



3 February 2012

Manager
Philanthropy and Exemptions Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: FBT@treasury.gov.au

Dear Sir/Madam

RE: Fringe Benefits Tax (FBT) Reform - Living-away-from-home benefits

Thank you for the opportunity to provide this submission to the Fringe Benefits Tax (FBT) Reform – Living-Away-From-Home benefits discussion paper.

The Association of Mining and Exploration Companies (AMEC) is the peak national industry body for mineral exploration and mining companies within Australia. The membership of AMEC comprises over 360 explorers, emerging miners and the companies servicing them.

AMEC's strategic objective is to secure an environment that provides certainty and clarity for mineral exploration and mining in Australia in a commercially, politically, socially and environmentally responsible manner.

It is in this context that this submission is made.

AMEC understands the Government seeks to prevent temporary foreign employees and their employers from intentionally exploiting the Living-Away-From-Home (LAFH) concessions. However, AMEC considers that those exploiting the LAFH concessions are probably only a small proportion of the total and that in the most part the concessions are being accessed for the purpose in which they are intended. Therefore, AMEC considers the proposed reforms are extreme and unnecessary. If the Government has concerns about the integrity of the LAFH system, then this should be addressed by better defining the circumstances where concessions would be available, not by denying them to legitimate beneficiaries.

AMEC considers the term 'concession' best describes the LAFH allowance as opposed to 'benefit'. It is an important distinction. Benefit implies an advantage to the employee, of which, if lawfully accessed, the LAFH allowance does not provide. The LAFH allowance is a concession afforded to the temporary foreign employee in recognition that they are also maintaining a residence in their home country. In theory, the maintenance of the home country residence and the LAFH allowance should result in a zero net benefit.

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As currently proposed, the changes will significantly increase the costs and as a consequence severely impede Australian companies from employing skilled foreign employees. The employment of temporary foreign workers is an important workforce planning strategy. It is well known that Australia is experiencing a skills shortage – something being keenly felt in the minerals exploration and mining sector. As AMEC understands this was the major reason for the concessions policy being implemented in the first place – the attraction of skilled labour to Australia.

The proposed regime will lead to significant cost increases for employers. Under the new proposal, when an employer provides a salary where the employee is not made worse off than the current situation, the increase in cost above the current allowances will be somewhere between 68% to 115% (depending upon the salary and whether the method chosen is PAYG or fringe benefit tax regime). This is likely to be a material financial burden for an employer, and where there is more than one foreign temporary employee, the cost increase will be necessarily multiplied. The result will be a disincentive for some companies to employ foreign skilled labour to meet current and forecast skills shortages in the Australian resident workforce. Other companies may just choose to locate the same personnel in another country, bypassing Australia altogether, to Australia’s detriment.

On a broader scale, the proposed changes have considerable potential to impact particular regions, for example Perth, which, as the home to Western Australia’s resources industry has many multi-national companies and local companies employing temporary foreign workers. Western Australia has a disproportionate number of foreign workers compared to the rest of Australia, shown in the following table. The flow on effect from the changes will be felt in many segments of the Perth economy.

	Total Workforce ¹	Primary 457 Visa's ²	Percentage
WA	1,293,100	13,810	1.07%
NT	124,800	950	0.76%
NSW	3,774,600	26,210	0.69%
Vic.	3,036,700	15,320	0.50%
Qld	2,468,100	11,590	0.47%
ACT	212,600	920	0.43%
SA	867,100	2,440	0.28%
Tas.	248,400	470	0.19%

Examining the WA figures more closely shows that 10 of the top 15 occupations by worker numbers are mining related³. Furthermore, six of those are engineering occupations. There is currently an Australian Senate Inquiry underway titled “The shortage of engineering and

¹ Labour Force as at June 2011. Labour Force, Australia – 6202.0, June 2011. Australian Bureau of Statistics
² Subclass 457 State/Territory summary report - 2010-11 to 30 June 2011, 2011. Australian Government Department of Immigration and Citizenship.
³ Subclass 457 State/Territory summary report - 2010-11 to 30 June 2011, 2011. Australian Government Department of Immigration and Citizenship.

related employment skills”³ which is examining “*the nexus between the demand for infrastructure delivery and the shortage of appropriate engineering and related employment skills in Australia*”. One strategy utilised to date by industry to fill engineering skills shortages has been through temporary foreign workers.

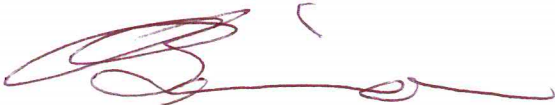
AMEC considers that the Government’s concerns about the integrity of the system might be better addressed by imposing stronger conditions aimed at ensuring that the relevant LAFH arrangement of a temporary resident is bona fide, as opposed to a blanket restriction. Such conditions may include:

- The duration of the stay in Australia does not exceed a specified maximum period;
- The temporary resident maintain a bona fide residence overseas; and
- The temporary resident demonstrates a fixed commitment to return to a particular employment position overseas at the end of the temporary stay in Australia.

In summary, AMEC considers that there are significant unintended consequences associated with this proposal and that the Government should reconsider its position in relation to changes to LAFH concessions.

AMEC is committed to the development of a workable LAFH concession policy. AMEC would like to invite Treasury officials to meet with AMEC members prior to the finalisation of the policy to discuss the policies implications.

Yours sincerely



Simon Bennison
Chief Executive Officer

³ http://www.apf.gov.au/Senate/committee/eet_cte/engineering/index.htm

