied in relation to each of the exemptions are summarised in the flowcharts in paragraphs 86 and 102 of this Ruling.

84. Flowchart 1 in paragraph 86 of this Ruling illustrates that the initial question to be considered is whether the benefit is an examination or test?

## Examination or test

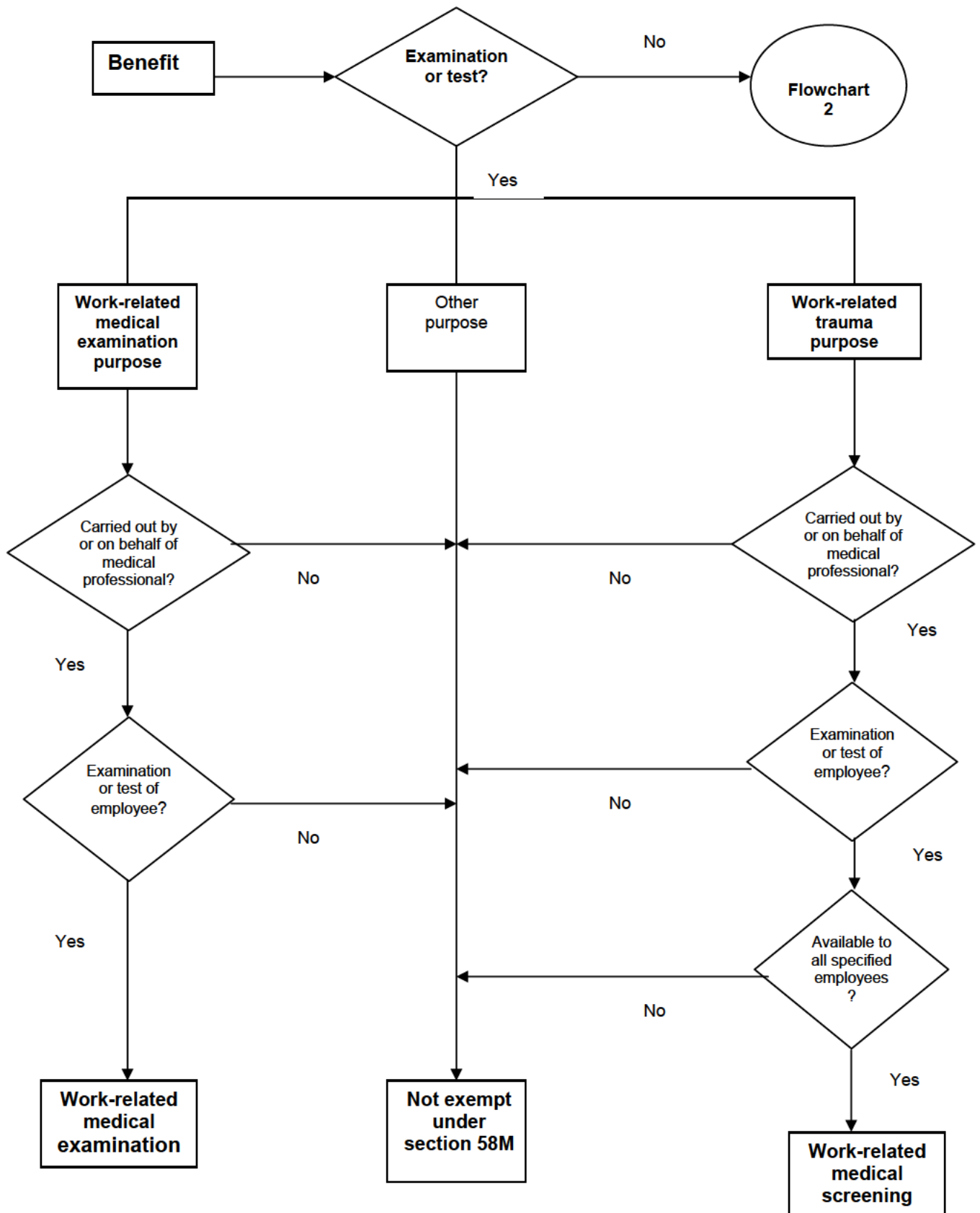
85. Neither examination, nor test are defined in the FBTAA. The *Macquarie Dictionary*<sup>2</sup> defines the word 'examination' as:

1. ... 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 ...

86. Flowchart 1 in this paragraph is a diagrammatic representation of the conditions to be considered where the benefit is an examination or test.

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<sup>2</sup> 2001, rev. 3<sup>rd</sup> edn, The Macquarie Library Pty Ltd, NSW.



87. 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**

88. As illustrated in flowchart 1 in paragraph 86 of this Ruling the purposes can be categorised into the following three categories:

- (a) to ascertain the physiological or psychological condition of the employee for one of the four purposes listed in the definition of 'work-related medical examination' in subsection 136(1);
- (b) to ascertain whether the employee has suffered, is suffering or is at risk of suffering from 'work-related trauma' as defined in subsection 136(1); and
- (c) other purposes.

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

89. 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:

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

90. Where the purpose of the examination is to ascertain the physiological or psychological condition of the employee for one of the four listed purposes the relevant conditions to consider are those contained within the definition of 'work-related medical examination' in subsection 136(1).

### ***The tests that apply to 'work-related medical examination'***

91. As illustrated by flowchart 1 in paragraph 86 of this ruling an examination or test that is carried out wholly or principally to ascertain the physiological or psychological condition of the employee for one of the four listed purposes will be a 'work-related medical examination' 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 examination' in subsection 136(1); and
- (b) the examination or test is carried out on an employee.

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

92. Where the benefit is an examination or test to ascertain the physiological or psychological condition of the employee for one of the four listed purposes the definition of 'work-related medical examination' in subsection 136(1) 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*

93. 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.

94. The phrase 'on behalf of' is not defined for the purposes of the FBTA. The *Australian Concise Oxford Dictionary*<sup>3</sup> 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*).

95. 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*.<sup>4</sup>

1. giving support, helping, aiding or assisting

96. 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.

<sup>3</sup> 2004, 4<sup>th</sup> Ed., Oxford University Press.

<sup>4</sup> 2001, rev. 3<sup>rd</sup> edn, The Macquarie Library Pty Ltd, NSW.



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

97. 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' in subsection 136(1).

***What is 'work-related trauma'?***

98. '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'***

99. As illustrated by flowchart 1 in paragraph 86 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' in subsection 136(1);
- (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'?*

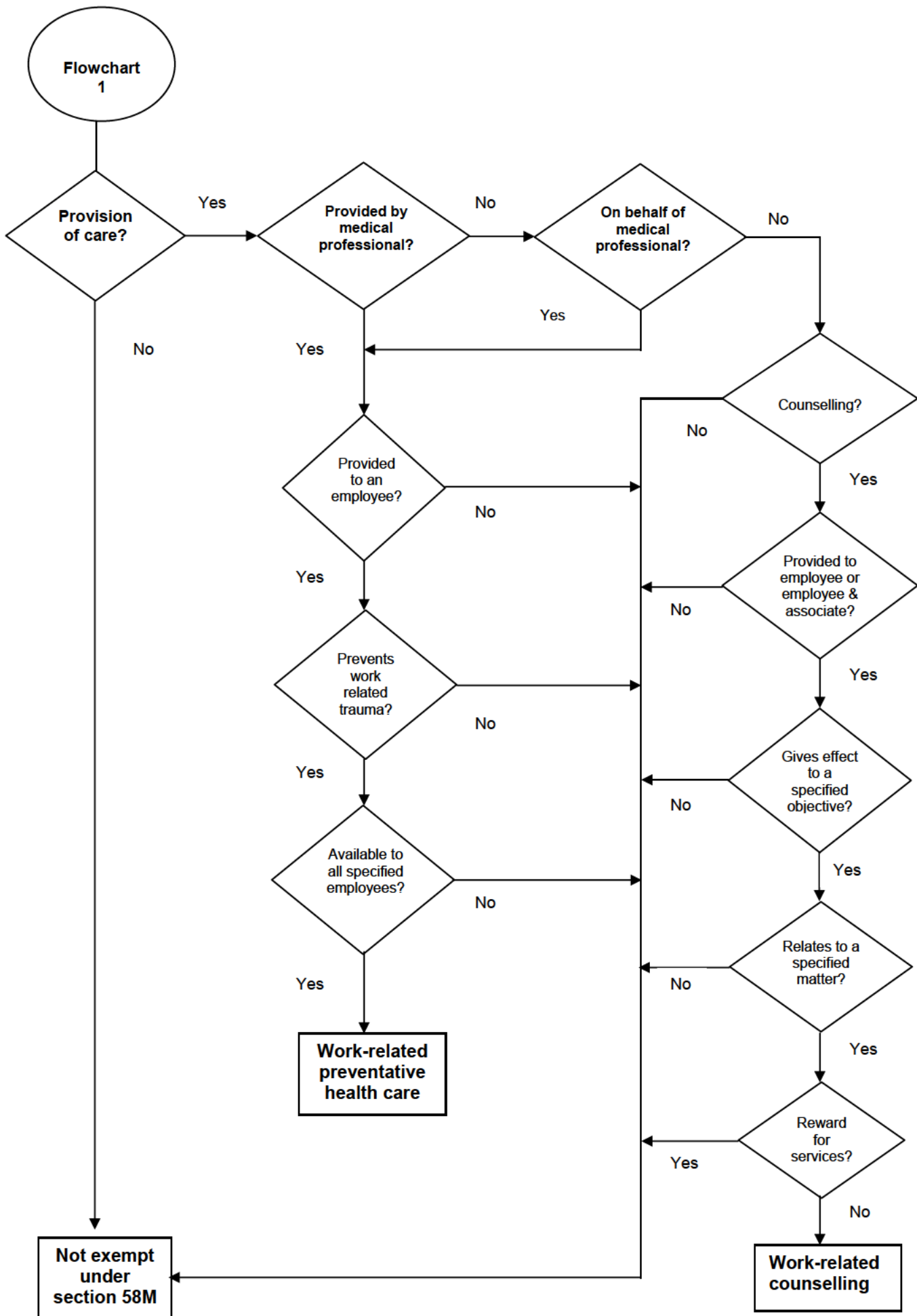
100. Where the benefit is an examination or test for 'work-related trauma' the definition of 'work-related medical screening' in subsection 136(1) requires the examination or test to be carried out by, or on behalf of an audiometrist, a legally qualified medical practitioner, nurse, dentist or optometrist.

**(c) Other purposes**

101. 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' in subsection 136(1) the examination or test will not be an exempt benefit under section 58M.

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

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



103. 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***

104. The word 'care' is not defined within the FBTAA. However, 'health care' is defined in subsection 136(1) to mean 'any examination or 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.

105. The *Macquarie Dictionary*<sup>5</sup> 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.

106. In applying the definitions in paragraphs 104 and 105 of this Ruling 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' in subsection 136(1).

107. 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 in paragraph 102 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' in subsection 136(1).

108. If the care is provided by or on behalf of a medical professional listed in the definition of 'work-related preventative health care' in subsection 136(1) 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'?***

109. The definition of 'work-related preventative health care' in subsection 136(1) requires the care to be provided by or on behalf of a legally qualified medical practitioner, nurse, dentist or optometrist.

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<sup>5</sup> 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW.

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

110. As illustrated by flowchart 2 in paragraph 102 of this Ruling care that is provided by or on behalf of a listed medical professional 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 from suffering from ‘work-related trauma; 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 preventative health care’ of subsection 136(1). 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’**

111. As illustrated by flowchart 2 in paragraph 102 of this Ruling, care that is not provided by or on behalf of a listed medical professional 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 an 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 employee’s duties;
- (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?***

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

113. The *Macquarie Dictionary*<sup>6</sup> defines the word 'counsel' as 'advice; opinion or instruction given in directing the judgment or conduct of another'. The *Australian Concise Oxford Dictionary*<sup>7</sup> 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'.

114. The wording of the definitions in paragraphs 112 and 113 indicates 'counselling' involves a suitably qualified person providing advice or guidance to someone else in relation to their established area of expertise.

115. 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'.

116. 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.

<sup>6</sup> 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW.

<sup>7</sup> 2004, 4<sup>th</sup> 4th Ed., Oxford University Press.

117. 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'***

118. Paragraph (d) of the definition of 'work-related counselling' in subsection 136(1) requires the counselling to 'relate' to certain specified matters. The word 'relate' is not specifically defined in the FBTA and therefore has its ordinary meaning. The *Australian Concise Oxford Dictionary*<sup>8</sup> defines 'relate' to mean '...establish relation between; connected; allied'. The *Macquarie Dictionary*,<sup>9</sup> 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.

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

119. 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 taxable 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.

120. 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 specified circumstances which are unlikely to apply in relation to a benefit provided under the scheme.

121. 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:

- (i) the infrequency and irregularity with which associated identical or similar benefits are provided;

<sup>8</sup> 2004, 4<sup>th</sup> Ed., Oxford University Press

<sup>9</sup> 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW.

- (ii) the sum of the notional taxable values of the benefit and any associated benefits which are identical or similar to the minor benefit;
- (iii) the sum of the notional taxable values of any other associated benefits;
- (iv) the practical difficulty in determining the notional taxable values of the benefit and any associated benefits; and
- (v) the circumstances surrounding the provision of the benefit and any associated benefits.

**Will any residual benefits be exempt benefits?**

122. As discussed at paragraph 76 of this Ruling an employee may receive the following residual benefits:

- (i) a 'pre-employment medical';
- (ii) a level 1 to level 4 medical;
- (iii) a 'men's health medical' or a 'women's health medical';
- (iv) a travel health consultation;
- (v) a health screening;
- (vi) a health appraisal;
- (vii) participation in a group exercise class;
- (viii) participation in an on-site consultation;
- (ix) a natural therapy;
- (x) participation in a seminar/workshop;
- (xi) a range of information and advice provided online;
- (xii) health coaching; and
- (xiii) flu vaccinations.

***(i) Will a 'pre-employment medical' be an exempt benefit?***

123. A 'pre-employment medical' is an examination conducted by a legally qualified medical practitioner at the commencement of employment of the employee. It includes a physical and clinical examination, audiometry, vision and urinalysis which is used to prepare a report advising whether the employee is fit for work. As this is one of the four 'work-related medical examination' purposes it is necessary to consider the 'work-related medical examination' tests summarised in flowchart 1 in paragraph 86 of this Ruling.



*(a) Is a 'pre-employment medical' carried out by a listed medical professional?*

124. A 'pre-employment medical' will be conducted by a qualified medical practitioner or nurse employed by BUPA. Where this occurs the first condition will be satisfied.

*(b) Who is examined or tested?*

125. A 'pre-employment medical' is an examination of an employee.

126. Therefore, as both tests are satisfied the provision of a 'pre-employment medical' will be an exempt benefit under subparagraph 58M(1)(c)(i).

***(ii) Will the provision of a level 1 to level 4 medical be an exempt benefit?***

127. Each of the level 1 to level 4 medicals involves an examination that is conducted for the purpose of ascertaining whether the employee has suffered, is suffering or is at risk of suffering from 'work-related trauma'. Therefore, in applying the steps summarised in flowchart 1 in paragraph 86 of this Ruling it is necessary to consider whether these examinations constitute the provision of 'work-related medical screening'.

*(a) Is a level 1 to level 4 medical carried out by or on behalf of a listed medical professional?*

128. The examinations will be conducted by a qualified medical practitioner or nurse employed by BUPA. Where this occurs the first condition will be satisfied as both a qualified medical practitioner and a nurse are a listed medical professional in the definition of 'work-related medical screening' in subsection 136(1).

*(b) Who is examined or tested?*

129. Each of the level 1 to level 4 medicals involves the examination of an employee.

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

130. As all the other conditions are satisfied a level 1 to level 4 medical will be an exempt benefit as 'work-related medical screening' under subparagraph 58M(1)(c)(ii) where the medical 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 provision of a 'men's health medical' or a 'women's health medical' be an exempt benefit?***

131. The 'men's health medical' has been designed to address male health risk factors and includes a personal health questionnaire, a physical and clinical examination, an assessment of body composition, pathology tests and assessments of cardiovascular disease and type 2 diabetes risks. A report summarising the results is provided to the employee.

132. The 'women's health medical' has been designed to address female health risk factors and includes a personal health questionnaire, a physical and clinical examination, an assessment of body composition, pathology tests and assessments of cardiovascular disease and type 2 diabetes risks. A report summarising the results is provided to the employee.

133. As both examinations are conducted for the purpose of ascertaining the existence or risk of contraction of an employee's health problems they are an examination or test for 'work-related trauma'. Therefore, in applying the steps summarised in flowchart 1 in paragraph 86 of this Ruling it is necessary to consider whether these examinations constitute the provision of 'work-related medical screening'.

***(a) Are the 'men's health medical' and the 'women's health medical' carried out by or on behalf of a listed medical professional?***

134. Both examinations will be conducted by a qualified medical practitioner or nurse employed by BUPA. Where this occurs the first condition will be satisfied as in each instance both a qualified medical practitioner and a nurse are a listed medical professional in terms of the definition of 'work-related medical screening' in subsection 136(1).

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

135. The examinations will be of an employee.

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

136. As all the other conditions are satisfied both the 'men's health medical' and the 'women's health medical' 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).

***(iv) Will the provision of a travel health consultation be an exempt benefit?***

137. The travel health consultation has been designed to provide the corporate traveller with information and required vaccinations before they embark on their trip. It deals with travel specific health issues such as mosquito and other insect borne illnesses, food and water illnesses, travel immunisation, altitude illnesses, air travel illnesses, avian influenza and SARS. It includes doctor consultation and advice, prescriptions and vaccinations.

138. As the consultation is not an examination or test the requirements that need to be considered are those that are summarised in flowchart 2 in paragraph 102.

***(a) Does the travel consultation involve the provision of care?***

139. As discussed at paragraph 104 of this Ruling 'health care' is defined in subsection 136(1) to mean 'any examination or 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. As the travel consultation comes within this definition it will involve the provision of care.

***(b) Is a travel consultation carried out by or on behalf of a listed medical professional?***

140. The travel consultation will be conducted by a qualified medical practitioner or nurse employed by BUPA. Where this occurs the first condition will be satisfied as both a qualified medical practitioner and a nurse are a listed medical professional in the definition of 'work-related preventative health care' in subsection 136(1).

***(c) Who is the care provided to?***

141. The travel consultation will be provided to an employee.

***(d) Will the travel consultation prevent 'work-related trauma'?***

142. Paragraph (b) of the definition of 'work-related trauma' in subsection 136(1) refers to 'the contraction, aggravation, acceleration or recurrence of a disease of the employee that is related to any employment of the employee.'

143. The travel health consultation is designed to provide the corporate traveller with information and the required vaccinations so as to avoid the contraction of a range of illnesses including malaria, tuberculosis, diphtheria, poliomyelitis, Japanese encephalitis, yellow fever and meningococcal infections. As each of these are diseases that can be contracted by an employee who travels overseas to perform duties of employment it is accepted that the principal purpose of a travel consultation provided to an employee travelling overseas for work purposes is to prevent the employee from suffering from 'work-related trauma'.

**(e) Will the travel consultation be made available to all the specified employees?**

144. As all the other conditions are satisfied the provision of a travel consultation to an employee who travels overseas to perform duties of employment will be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii) where the consultation 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 provision of a health screening be an exempt benefit?**

145. Health screenings involve an examination or test that is conducted on the employer's premises for;

- blood pressure;
- cholesterol;
- glucose;
- body composition;
- skin checks;
- lung function;
- bone density;
- audiometry;
- vision;
- fitness; and
- drug and alcohol screening.

146. As they are an examination or test for 'work-related trauma' the relevant tests to consider are those summarised in flowchart 1 in paragraph 86 of this ruling for 'work-related medical screening'.

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

147. A health screening will be conducted by a qualified medical practitioner or nurse employed by BUPA. Where this occurs the first condition will be satisfied as both a qualified medical practitioner and a nurse are a listed medical professional in the definition of 'work-related medical screening'.

*(b) Who is examined or tested?*

148. A health screening is an assessment of an employee.

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

149. As all the other conditions are satisfied, a health screening 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).

***(vi) Will the provision of a health appraisal be an exempt benefit?***

150. Health appraisals involve a number of tests being conducted. The tests can include:

- glucose;
- cholesterol;
- blood pressure;
- diabetes risk;
- cardiovascular disease risk;
- body fat percentage;
- fitness test;
- lung function;
- flexibility test;
- abdominal strength; and
- upper body strength.

151. As they are an examination or test for 'work-related trauma' the relevant tests to consider are those summarised in flowchart 1 in paragraph 86 of this ruling for 'work-related medical screening'.

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

152. A health appraisal will be conducted by a qualified medical practitioner or nurse employed by BUPA. Where this occurs the first condition will be satisfied as in each instance a qualified medical practitioner and a nurse are listed medical professionals in terms of the definition of 'work-related medical screening'.

*(b) Who is examined or tested?*

153. A health appraisal is an assessment of an employee.

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

154. As all the other conditions are satisfied, a health appraisal 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).

***(vii) Will the participation in a group exercise class be an exempt benefit?***

155. A group exercise class is conducted onsite by a professional instructor. As it does not involve an examination or test the tests to consider are those summarised in flowchart 2 in paragraph 102 of this Ruling.

156. As set out in flowchart 2 in paragraph 102 of this Ruling the initial test to consider is whether a group exercise class involves the provision of care. As discussed at paragraph 106 of this Ruling 'care' is wider than just health care. It can include the directions given by a professional instructor in a group exercise class.

157. Having concluded the exercise classes involve the provision of care, the second test to consider is whether the care is provided by or on behalf of a listed medical professional.

158. The professional instructors who conduct the exercise classes are not listed medical professionals. However, an employee may attend a group exercise class as a result of a referral provided by:

- a BUPA medical practitioner or nurse; or
- an external medical practitioner.

159. In both situations, the professional instructor conducting the class can be seen to be acting 'on behalf of' the referring medical practitioner or nurse as they will be providing the care as a result of a direction made by the medical practitioner or nurse. Therefore, the appropriate conditions to consider are those that apply to 'work-related preventative health care'. These conditions are considered at paragraphs 161 to 163 of this Ruling.

160. By contrast, the care provided to an employee who attends without a referral cannot be seen to be made 'on behalf of' a medical professional listed in the definition of 'work-related preventative health care' in subsection 136(1). In such a situation the relevant conditions to consider are those that apply to 'work-related counselling'. These conditions are considered at paragraphs 164 to 165 of this Ruling.

*Will the attendance of an employee at a group exercise class as the result of a referral from a medical practitioner or nurse be an exempt benefit as 'work-related preventative health care'?*

(a) Who attends the exercise class?

161. The exercise classes are attended by employees.

(b) What is the principal purpose of the group exercise classes?

162. This condition will be satisfied where the employee attends an exercise class wholly or principally to prevent them suffering from 'work-related trauma'.

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

163. In applying the final condition it can be concluded that the attendance of an employee at a group exercise class where the employee has been referred by a listed medical professional may be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii). This will occur where the class 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).

*Will the attendance of an employee who does not have a referral from a medical practitioner or nurse at a group exercise class be an exempt benefit as 'work-related counselling'?*

(a) Does the group exercise class constitute the provision of counselling?

164. As set out in paragraph 117 of this Ruling, although the knowledge or skills provided as part of counselling can be in a wide range of areas that may include training or advice about how to undertake various physical activities, a predominantly physical activity session with negligible or no lecture component will not constitute 'counselling'.

165. The classes are conducted to enable the employee to participate in the particular type of activity. As such, they are not considered to be principally for the provision of advice or information. Therefore, they do not constitute the provision of counselling and the attendance of an employee will not constitute the provision of 'work-related counselling'.

*Will the attendance of an employee who does not have a referral from a medical practitioner or nurse at a group exercise class be an exempt minor benefit?*

166. The attendance of an employee who does not have a referral from a medical practitioner or nurse at a group exercise class will be an exempt minor benefit where the requirements of section 58P are satisfied. These requirements are discussed in paragraphs 119 to 121 of this Ruling.

***(viii) Is the information and advice provided in an on-site consultation an exempt benefit?***

167. A variety of health related consultations may be provided at the employer's workplace. The subject matter includes:

- diet and nutrition;
- life coaching;
- meditation;
- time management;
- QUIT smoking; and
- financial health.

168. As the on-site consultations do not involve an examination or test the tests to consider are those summarised in flowchart 2 in paragraph 102 of this Ruling.

**(a) Does the on-site consultation involve the provision of care?**

169. As discussed at paragraph 106 of this Ruling 'care' is wider than just health care. It can include the provision of advice by counselling.

**(b) Will an on-site consultation be carried out by or on behalf of a listed medical professional?**

170. As the on-site consultations will not be conducted by or on behalf of a listed medical professional the relevant conditions to consider are those that apply to 'work-related counselling'.

**(c) Does the on-site consultation constitute the provision of counselling?**

171. As set out in paragraphs 112 to 117 of this Ruling 'counselling' involves a suitably qualified person giving advice or guidance in relation to their area of expertise. This advice and guidance can be provided in a variety of ways including by way of a consultation. Therefore, an on-site consultation by a qualified presenter will constitute the provision of counselling.



(d) Who attends the on-site consultations?

172. The on-site consultations are attended by employees.

(e) 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?

173. This condition will be satisfied where the on-site consultation is provided as part of a plan or policy of the employer.

(f) Does the counselling relate to a specified matter?

174. The on-site consultations can cover a range of topics including health related issues, stress management, personal relationships, drug or alcohol abuse and healthy eating. Each of these topics come within the list contained in paragraph (d) of the 'work-related counselling' definition in subsection 136(1).

(g) Is the counselling provided as a reward for services?

175. To come within the definition of 'work-related counselling' in subsection 136(1) the counselling must not be provided wholly or principally as a reward for services rendered or to be rendered by the employee.

176. Therefore, the on-site consultations will be an exempt benefit under subparagraph 58M(1)(c)(iv) as 'work-related counselling' where the requirements of paragraphs (c) and (e) of the definition of 'work-related counselling' in subsection 136(1) are met.

***(ix) Will the provision of a natural therapy session be an exempt benefit?***

177. BUPA provides a range of natural therapy based services including:

- massage;
- reflexology;
- cellular age assessments; and
- iridology.

178. As these services are not an examination or test the tests to consider are those summarised in flowchart 2 in paragraph 102 of this Ruling.

179. As set out in flowchart 2 in paragraph 102 of this Ruling the initial test to consider is whether a natural therapy session involves the provision of care. As discussed at paragraph 104 of this Ruling 'care' is wider than just health care. It can include the provision of a natural therapy based service.

180. Having concluded the natural therapy sessions involve the provision of care, the second test to consider is whether the care is provided by or on behalf of a listed medical professional.

181. The BUPA employees who provide a natural therapy session may not be a listed medical professional. However, an employee may attend a group exercise class as a result of a referral provided by:

- a BUPA medical practitioner or nurse; or
- an external medical practitioner.

182. In both situations, the BUPA employee providing the natural therapy session can be seen to be acting 'on behalf of' the referring medical practitioner or nurse as they will be providing the care as a result of a direction made by the medical practitioner or nurse. Therefore, the appropriate conditions to consider are those that apply to 'work-related preventative health care'. These conditions are considered at paragraphs 184 to 186 of this Ruling.

183. By contrast, the care provided to an employee who attends without a referral cannot be seen to be made 'on behalf of' a medical professional listed in the definition of 'work-related preventative health care' in subsection 136(1). In such a situation the relevant conditions to consider are those that apply to 'work-related counselling'. These conditions are considered at paragraph 187 of this Ruling.

*Will the attendance of an employee at a natural therapy session as the result of a referral from a medical practitioner or nurse be an exempt benefit as 'work-related preventative health care'?*

*(a) Who attends the natural therapy sessions?*

184. The natural therapy sessions are attended by employees.

*(b) What is the principal purpose of a natural therapy session?*

185. This condition will be satisfied where the employee attends a natural therapy session wholly or principally to prevent them suffering from 'work-related trauma'.

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

186. In applying the final condition it can be concluded that the attendance of an employee at a natural therapy session where the employee has been referred by a listed medical professional may be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii). This will occur where the class 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).

*Will the attendance of an employee who does not have a referral from a medical practitioner or nurse at a natural therapy session be an exempt benefit as 'work-related counselling'?*

**(a) Does a natural therapy session constitute the provision of counselling?**

187. The natural therapy sessions are conducted to enable the employee to receive a particular type of service. As such, they are not considered to be principally for the provision of advice or information. Therefore, they do not constitute the provision of counselling and the attendance of an employee will not constitute the provision of 'work-related counselling'.

*Will the attendance of an employee who does not have a referral from a medical practitioner or nurse at a natural therapy session be an exempt minor benefit?*

188. The attendance of an employee who does not have a referral from a medical practitioner or nurse at a natural therapy session will be an exempt minor benefit where the requirements of section 58P are satisfied. These requirements are discussed in paragraphs 119 to 121 of this Ruling.

**(x) Is the information and advice provided in a seminar or workshop an exempt benefit?**

189. A variety of seminars and workshops may be provided as part of the scheme. the topics covered at the seminars and workshops include:

- 'diet myth busters';
- 'secret mens business';
- 'sit right/lift right';
- 'sleep well'; and
- 'the organic debate'.

190. As the seminars and workshops do not involve an examination or test the tests to consider are those summarised in flowchart 2 in paragraph 102 of this Ruling.

**(a) Does a seminar or workshop involve the provision of care?**

191. As discussed at paragraph 104 of this Ruling 'care' is wider than just health care. It can include the provision of advice in a seminar or workshop.

*(b) Will a seminar or workshop be carried out by or on behalf of a listed medical professional?*

192. As the seminars and workshops will not be conducted by or on behalf of a listed medical professional the relevant conditions to consider are those that apply to 'work-related counselling'.

*(c) Will a seminar or workshop constitute the provision of counselling?*

193. As set out in paragraphs 112 to 117 of this Ruling 'counselling' involves a suitably qualified person giving advice or guidance in relation to their area of expertise. This advice and guidance can be provided in a variety of ways including by way of a seminar or workshop. Therefore, a seminar or workshop conducted by a qualified presenter will constitute the provision of counselling.

*(d) Who attends the seminars and workshops?*

194. The seminars and workshops are attended by employees.

*(e) 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?*

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

*(f) Does the counselling relate to a specified matter?*

196. The seminars and workshops can cover a range of topics that come within the list contained in paragraph (d) of the 'work-related counselling' definition in subsection 136(1).

*(g) Is the counselling provided as a reward for services?*

197. To come within the definition of 'work-related counselling' in subsection 136(1) the counselling must not be provided wholly or principally as a reward for services rendered or to be rendered by the employee.

198. Therefore, the seminars and workshops will be an exempt benefit under subparagraph 58M(1)(c)(iv) as 'work-related counselling' where the requirements of paragraphs (c) and (e) of the definition of 'work-related counselling' in subsection 136(1) are met.

***(xi) Will the advice and information provided through on-line solutions be an exempt benefit?***

199. An employee may receive a range of information on-line via six modules that include program information, a range of articles, recipe books, exercise video coach, health calculators, health risk assessments, an on-line fitness challenge and an online weight management program.

200. In considering the tests that are summarised in the flowcharts in paragraphs 86 and 102 of this Ruling it is necessary to separately consider the health based assessments contained in module 4 from the information and advice provided in the other modules.

201. Module 4 houses a number of health based assessment modules including:

- Health Profiler;
- Health Risk Assessment; and
- self assessments.

202. As each of these assessments are a test conducted for the purpose of ascertaining whether the employee is suffering or is at risk of suffering from 'work-related trauma' it is necessary to consider the tests for 'work-related medical screening' that are summarised in flowchart 1 in paragraph 86 of this Ruling. These tests are considered at paragraphs 204 to 208 of this Ruling.

203. By contrast, the other on-line modules do not involve an examination or test. Therefore, the relevant tests to consider are those that are summarised in flowchart 2 in paragraph 102 of this Ruling. These tests are considered at paragraphs 209 to 221 of this Ruling.

*Will the advice and information provided in the on-line health based assessment modules be an exempt benefit as 'work-related medical screening'?*

***(a) Are the module 4 health risk assessments carried out by or on behalf of a listed medical professional?***

204. The module 4 health risk assessments are in questionnaire format or survey style assessments that are completed online by an employee.

205. Both the questionnaire and the generated recommendations which are based on the responses provided by the employee are designed and developed by a qualified medical practitioner.

206. Although a qualified medical practitioner does not personally examine the employee, both the recommendations and the criteria which determine the particular recommendations that are provided to the employee are developed by a qualified medical practitioner. Therefore, it can be concluded that the assessment has been carried out by or on behalf of a qualified medical practitioner.

(b) Who is examined or tested?

207. The module 4 health risk assessments are an examination or test of an employee.

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

208. As all the other conditions are satisfied, a module 4 health assessment 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).

*Will the provision of online advice and information by the other online modules be an exempt benefit?*

209. As set out in flowchart 2 the initial test to consider is whether the provision of online advice and information by the other online modules involves the provision of care. As discussed at paragraph 106 of this Ruling 'care' is wider than just health care. It can include the provision of advice and information.

210. Having concluded the natural therapy sessions involve the provision of care, the second test to consider is whether the care is provided by or on behalf of a listed medical professional.

211. This condition will be met where the information is developed by a listed medical professional, or where a listed medical professional refers an employee to a particular module. Where this occurs, the relevant tests to consider are those that apply to 'work-related preventative health care'. These tests are discussed at paragraphs 213 to 215 of this Ruling.

212. Alternatively, where the information has not been developed by a listed medical professional and the employee has not been referred to the module by a listed medical professional the relevant tests to consider are those that apply to 'work-related counselling'. These tests are discussed at paragraphs 216 to 221 of this Ruling.

*Will the online advice that is provided by or on behalf of a qualified medical practitioner or nurse be an exempt benefit as 'work-related preventative health care'?*

(a) Who receives the online advice?

213. The online advice is provided to employees.

(b) What is the principal purpose for providing the information?

214. The information covers a range of health related matters that will assist in preventing the employee from suffering from 'work-related trauma'.

(c) Are the resources made available to all relevant employees?

215. In applying the final condition it can be concluded that the online advice provided by or on behalf of a listed medical person may be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii). This will occur where the resources are 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).

*Will the online advice that is not provided by or on behalf of a qualified medical practitioner or nurse be an exempt benefit as 'work-related counselling'?*

(a) Does the advice constitute the provision of 'counselling'?

216. As set out in paragraph 114 of this Ruling 'counselling' involves a suitably qualified person giving advice or guidance in relation to their area of expertise. This requirement is satisfied as the online advice is drafted by a suitably qualified person.

(b) Who receives the information?

217. The information is provided to employees.

(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?

218. This condition will be satisfied where the information is provided as part of a plan or policy of the employer.

(d) Does the advice relate to a specified matter?

219. The information relates to health and fitness related issues.

(e) Is the advice provided as a reward for services?

220. To come within the definition of 'work-related counselling' in subsection 136(1) the online advice must not be provided wholly or principally as a reward for services rendered or to be rendered by the employee.

221. In evaluating each of the relevant factors it can be concluded that the provision of the online advice that is not provided by or on behalf of a listed medical professional will be an exempt benefit under subparagraph 58M(1)(c)(iv) as 'work-related counselling' where the requirements of paragraphs (c) and (e) of the definition of 'work-related counselling' in subsection 136(1) are met.

***(xii) Will the provision of health coaching be an exempt benefit?***

222. BUPA provides a telephonic health coaching service that is designed to assist those identified as high risk in better managing their health. The health coaching program involves developing a one-on-one relationship with a specially trained and qualified nurse.

223. As the health coaching does not involve an examination or test the relevant tests to consider are those summarised in flowchart 2 in paragraph 102 of this Ruling.

***(a) Does the health coaching involve the provision of care?***

224. As discussed at paragraph 104 of this Ruling the definition of 'health care' includes any form of care that is related to the physiological or psychological health of a person. The support that is provided by health coaching comes within this definition as it involves the provision of care that is related to the physiological or psychological health of a person.

***(b) Will the health coaching be provided by or on behalf of a listed medical professional?***

225. The health coaching will be provided by a specially trained and qualified nurse who is a listed medical professional. As the coaching will be provided by a listed medical professional the relevant tests to consider are those that apply to 'work-related preventative health care'.

***(c) Who receives the health coaching?***

226. The online advice is provided to employees.

***(d) What is the principal purpose for providing the health coaching?***

227. The aim is to support participants so they can develop the knowledge and confidence to participate more effectively in their own healthcare decisions.

***(e) Is the health coaching made available to all relevant employees?***

228. In applying the final condition it can be concluded that the health coaching may be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii). This will occur where the health coaching is provided to prevent the employee from suffering from 'work-related trauma' and 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).



***(xiii) Will the provision of flu vaccinations be an exempt benefit?***

229. BUPA provides a nationally co-ordinated corporate flu vaccination program. Under the program the flu vaccinations are administered by qualified nursing staff.

230. As the provision of a flu vaccination does not involve an examination or test the relevant tests to consider are those summarised in flowchart 2 in paragraph 102 of this Ruling.

***(a) Do the flu vaccinations involve the provision of care?***

231. As discussed at paragraph 104 of this Ruling the definition of 'health care' includes any form of care that is related to the physiological or psychological health of a person. It includes the supply of drugs in connection with the care. The administration of a flu vaccination comes within this definition as it involves the provision of care that is related to the physiological or psychological health of a person.

***(b) Will the flu vaccination be provided by or on behalf of a listed medical professional?***

232. The flu vaccinations will be administered by qualified nursing staff who are listed medical professionals in terms of the definition of 'work-related preventative health care' in subsection 136(1). As the vaccinations will be administered by a listed medical professional the relevant tests to consider are those that apply to 'work-related preventative health care'.

***(c) Who receives the flu vaccinations?***

233. The flu vaccinations are provided to employees.

***(d) What is the principal purpose for providing the flu vaccinations?***

234. As the flu vaccinations are administered to prevent the employee contracting a disease they are provided in order to prevent the employee suffering from 'work-related trauma'.

***(e) Are the flu vaccinations made available to all relevant employees?***

235. In applying the final condition it can be concluded that the flu vaccinations may be an exempt benefit as 'work-related preventative health care' under subparagraph 58M(1)(c)(iii). This will occur where the flu vaccinations are 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).

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

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TR 2006/10

### *Subject references:*

- exempt benefits
- fringe benefits
- fringe benefits tax
- minor benefits
- recreational facility
- residual fringe benefit
- tax-exempt body entertainment fringe benefits
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- work-related medical examinations
- work-related medical screening
- work-related preventative health care

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