



**RESPONSE BY
AUSTRALIAN CONTRACT PROFESSIONS MANAGEMENT
ASSOCIATION LTD**

TO THE

**FRINGE BENEFITS TAX (FBT) REFORM
LIVING-AWAY-FROM-HOME-BENEFITS
CONSULTATION PAPER**

NOVEMBER 2011

**ACPMA
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Executive summary

- 1. There will be significant adverse implications if the proposed reforms are introduced in their present format**
- 2. All sectors of the Australian economy will be adversely affected**
- 3. There will be a reduction in corporate, GST and PAYG inflows to Government**
- 4. Government policy on meeting skilled labour shortages will be adversely affected**
- 5. There are alternative simpler solutions to the proposals which address the concerns of Government and Industry and should be adopted**

Preamble

Australian Contract Professions Management Association (ACPMA) shares the concern of Government expressed in The Fringe Benefits Tax (FBT) Reform – Living –away-from-home-benefits Consultation Paper issued November 2011 (the Paper). For some time ACPMA has discussed the various issues, including excesses found in the market place, with Government. To an extent these concerns were acted upon when the Australian Taxation Office agreed with ACPMA a set of guidelines. Such guidelines, had they been adopted and policed Australia wide, could have largely eliminated any blatant excesses.

Whilst recognising that change is required, ACPMA has significant concerns that some of the proposals outlined in the Paper will be of long term harm to the Australian economy.

It is important to note that the use of LAFHA is indeed widespread across Australia and arises under relocation of permanent residents (as defined in the Paper), Work (Labour) Agreements and Standard Business Sponsorship arrangements. Thus we forecast negative consequences reaching all corners of the Australian economy.

BACKGROUND TO ACPMA

Australian Contract Professions Management Association (ACPMA) was established in 2000 and has as its members Contract Management Companies (CMCs).

- **Members** have been in business for over 16 years.
- **Members** have more than 3,400 employees
- **Members** have contracted with more than 800 companies and businesses throughout Australia, many of which are:
 - **In the top 150 Australian Stock Exchange listed companies such as** News Corp, NAB, BHP Billiton, CBA, Telstra, ANZ Bank, Westpac, Macquarie Bank, Rio Tinto, Qantas, Woodside, Origin Energy, Boral
 - **Small businesses**
 - **In the public sector such as** ATO, ABC, DIAC, Defence, RBA, ASIC, NSW Police, NSW Attorney General's Dept.
 - **In Community Organisations such as** AGSM, ANI, Deakin University, Mt Eliza Business School, Universities of NSW, Western Sydney, Sydney and WA.
 - **In the Community Organisations such as** Anglicare, Australian Business Ltd, Australian Consumer Association, Diabetes Australia, Mission Australia.

RESPONSES TO CONSULTATION QUESTIONS

1. Are there any unintended consequences from the proposed reforms?

RESPONSE: YES AND THEY ARE SERIOUS. SEE BELOW FOR DETAILS

2. What practical aspects of the proposed reforms need further consideration?

RESPONSE:

- a. **LOST REVENUE TO THE GOVERNMENT THROUGH HIGHER EXPENSE REIMBURSEMENTS LEADING TO HIGHER DEDUCTIONS AND LOWER CORPORATE TAX**
 - b. **SIMPLIFICATION OF THE SUBSTANTIATION RULES. THE SUGGESTIONS BELOW, IF ADOPTED, WILL REMOVE MOST OF THE PERCEIVED PROBLEMS.**
3. Are there any interactions with other areas of the tax law that need to be addressed?

RESPONSE

THERE IS A NUMBER OF TAXATION POLICY ASPECTS THAT SHOULD BE CONSIDERED. DISTORTIONS IN BEHAVIOUR WILL BE CAUSED DUE TO THE DIFFERING TREATMENT OF CASH ALLOWANCES AS OPPOSED TO EXPENSE PAYMENTS. THERE WILL BE A TENDENCY FOR EMPLOYEES TO CONVERT CASH ALLOWANCES TO EXPENSE PAYMENTS WHICH WILL BE TAXED AS FRINGE BENEFITS. THIS WILL LEAD TO LOWER CORPORATE PROFITS AS FRINGE BENEFITS ARE DEDUCTIBLE TO THE EMPLOYER WITH CONSEQUENTIAL LESS CORPORATE TAXATION COLLECTIONS.

SHOULD THERE BE SUBSTANTIATION REQUIREMENTS FOR EMPLOYEES IT WILL BE DIFFICULT FOR THEM TO TRACK EXPENDITURES ON FOOD ITEMS IN PARTICULAR WHICH AFFECTS THE SIMPLICITY OF THE TAX.

THERE IS ALSO AN ISSUE OF THE EQUITY OF THE DIFFERENTIATION BETWEEN WORKERS FROM OVERSEAS AND LOCAL WORKERS, IN THE REQUIREMENT FOR A LOCAL RESIDENCE. IF A WORKER WORKING WITHIN AUSTRALIA IS NECESSARILY ABSENT FROM HIS (OVERSEAS) HOME AND IS PAID A SUM WHICH GENUINELY IS TO RECOMPENSE HIM FOR RELOCATING AND INCREASED COSTS, WHY SHOULD HE BE TREATED DIFFERENTLY FROM LOCAL WORKERS AND PENALISED?

IDEALLY, IF THE CLARITY AND UNIFORMITY COULD BE PROVIDED IN THE RELATIONSHIP BETWEEN LAFHA IN ITS FORMS AND THE OBLIGATION TO PAY SUPERANNUATION GUARANTEE (ON THE BENEFIT) THAT WOULD BE PREFERRED. AT THIS TIME, IN SOME SITUATIONS (FOR EXAMPLE IF THERE HAS NOT BEEN A GENUINE RELOCATION) SUPERANNUATION IS PAYABLE ON THE BENEFIT AND IN SOME IT IS NOT. THE RELATIONSHIP WITH LAFHA AND PAYG AND HOW THAT WILL WORK IN PRACTICE WITH EXPENSE REIMBURSEMENTS IS UNCLEAR.

4. As the statutory food amount is intended to reflect the ordinary costs incurred by an Australian in 2011, what should the statutory food amount be updated to?

RESPONSE: SHOULD BE BASED ON THE AUSTRALIAN BUREAU OF STATISTICS (ABS) FINDINGS AND BE SPECIFIC TO REGIONS

5. Should the statutory food amount be indexed annually to ensure it remains up to date?

RESPONSE: YES AND AGAIN TO REFLECT ABS FINDINGS

6. What transitional arrangements would be appropriate for the community sector?

RESPONSE: THERE WILL BE SIMILAR IMPACTS AS OUTLINED ABOVE WHERE THEY PAY LAFHAS TO THEIR DIRECT EMPLOYEES AND EQUALLY WHERE THEY USE THE SERVICES OF OTHER SUPPLIERS OF LABOUR, INCLUDING CONTRACT MANAGEMENT COMPANIES.

DISCUSSION ON RESPONSES

OVERVIEW OF THE ISSUES

As at 31 December 2011 there were 68,320 457 VISA holders and 114,560 417 visa holders in Australia. Applications for new sponsorships were 36.7% higher in July to December 2011 compared to the period July to December 2010. (DIAC: [Subclass 457 State/Territory summary report 2011-12](#))

Thus demand has been increasing. Should the proposed reforms be implemented in their current format, we predict serious negative consequences for the Australian economy, some of which are listed below.

1. **NEGATIVE CONSEQUENCES FOR THE AUSTRALIAN ECONOMY. THE RETENTION OF BOTH EXTERNALLY PROVIDED FOREIGN NATIONALS TO CLIENTS AND INTERNAL FOREIGN NATIONAL STAFF WILL BE ENDANGERED IF NOT ELIMINATED.**
2. **THE ABILITY TO ATTRACT SKILLED FOREIGN NATIONALS, WHOSE SKILLS ARE NOT AVAILABLE IN AUSTRALIA AND WHO ARE CONSIDERED THE BRIGHTEST AND THE BEST GLOBALLY, ESPECIALLY IN THE OIL AND GAS FIELDS, WILL BE SEVERELY TRUNCATED.**
3. **IT WILL CREATE INFLATIONARY WAGE PRESSURES IN AUSTRALIA AT A TIME WHEN THE GLOBAL ECONOMY IS FACING A MOST UNCERTAIN FUTURE. TO MINIMISE THE EFFECT OF THE LOSS OF LAFHAS, AUSTRALIAN EMPLOYERS WILL BE FORCED TO OFFER HIGHER THAN AUSTRALIAN MARKET WAGES.**
4. **THE RELATIONSHIP WITH MAJOR CLIENTS, ESPECIALLY IN THE OIL AND GAS INDUSTRY SECTORS AND WITH THOSE COMPANIES REQUIRING HIGH LEVEL IT SKILLS WILL BE STRAINED.**
5. **IT WILL WEAKEN AUSTRALIA'S GLOBAL COMPETITIVENESS AND LESSEN HER ABILITY TO ATTRACT AND RETAIN SKILLED FOREIGN NATIONALS.**

NEGATIVE FISCAL AND EMPLOYMENT ISSUES

1. **A SIGNIFICANT NUMBER OF LAFHA RECIPIENTS (both 457 and 417) WILL LEAVE AUSTRALIA THUS REDUCING**
 - a. **PAYG REVENUE (GROSS INCOME REDUCTION)**
 - b. **GST REVENUE (LOWER BILLINGS)**
 - c. **LOST COMPANY TAX AND STAGNATION OF THE ECONOMY. ALTHOUGH NOT EXCLUSIVE, THIS WILL BE AS A RESULT OF HIGHER FBT DEDUCTIONS WHEN EMPLOYERS MOVE TO A REIMBURSEMENT REGIME RATHER THAN PAYING A LAFHA**
2. **REDUCTION OF GDP (LOWER BUSINESS ACTIVITY)**
3. **REDUCTION OF EMPLOYMENT POSITIONS (NO SKILLED AUSTRALIANS TO TAKE UP SLACK) AND ATTENDANT WAGES PRESSURE WITH A SMALLER SKILLED WORK FORCE TO DO THE WORK.**

ADVERSE POLICY IMPACTS

FEDERAL POLICY OBJECTIVES AFFECTED INCLUDE:

1. ECONOMIC WITH HIGHER INFLATION THROUGH DEMAND REMAINING AND LOCAL PEOPLE DEMANDING HIGHER REMUNERATION WITH NO INCREASE IN PRODUCTIVITY
2. IMMIGRATION. REDUCTION IN THE NUMBER OF SKILLED WORKERS COMING TO AUSTRALIA AND ULTIMATELY BECOMING PERMANENT RESIDENTS AND CITIZENS. INDUSTRY EXPANSION THWARTED ESPECIALLY IN MINING, OIL AND GAS
3. SCIENCE AND INNOVATION
4. INFORMATION AND TECHNOLOGY
5. SMALL BUSINESS
6. EXPORTS
7. EDUCATION AND TRAINING (ESPECIALLY TRANSFER OF KNOWLEDGE)
8. TOURISM
9. WORK PLACE RELATIONS (WAGES PUSH)

THE TENETS OF A GOOD TAX SYSTEM ARE THREE FOLD

- 1. SIMPLE**
- 2. EQUITABLE**
- 3. EFFICIENT**

THE CHANGES ARE NOT SIMPLE. FOR EXAMPLE SUBSTANTIATION WILL BE COMPLEX AS WILL THE VARIATION OF PAYG DEDUCTIONS PROCESS. A CHANGE UP OR DOWN IN REMUNERATION LEVEL WILL INVOLVE A VARIATION OF THE VARIATION – IT SHOULD BE NOTED THAT THERE ARE EXISTING PENALTIES SHOULD ESTIMATES BE OUTSIDE TAX LAW BANDS. IT WILL REQUIRE THE ATO TO DEDICATE SIGNIFICANT ADDITIONAL EFFORT AND RESOURCES AT THE TIME VARIATIONS FOR PAYG DEDUCTIONS ARE SOUGHT AND AGAIN EACH TIME A FURTHER VARIATION OF THE VARIATION IS INVOLVED THROUGH CHANGED CIRCUMSTANCES AND AGAIN AT THE TAX RETURN STAGE WHERE SUBSTANTIATION OF DEDUCTIONS WILL NEED TO BE VERIFIED

FROM AN EQUITABLE SENSE THE CHANGES HIT ONLY ONE CLASS OF TAXPAYER -THE TEMPORARY RESIDENT, AS OPPOSED TO THE PERMANENT RESIDENT. HOWEVER BOTH CATEGORIES OF TAXPAYER INCUR COSTS AND FACE SIMILAR ISSUES WHEN LIVING AWAY FROM THEIR PLACE OF PERMANENT RESIDENCE.

FROM AN EFFICIENCY ASPECT, THERE IS NO SAFEGUARD FROM ALTERNATIVE RESTRUCTURING TO AVOID OR MINIMISE THE EFFECTS OF THE PROPOSED CHANGES.

CONCLUSION

It is clear from the information outlined above that the use of arrangements which enable Australian employers to engage foreign workers and include a LAFHA in their remuneration is extremely widespread.

Further, the capacity of the employers to provide a LAFHA is a very significant element in attracting the skills of the foreign workers in question. Removing the effective tax free arrangements applying to the majority of current LAFHA recipients would leave the employer with the choice of either substantially increasing costs in order to provide the equivalent remuneration to the employee or risk losing that employee altogether. It would effectively be a choice between higher human capital costs or decreased efficiency.

RECOMMENDATIONS

1. IT IS ACKNOWLEDGED THAT THERE HAVE BEEN EXCESSES IN THE PAST. TO AVOID THESE HAPPENING INTO THE FUTURE THE FOLLOWING RECOMMENDATIONS ARE MADE:
 - a. AN ACCOMMODATION BENCH MARK APPROACH SIMILAR TO THE FOOD COMPONENT APPROACH USED BY THE ATO SHOULD BE ADOPTED. THIS WOULD INVOLVE THE SETTING OF REASONABLE ACCOMMODATION AMOUNTS. THIS APPROACH HAS BEEN ADOPTED WHEN DEALING WITH TRAVELLING ALLOWANCES. ANY CLAIM ABOVE SUCH BENCHMARK AMOUNTS WOULD REQUIRE SUBSTANTIATION. USING THIS APPROACH THE DISCRETIONARY APPLICATION OF OVER INFLATED AMOUNTS PAID I.E. EXPLOITATION WILL BE ELIMINATED.
 - b. IN ANY EVENT ALLOW LAFHAS (AS DETERMINED USING THE APPROACH IN (a)) TO BE PAID TO TEMPORARY RESIDENTS (WHICH BY DEFINITION INCLUDE NZ CITIZENS) FOR UP TO A MAXIMUM OF 2 YEARS FROM DATE OF FIRST PAY. WE NOTE THAT THE MAJORITY OF 457 VISA HOLDERS WOULD SATISFY THE REQUIREMENTS OF THE EMPLOYER NOMINATION SCHEME PROGRAMME AT THE 2 YEAR MARK AND WOULD THEREFORE BE ELIGIBLE TO APPLY FOR PERMANENT RESIDENCY AS PER THE GOVERNMENT'S AIM
 - c. IN ANY EVENT ALLOW LAFHAS (AS DETERMINED USING THE APPROACH IN (a)) TO BE PAID TO 417 VISA HOLDERS FOR A MAXIMUM OF 12 MONTHS; THERE IS ANECDOTAL EVIDENCE THAT MANY SUCH VISA HOLDERS ENRICH AUSTRALIA'S RESOURCE POOL AND THEREFORE DIRECTLY CONTRIBUTE TO THE GROWTH OF HER ECONOMY.
 - d. IN THE ALTERNATIVE, A CEILING OF 30% BE SET FOR LAFHAS. ANY AMOUNTS IN EXCESS OF THIS MAXIMUM MUST BE TREATED AS ASSESSABLE INCOME AND TAXED AT THE RELEVANT PAYG RATE. ANY EXCESS THAT CAN BE SUBSTANTIATED THROUGH LEASE/MORTGAGE PAYMENTS AND FOOD RECEIPTS TO AN ALLOWABLE DEDUCTION. THE TIME RESTRICTIONS SET OUT IN b AND c ABOVE WILL ALSO APPLY.