
Bernard Pulle and Kai Swoboda
Economics Section

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Date introduced: 26 March 2015
House: House of Representatives
Portfolio: Treasury
Commencement: 1 July 2016.

Links: The links to the Bills, their Explanatory Memoranda and second reading speeches can be found on the Bills’ home pages for the Tax and Superannuation Laws Amendment (Norfolk Island Reforms) Bill 2015 and the A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Amendment Bill 2015, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website.
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The Bills at a glance
The Tax and Superannuation Laws Amendment (Norfolk Island Reforms) Bill 2015 and the A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Amendment Bill 2015 are part of a package of eight Bills. The package proposes reforms to the governance arrangements for Norfolk Island and the extension of mainland social security, health, Medicare, immigration and taxation arrangements to the Island.


- repeal the income tax exemptions that apply to Norfolk Island resident individuals, companies and trustees in relation to their Norfolk Island sourced income and their foreign sourced income
- fix a date of 30 July 2016 as the assumed date of acquisition for capital gains tax (CGT) assets not previously subject to Australian income tax
- repeal the Medicare levy exemptions that apply to Norfolk Island residents
- repeal the superannuation guarantee charge exemptions that apply to Norfolk Island employers and employees in relation to work performed on Norfolk Island and
- establish transitional arrangements to phase in the superannuation guarantee charge over a 12-year period.

The purpose of the A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Amendment Bill 2015 is to amend the A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999 to repeal the current exemption of residents of Norfolk Island from paying the Medicare levy surcharge.

A third Bills Digest for the five Bills that relate to consequential amendments to extend health and aged care related tax and levy measures to Norfolk Island covers these Bills:

- Aged Care (Accommodation Payment Security) Levy Amendment (Norfolk Island) Bill 2015
- Health and Other Services (Compensation) Care Charges Amendment (Norfolk Island) Bill 2015
- Health Insurance (Approved Pathology Specimen Collection Centres) Tax Amendment (Norfolk Island) Bill 2015
- Health Insurance (Pathology) (Fees) Amendment (Norfolk Island) Bill 2015 and
- Private Health Insurance (Risk Equalisation Levy) Amendment (Norfolk Island) Bill 2015.

2. Section 55 of the Australian Constitution provides that ‘Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect’.
Current position and proposed changes

**Tax and Superannuation Laws Amendment (Norfolk Island Reforms) Bill 2015**

The Bill proposes to remove a number of specific exemptions from income tax, the Medicare Levy and the superannuation guarantee charge that apply to residents of Norfolk Island. The Bill also introduces transitional arrangements for capital gains tax and the superannuation guarantee to facilitate their introduction.

**Income tax and capital gains tax**

The Australian income tax system extends to Norfolk Island and includes Norfolk Island as part of Australia. However, there are specific exemptions for certain Norfolk Island residents for their income sourced from Norfolk Island and from outside Australia.\(^6\)

These exemptions also apply to Norfolk Island resident companies, so that dividend distributions are unfrankable (that is, a recipient of a distribution cannot claim a credit for tax already paid by the company).\(^7\)

Administrative arrangements relating to these exemptions include that a tax file number (TFN) is deemed to have been given by a recipient to an investment body (such as a bank) or to their employer where the income they receive from that body or employer is exempt from Australian income tax.\(^8\)

For Australia generally, capital gains tax (CGT) is a tax applied at an individual's marginal income tax rate to the difference between the purchase price and sale price of a CGT asset. For CGT assets acquired before CGT was introduced, the purchase price is calculated at 20 September 1985, the date on which the CGT first applied.\(^9\) A CGT was applied to the Cocos (Keeling) Islands from 30 June 1991.\(^10\) The implementation of a CGT for Norfolk Island will require a nominated start date so that capital gains can be calculated as applying from that date. That date is 1 July 2016.

This Bill removes exemptions relating to Norfolk Island residents and amends arrangements so that dividend distributions and requirements for TFNs are consistent with those arrangements that apply to Australian taxpayers generally.

**Medicare Levy**

The Medicare Levy (currently two per cent) is imposed on taxable income subject to certain conditions, including income thresholds. Under current arrangements, Norfolk Island residents are given a specific exclusion in the [ITAA 1936](https://www.legislation.gov.au/Details/C19360005) from the payment of the Medicare Levy.\(^11\)

Individual taxpayers identify themselves in their annual tax return as being exempt from the Medicare Levy as a resident of Norfolk Island.\(^12\)

The Tax and Superannuation Laws Amendment (Norfolk Island Reforms) Bill 2015 would remove this exemption.\(^13\)

While Norfolk Island residents are exempt from the Medicare Levy, they do pay a separate 'Norfolk Island Healthcare Levy' and a 'Medivac Levy' to the Norfolk Island administration to partly fund the provision of health services. Around 1,300 people on Norfolk Island currently pay these levies.\(^14\)

Economic modelling of the impact of imposing the Medicare levy on Norfolk Island residents included the assumption that, on the introduction of Medicare the Norfolk Island Healthcare Levy and Medivac Levy would be

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9. The decision to implement a capital gains tax regime was announced on this date by the Treasurer. Legislation was subsequently passed in mid-1986 (the [Income Tax Assessment Amendment (Capital Gains) Act 1986](https://www.legislation.gov.au/Details/C19860009), accessed 30 April 2015).
made redundant. In late 2014, the Administrator of Norfolk Island confirmed that the Medicare Levy would replace the Norfolk Island health levy of $1,200 per year as part of the proposed changes.

The economic modelling assumed that households would lose income through the payment of the Medicare Levy but avoid out of pocket health care costs and the payment of the Healthcare Levy and the Medivac Levy. The change was expected to produce benefits in 2023–24 of a 21 per cent increase in consumption, a six per cent increase in employment and an eight per cent increase in economic activity.

Superannuation guarantee

Under the SGAA, employers are generally liable to make quarterly superannuation contributions on behalf of their employees (subject to certain exemptions) at a specified proportion of their wages or salary. If they do not do so, an employer is liable to pay the Australian Taxation Office an equivalent superannuation guarantee charge plus a penalty for any shortfall.

Specific exemptions for the application of the superannuation guarantee to Norfolk Island were only recently inserted into the SGAA by the Treasury Legislation Amendment (Repeal Day) Act 2015. It included the provisions—now proposed for repeal in this Bill—as part of a broader package of changes to simplify the meaning of ‘Australia’ for the purposes of the income tax law.

Under these provisions, salary or wages paid to an employee who is a resident of Norfolk Island for work done in Norfolk Island or outside Australia are exempt. Salary or wages paid by an employer who is a resident of Norfolk Island to an employee who is a resident of Australia for work done in Norfolk Island are also exempt.

The inclusion of these new specific exemptions for Norfolk Island, by the Repeal Day Act 2015, did not however have any material impact as the SGAA, as previously drafted, did not extend to Norfolk Island, but only to the Cocos (Keeling) Islands and the Territory of Christmas Island (see superseded drafting of section 4 of the Act).

This was confirmed by the Australian Taxation Office in a tax determination issued in 1994:

Does the Superannuation Guarantee (Administration) Act 1992 (SGAA) apply to Norfolk Island?

1. No. Legislation has no effect on an external territory unless the legislation makes clear provision for such an effect. The only clear provision made in the SGAA is in section 4 which provides that the SGAA extends to the Territories of Cocos (Keeling) Islands and Christmas Island and has effect as if those Territories were part of Australia. Therefore, the SGAA does not extend to Norfolk Island.

2. Accordingly, the SGAA does not apply to salary or wages paid by a Norfolk Island resident employer to a Norfolk Island resident employee for work done in Norfolk Island.

Changes proposed by the Tax and Superannuation Laws Amendment (Norfolk Island Reforms) Bill 2015 would remove this exemption and put in place a transitional schedule to phase in the superannuation guarantee rate over a 12-year period.

An analysis that examined the economic impact of implementing a range of tax and other changes for Norfolk Island noted that under current arrangements, some employers on Norfolk Island already implement a superannuation type scheme and that the imposition of the Australian superannuation guarantee would not necessarily equate to an equivalent increase in net labour costs for all sectors.

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15. Ibid., p. 31.
23. Tax and Superannuation Laws Amendment (Norfolk Island Reforms) Bill 2015, Schedule 2, items 1 and 2.
24. CIE, Final report: economic impact of Norfolk Island reform scenarios, op. cit., p. 32.
Modelling indicated that the impact of imposing the superannuation guarantee (assuming the burden was shared equally by employers and employees) would differ across employers, from the application of the full 9.5 per cent for private employers (where no contribution was previously paid) to 3.8 per cent for public employers.25 The economic impact of the superannuation changes (modelled as part of other tax and welfare changes) was for employers to experience higher wage rates, contracting employment and a decline in economic activity of around three to four per cent. Households would however have higher disposable income in retirement and hence lead to higher future consumption.26

A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Amendment Bill 2015

The Medicare Levy Surcharge is imposed on taxpayers who do not have an appropriate level of private patient hospital cover for any period during the year that they did not have this cover. The surcharge is imposed by the A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999 on the ‘reportable fringe benefits total’.27

This Bill makes amendments to remove the exemption from the Medicare surcharge for Norfolk Island residents consequent upon the repeal of Norfolk Island’s Medicare levy exemption by the Tax and Superannuation Laws Amendment (Norfolk Island Reforms) Bill 2015. These changes apply from 1 July 2016.

Committee consideration

On 26 March 2015, the Senate Selection of Bills Committee recommended that the Norfolk Island package of Bills not be referred to a committee.28 The Committee’s report was subsequently endorsed by the Senate on the same day.29

Senate Standing Committee for the Scrutiny of Bills

At the time of writing the Senate Standing Committee for the Scrutiny of Bills had not reported on the Bill.30

Parliamentary Joint Committee on Human Rights

At the time of writing the Parliamentary Joint Committee on Human Rights had not reported on the Bill.31

Policy position of non-government parties/independents

For these two Bills, no public statements by non-government parties and independents have been found. See the Bills Digest for the Norfolk Island Legislation Amendment Bill 2015, for an overview of the responses of non-government parties and independents to the proposed reforms in governance arrangements more broadly.32

Position of major interest groups

For these two Bills, no public statements by major interest groups have been found. See the Bills Digest for the Norfolk Island Legislation Amendment Bill 2015, for an overview of the positions of major interest groups to the broader reforms.33

Financial implications

The total Norfolk Island reform package is estimated to cost the Commonwealth $136.2 million over the forward estimates, according the Explanatory Memorandum.34 However, potential revenue from the collection of levies and taxes is not separately identified.

25. Ibid., pp. 32–33. The modelling however used a different schedule for the phased increase in the superannuation guarantee rate of three per cent in 2016–17 to reach 9.5 per cent in 2021.
26. Ibid., p. 47.
27. A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999, section 10, accessed 5 May 2015. The term ‘reportable fringe benefits total’ is defined in the Fringe Benefits Tax Assessment Act 1986 (Part XIB) and generally covers the grossed up value of the sum of an employee’s individual fringe benefits amount from all of their employers.
32. The Bills Digest is available at the Bill homepage. See: Parliament of Australia, ‘Norfolk Island Legislation Amendment Bill 2015 homepage’.
33. Ibid.
34. Ibid.
Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed these Bills’ compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that these Bills are compatible.  

Key issues and provisions

**Tax and Superannuation Laws Amendment (Norfolk Island Reforms) Bill 2015**

Schedule 1—Removing income tax and Medicare Levy exemptions and capital gains tax transitional arrangements

**Item 1** of Schedule 1 of the Bill repeals existing Division 1A of Part III of the *ITAA 1936*, which establishes the arrangements for exempting certain Norfolk Island residents from income tax for their income sourced from Norfolk Island and from outside Australia. The repeal of this exemption requires a number of consequential amendments which rely on this Division to provide certain arrangements for Norfolk Island residents. This change applies from the 2016–17 income year onwards (Item 19).

**Capital gains tax**

**Item 18** amends the *Income Tax (Transitional Provisions) Act 1997 (ITTPA)* to insert proposed section 102-25. This new section provides a transitional arrangement for the imposition of capital gains tax (CGT) for entities resident in Norfolk Island so that CGT only applies to capital gains that accrue after 1 July 2016 unless those assets were already subject to Australian income tax.

**Items 10 to 13** are consequential to this and amend the *ITAA 1997* make references to the transitional arrangements in the *ITTPA*.  

**Exemptions for Norfolk Island residents to quote their tax file number**

**Item 4** repeals section 202EF of the *ITAA 1936* which provides that a recipient is taken to have quoted a TFN where their eligible pay as you go (PAYG) payments would be exempt from income tax under the existing Division 1A of Part III (proposed for repeal by this Bill by Item 1).

With the proposed repeal of section 202EF, **items 2 and 3** are consequential, removing references to this section under provisions relating to the quotation of TFNs for indirectly held investments.

**Unfrankable distributions**

**Item 15** of Schedule 1 repeals paragraph 202-45(b) of the *ITAA 1997*. Section 202-45 lists types of distributions by corporate entities that are unfrankable. Paragraph 202-45(b) provides that a distribution by certain corporate tax entities from sources in Norfolk Island are unfrankable.

**Medicare Levy**

**Items 5 to 8** of the Bill are consequential amendments to remove references to the exemptions created under Division 1A that is repealed by Item 1 of Schedule 1.

Schedule 2—Superannuation guarantee

**Item 1** of Schedule 2 of the Bill repeals paragraphs 27(1)(b) and (c) of the *SGAA*, which provide the exemption from the superannuation guarantee charge for certain salary or wages paid to Norfolk Island employees.

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34. Explanatory Memorandum, p. 8.
35. The Statement of Compatibility with Human Rights can be found on page 9 of the Explanatory Memorandum to the Bills.
38. The amendment also includes the existing transitional provision relating to certain Cocos (Keeling) Islands assets where the CGT asset is deemed to have been acquired on 30 June 1991.
Item 2 establishes a transitional arrangement to incrementally increase the superannuation guarantee charge for ‘Norfolk Island salary or wages’. It starts at one per cent for the year commencing on 1 July 2016 and increases by one percentage point each July until it reaches the rate of 12 per cent, as legislated in the SGAA for 2027–28 (Figure 1). The definition of ‘Norfolk Island salary or wages’ covers salary or wages that were previously exempt from the superannuation guarantee.

Figure 1  Transitional superannuation guarantee rate for Norfolk Island salary or wages, 2016–17 to 2027–28

![Graph showing the transitional superannuation guarantee rate for Norfolk Island salary or wages from 2016-17 to 2027-28. The rate starts at 0% in 2016-17, increases to 1% in 2017-18, 2% in 2018-19, and so on, until it reaches 12% in 2027-28.]

Source: Explanatory Memorandum, p. 72.

A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Amendment Bill 2015

Section 10 of Part 2 of the A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999 imposes the Medicare Levy surcharge on reportable fringe benefits. Subsection 10(3) provides an exception for residents of Norfolk Island.

Item 3 of Schedule 1 repeals subsection 10(3) to remove the current exemption given to residents of Norfolk Island.

Item 4 of Schedule 1 provides that the amendments apply in relation to the 2016–17 year of income and later income years.
