This submission is made as part of the consultation being undertaken for the revised rules regarded LAFHA, released for consultation as part of the 2012 Federal Budget.

I write from my position as a UK citizen, currently working in Australia under a 457 visa, and in receipt of LAFHA. Alongside many temporary residents in a similar position, I am concerned by the new rules for eligibility for the following reasons:

1. That the new rules have been introduced with considerable and undue haste (notwithstanding earlier consultations which implied the likelihood of transition arrangements which we could fairly assume might well apply to all current recipients), effectively leaving temporary resident claimants with barely six weeks to make major adjustments to family budgets. This is difficult to do for many families as they have long term financial commitments such as rental leases and car loans which cannot easily be rescinded. In many cases, particularly where recipients are on modest wages, have children, live in states where education is chargeable for temporary residents, or who live in expensive centres such as Sydney – this has the potential to cause significant hardship, and to place some families in a situation where they can neither afford to stay in Australia, nor afford to return to their country of origin. Many of these people would otherwise wish to remain in Australia, to move to permanent residence and citizenship, and to contribute fully, both socially and financially, to the Australian community. I am also aware of families who are having to make plans to return home (with consequent financial loss, loss of employment, and disruption to children's education etc), and others who have had to downsize to smaller accommodation than is reasonable given the size of their household.
2. That the new rules have been introduced in a fashion which clearly discriminates against temporary residents and citizens of countries other than Australia. In particular, that the transitional arrangements are being denied to a group which will comprise almost entirely of temporary residents who are overseas nationals, whilst being provided to a group which will overwhelmingly comprise of Australian nationals. In so doing, I believe these rules may breach tax treaties between the UK and Australia, and between Australia and other countries, which provide for equality in taxation and tax-related benefits for citizens of the one country resident in another. They are also fundamentally unfair and discriminatory, in a manner which reflects poorly on the high values to which the nation of Australia aspires in the family of nations and in the Commonwealth. I understand that other submissions will identify to you the precise nature of this breach, and the relevant legal wording, and therefore I do not reproduce that here.
3. That the new rules place many temporary residents in an unfair position in relation to the taxes they pay and the benefits they receive from the Australian Commonwealth. These issues are complex, such that as a British citizen living in Victoria, I have rights to education and health services that would be denied an Irish citizen living in New South Wales. Nevertheless, since the withdrawal of LAFHA from temporary residents means that we will be taxed in the same way as permanent residents and citizens, and will have almost the same obligations under the law as permanent residents and citizens, that we should also be accorded the same benefits as these groups, and in particular should not be charged for, or denied, benefits and services such as Medicare, schooling, and childcare allowances. Whilst this discrepancy applies, for example, a New South Wales temporary resident can be denied all access to LAFHA, but be charged $5k per annum per child to access schooling which is

free to permanent residents and citizens, and be denied access to many thousands of dollars' worth of childcare subsidy.

My submission is not fundamentally to argue against reforms to the LAFHA legislation, but rather the unequal and fundamentally unfair way in which these changes are being introduced. It is clearly for the Australian government to determine where it wishes to use limited public resources, and to make judgements about where those are best spent. These are often difficult decisions and trade-offs. Thus, in this instance, the Australian government has made a decision that it is more important to save the money currently spent on LAFHA, and to spend it on other benefits and services, than to invest in incentivising and attracting skilled migrants to work and potentially to settle in the country. I may judge this to be the wrong choice, since I believe that the benefits brought to the Australian economy and community by that investment far outweigh the costs of the investment, but I respect that this is a policy choice which has to be made by the government.

However, the manner of its implementation creates a series of substantial inequalities and hardships as set out above, and does appear to have been targeted unfairly at a group within the community that has no right to vote. I cannot avoid the conclusion that the government would not have attempted a revision to tax rules in the budget that would, at a stroke, have removed 15-25% of take home pay from those with a vote – yet this is the impact on most people in my position. Therefore I have to conclude that the decision is somewhat cynical, since it has the most significant effect on a group which has neither democratic rights, nor organised representation, and whose position is not well understood by (and is easily misrepresented to) the majority of Australian citizens.

I would suggest that there are three fair and reasonable alternative solutions which you can apply in this situation. These are:

1. LAFHA is removed, we are taxed as residents, and we are entitled to claim benefits such as Medicare, Childcare and Free Schooling, regardless of nationality and/or the state in which we reside;
2. Allow the same transitional period until 1st July 2014 (as effectively applied to citizens and permanent residents), or until individuals are able to apply for PR, whichever is the sooner, or put in place an alternative transitional arrangement which treats all current LAFHA claimants equally;
3. Allow 457 visa holders (or a subset currently in receipt of LAFHA, or awarded their visa before a specified date) the opportunity to apply for PR from 1st July 2012, regardless of how long we have been in the country and/or worked for our sponsoring company.

The government's case is that claims against LAFHA have extended far beyond the original intention, and that the benefit is being claimed by people who have no need for it, nor no real right to it – in the vernacular, that it has become a 'rort'. The government particularly contends that claims are being made over many years, and by people on high salaries who have no need of it. However, as yet there has been very little evidence released into the public domain to support these contentions. As part of this process, therefore, and to allow third parties to draw conclusions about the extent of the abuse of the benefit, the government should release into the public domain:

1. A complete record of all consultation responses received since it first raised the issue of LAFHA reform last November, and its case in response to the points raised in these

submissions – I note that the former has been released, for the previous round of consultation, but that the government has not directly responded with its case to many very cogent and clear submissions from serious and significant organisations;

2. Data which identifies the average salary of LAFHA claimants, and the banded salary distribution of those claimants – and which also identifies the proportion of claims by people with salaries that the government considers to be excessive for a claim (I understand that a figure of $250,000 pa has been suggested as a benchmark, equating to Executive salaries);
3. Data which identifies the average size and banded distribution of LAFHA claims, in order to identify the scale of claims – so that it can be better understood if some claims are excessive;
4. Data which identifies the average length and banded distribution of LAFHA claims, to identify the proportion of claims which are lengthy in nature (ie. beyond two years, or whatever threshold the government considers appropriate to use);
5. Data which identifies the proportions of LAFHA claimants who move to permanent residence, and who leave the country without moving to a more permanent status – to identify whether LAFHA forms a short term stepping stone to permanent residence for most claimants;
6. Data which identifies the extent to which the withdrawal of LAFHA impacts upon claimants, upon employers, and on the labour market for skilled workers. I assume that the government has undertaken detailed cost-benefit analysis which compares the cost savings of LAFHA withdrawal with the greater difficulties in recruiting skilled employees which may accrue to the Australian economy, and also has evidence detailing the impact on claimants?

It is my belief that most LAFHA claimants are likely to be on modest incomes, many or most of whom move to PR after around two years in the country, and that most claims through LAFHA are short term and modest in scale. However, I do not have the evidence that the Government has, and it would be helpful for the Government to provide into the public domain the evidence to support its contention of abuse.

Moreover, if the Government's primary concern is the abuse of the system, then there are cost control measures, such as time or value limitations on claims, which might be both effective, and considerably less damaging and divisive than the current proposals. I am concerned that in fact, the claims of abuse of the system are a smokescreen for the primary reason, which is cost saving, and that in so doing the government is unnecessarily impugning migrant workers in order to ease its own discomfort. This in itself is damaging to the social cohesion of the Australian community, and undermines the hopes and aspirations of many people who have arrived in Australia having chosen to live here in the belief that it is the country they wanted to settle in, and commit to.

The government has indicated that employees who lose money through the withdrawal of LAFHA should ask employers for an increase in pay and benefits. This is unrealistic, and places an undue burden on employers to backfill cuts in government spending. Any employer who pays a temporary worker less than a local worker is in breach of the terms of the visa, and their legal obligations, and hence it is unlikely that most temporary workers will be paid any differently than local workers. Employers cannot, therefore, fairly pay more to temporary workers, since this would be discriminatory to local workers. I contend therefore, that the Government's approach on this is hugely unrealistic, places an undue burden on employers, and indeed implies that employers have

been acting illegally in their employment of temporary workers – again impugning another group in the community to spare the Government's embarrassment.

The current papers provided in explanation of the LAFHA changes are largely silent on the numbers impacted by the withdrawal, and the nature of the groups impacted. The government should make explicit the groups of people who will lose LAFHA, and their characteristics (for example identifying that the majority of those who lose out are foreign nationals), and also make clear its rationale for impacting these groups rather than others. This will ensure that there is explicit clarity about the scale and impact of these changes, and that the Australian community fully understands their implications.

The government should, as part of its rationale for the changes, make clear its argument that these changes do not breach any existing international treaties concerned with equality of taxation or access to education for temporary residents and foreign nationals, and confirm that they have consulted with the governments of the UK, US and other treaty holding nations that they are also satisfied that the changes proposed do not breach treaty obligations.