



Submission in response to  
Consultation Paper on proposed changes to the taxation of Living  
Away from Home allowances (“LAFHA”)

The Department of Treasury  
Australian Government

**Submission of  
The Recruitment and Consulting Services Association (RCSA)**

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Recruitment & Consulting Services Association Ltd  
RCSA Head Office  
PO Box 18028 Collins St. East  
Melbourne Victoria 8003

## **The Recruitment and Consulting Services Association – what is it?**

The RCSA is the peak body for the recruitment and on-hire workers services industries throughout Australia and New Zealand. It is a not-for-profit Association that is managed by a Board of Directors.

The principal focus of the RCSA is “to represent and serve the interests of Members for the increased profile and professionalism of the industry”. The RCSA has more than 4,400 Members in Australia and New Zealand comprising multi-national companies, single consultancies, and individual practitioners operating within a recruitment consultancy.

The Association is instrumental in setting the professional standards, educating and developing Member skills, monitoring industry participant performance and working with legislators to formulate the future. Members are kept up-to-date on information regarding best practice techniques, resources and technological innovation, along with legislative changes impacting on employment.

The RCSA also acts as a lobbying voice, representing its Members on issues that impact upon the industry. It has a strong relationship with the public and private sector.

Members of the RCSA provide an extensive range of employment services including on-hire employee services (‘labour hire employees’), contracting services (‘including labour hire independent contractors’), recruitment services (agency/placement only), *Job Services Australia* services and consulting services.

Every year the industry places millions of individuals in on hire employment and on-hire independent contracting in an increasingly broad range of sectors from resources, mining, information technology, building, construction and engineering to secretarial placements, call centres and accounting.

The method of engagement may vary within occupational type and industry, with the majority of on-hire independent contracting amongst the RCSA Membership occurring within professional, scientific and technical occupations.

The RCSA is instrumental in setting standards in the on-hire worker services industry. Furthermore, maintaining and raising standards in financial compliance, work safety, workplace relations and work law are at the top of the Association’s agenda.

## **RCSA Code for Professional Practice**

The RCSA has a Code for Professional Practice, authorised by the ACCC, which can be viewed at [www.rcsa.com.au/employers/76](http://www.rcsa.com.au/employers/76). In conjunction with the RCSA Constitution and By Laws, the Code sets the standards for relationships between Members, best practice with clients and candidates and general good order with respect to business management, including compliance. Acceptance of, and adherence to, the Code is a pre-requisite of Membership.

The Code is supported by a comprehensive resource and education program and the process is overseen by the Professional Practice Council, appointed by the RCSA Board. The Ethics Registrar manages the complaint process and procedures with the support of a volunteer Ethics panel mentored by RCSA's Professional Practice barrister.

RCSA's objective is to promote the utilisation of the Code to achieve self-regulation of the on-hire worker services sector, wherever possible and effective.

## **On-Hire Worker Services in Context**

### **The on-hire worker services industry is a significant contributor to the Australian economy**

Research completed by the Australian Bureau of Statistics in 2002 indicated that the on-hire services industry contributes \$10 billion to the Australian economy, more than that of accounting services and more than that of legal services. The annual revenue of the industry is \$16 billion, according to both Recruitment Super and RCSA Member Research.

### **Most on-hire workers engaged by RCSA Members are either skilled or professional workers**

RMIT University research<sup>1</sup> found the 61% of RCSA on-hire employees are skilled or professional workers with the remaining 39% being semi-skilled or unskilled.

### **Business is more productive and competitive because of the use of on-hire workers**

RMIT University research found that 76% of organisations using on-hire workers were more productive and competitive as a result.

### **Survey of members**

The membership base of RCSA was surveyed with a number of questions concerning LAFHA and the responses have been mixed. Survey results are discussed in the Submission below.

### **RCSA Submission**

The following matters are put by RCSA in submission to the consultation paper referencing the 3 criteria of a good tax, namely, efficiency, equity and simplicity:

#### **Tax Efficiency**

1. The proposed changes will result in a situation where there will be a differing tax treatment based on whether the economic return to the employee is paid as a cash allowance or paid as an employer fringe benefit.
2. Having any economic gain taxed on the basis of the entity paying the gain rather than the entity receiving the benefit will result in distortions in behaviour.

3. The incentive on the **part of the employer** will be to provide a cash allowance subject to receipt of the required declaration from the employee. That will be the simpler system for the employer without having to worry about tracking expense payment fringe benefits and paying fringe benefits tax.
4. There will be a tendency on the **part of the employee**, on the other hand, to pass the tax incidence of a benefit such as the cash reimbursement to the employer which will result in a bias towards a fringe benefits tax treatment.
5. In other words, given a choice, an employee would rather not receive a cash allowance, be assessed on it and then have to substantiate deductions. The employee will be concerned with receiving an after tax amount in hand without bothering or worrying about the amount of tax to be received on any benefit. This is a likely result which is confirmed in the RCSA Member survey.
6. If a living away from home allowance ('LAFHA') is paid as an FBT expense reimbursement the effect will be a reduction in employer profits due to the tax deductibility of fringe benefits in the hands of the employer. In other words the situation may result in a situation where there is in fact an erosion of the revenue base by reason of a reduction in corporate profits.
7. The proposed changes are also likely to result in an exodus of employees currently receiving LAFHA benefits exiting the country. This may result in the loss of PAYG collections.

#### **Simplicity and compliance issues**

8. Additionally, any system for taxing an economic benefit based on payment will result in two sets of legislation in two separate acts. It seems expense payment Fringe benefits of a LAFHA nature will be dealt with under the fringe benefits legislation and cash allowances will be dealt with under the Income Tax legislation. This will cause confusion, complexity and difficulties in comprehending the law and applying it. It creates a layer of complexity and artificiality.
9. The requirement for an employee to substantiate food expenditure will be particularly difficult. Expenditure on food is a daily occurrence unlike expenditure on a motor car. A motor car may get filled with petrol once a week, serviced twice a year and be subject to car payments.
10. Food might be purchased in small quantities two or three times a day.

11. If there is to be a requirement to substantiate expenditure on food to prove expense beyond the norm then this will necessarily involve tracking all expenditure on food in order to compare total expenditure as against normal expected food expenditures. Even if food expenditures are measured through some benchmarking system (such as the publishing of accepted normal per head food expenditure figures) the deductibility of extraordinary expense will need to be determined by comparing total food expenditures as against a published benchmark.
12. This might be done over a trial period (much like a car log book system) or it may be required to be established over the full year. Either method will involve the keeping of an inordinate amount of paper in order to track the expenditure. This will make compliance time consuming and difficult.
13. Having three separate categories of tax treatment of what can be the same economic benefit – allowances, FBT expense provisions and direct provision of food and accommodation is cumbersome and difficult to comprehend. This does not assist the objective of simplicity from a tax policy perspective.
14. If there is to be a deduction scheme in relation to cash allowances available to employees it needs to be broader than the deduction scheme currently available to employees, where deductions are extremely limited. If a deduction system is to be implemented, there needs to be education and a trial period to enable employees to understand their obligations and the system and rules should be simple and easy to follow. This may or may not involve published guidelines or benchmarks – it may be feasible to have benchmark figures published either as acceptable deduction amounts by themselves or to be used as a measure against which total expenditure is to be compared. Ideally, the requirement for substantiation would be over a trail “snap shot” period only.

#### **Consultation paper - ambiguity**

15. The consultation paper does not make it clear if the current system is to be rationalised with accommodation expense benefits, accommodation residual benefits and food fringe benefits (which are said to collectively complement LAFHA) being removed along with cash allowances from the FBT system and being placed into the Income Tax legislation, or whether it is intended to keep these fringe benefits where they are in the FBT legislation and remove only the cash allowance provisions into the Income Tax legislation. It is assumed the later for the purposes of this submission. Any system should reconcile all of the treatments and provide simplicity and clarity for ease of compliance.

16. To fail to do so will result in the taxation changes infringing the ideal criteria of a good tax of simplicity and efficiency.

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 the superannuation is payable on the benefit and in some it is not (for example if there has not been a genuine relocation).

### **Equity issues**

It might be considered that imposing a differential taxation outcome, based on whether a worker is based overseas or based locally, is not equitable in that all taxpayers are not then being treated equally. The converse argument is that the proposed changes are introducing equity to permit Australian workers to be treated the same as overseas workers to correct current abuses. Certainly where an overseas worker abandons an overseas place of residence he or she should not then be in a position to claim LAFHA benefits and perhaps a timeframe could be introduced. When this timeframe expires if the worker remains in the country the entitlement to a LAFHA ceases unless the worker in fact is working away from an Australian residence. But otherwise to give a blanket treatment to all temporary residents not maintaining an Australian residence may be perceived as giving rise itself to issues of equity.

### **Survey Response**

17. RCSA Members were surveyed in relation to the proposed changes.
18. Some key points emerge from the survey results are outlined below.
  - There will be a perception of overseas, skilled workers receiving less take home pay.
  - If the rules are the same for everybody, there will be less effect on local competition.
  - In some cases, perception as to the high nature of Australian Taxation rates has been a problem in attracting foreign workers when compared with overseas Asian countries, leading in some cases to job offers being declined.
  - There was a mixed reaction as to whether the proposed changes will result in increased administrative burden – some believing it will not, others believing it will and others saying it will provide an opportunity to clarify the relationship between LAFHA , PAYG, superannuation guarantee and Payroll tax law. There is a need seen to address the relationship between LAFHA, PAYG and superannuation and ensure a clear system and set of rules in

circumstances where the LAFHA is fully taxable in the employees hands as opposed to not taxable in the employees hands.

- Some see the proposed changes as an opportunity to provide more of an equal playing field and will weed out abuses and will be fair.
- LAFHA has been a definite attraction to overseas workers in skilled, hard to fill job occupations, such as mining and resources.
- Some roles will relocate to Asian countries when the LAFHA rules are changed;
- Some view the proposed changes as introducing a great deal more confusion and complexity, producing additional administrative work in relation to expense reimbursements as the changes are likely to drive employees from cash allowances to expense reimbursement, which is more administratively difficult and time consuming to administer.
- There is a concern this will lead to additional costs and difficulty in being able to pass on these costs in long term supplier contracts where pricing is fixed.