



# FRINGE BENEFITS TAX REFORM

## LIVING-AWAY-FROM-HOME BENEFITS

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# SUBMISSION

## Living-away-from-home benefits



Driving Business Success for Consulting Firms in the Built and Natural Environment

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## ABOUT CONSULT AUSTRALIA

Consult Australia is the peak industry body representing consulting companies that provide professional services to the built and natural environment. These services include design, technology and management solutions for individual consumers through to major companies in the private and public sector including local, state and federal governments. Consult Australia represents over 270 companies, from large multidisciplinary corporations to small niche practices, collectively employing over 50,000 staff.

Consult Australia's vision is to drive business success for consulting companies in the built and natural environment through collaboration, education, support and advocacy. We are dedicated to providing support and advocacy to our members with integrity, commitment, evidence based positioning, responsible actions and respect.

Consult Australia achieves these goals through a range of top down (improving regulation and creating opportunities) and bottom up (building capacity and community to reduce risk) support and services to members.

Consult Australia is a member of the Australian Sustainable Built Environment Council (ASBEC), the Australian Construction Industry Forum (ACIF), the Australian Services Roundtable (ASR), the National Engineering Registration Board (NERB), the Australian National Engineering Taskforce (ANET), and the Australian Chamber of Commerce and Industry (ACCI). Consult Australia is a host organisation for the annual Built Environment Meets Parliament (BEMP) summit.

## INTRODUCTION AND EXECUTIVE SUMMARY

Consult Australia appreciates the opportunity to contribute to The Treasury consultation paper, *Fringe Benefits Tax (FBT) Reform – Living-Away-From-Home Benefits*.

The proposed reform of the fringe benefits tax treatment of living-away-from-home allowance (LAFHA) will have a significant impact on Consult Australia members' abilities to attract and retain the skilled workers necessary to meet the demands of the Australian economy. The Consult Australia submission is therefore primarily concerned with the impact that reforms to LAFHA will have on temporary skilled migrants employed by its members.

The immediate impact of the proposed changes will be severe for individual workers who have made financial commitments (such as rental contracts, or career changes for spouses), based on the benefits available from the existing LAFHA arrangements. They will be forced to reconsider their situation and it is expected that many will choose to return to their country of origin (a brain-drain for Australia), or incur a sudden drop in take home salary.

The proposed reforms state, "the changes will ensure a level playing field exists between hiring an Australian worker or a temporary resident worker living at home in Australia, in the same place, doing the same job." However, the impact of relocation costs and public school education fees for 457 visa holders is not considered. Also, temporary residents are unable to access benefits available to a permanent resident including Family Tax benefit A and B, and the child care rebate. These factors must be considered before a revised LAFHA framework is finalised.

Companies forced to offer higher salaries to retain the services of temporary migrants affected by the proposed reforms will incur unplanned increases to payroll tax, workcover and superannuation liabilities. This will increase costs to business that may not be able to be passed on to clients. Pay parity issues with the local workforce will also emerge.

Consult Australia supports reform to LAFHA, but urges the Government to adjust the proposed reforms in two important ways:

1. The fringe benefit tax (FBT) treatment of LAFHA benefits should be reformed so temporary resident employees will be required to maintain a home for their own use in Australia *or overseas* (which they are living away from for work) to access the concession, and in those cases the expenses will need to be substantiated.
2. If reforms to the LAFHA benefit are implemented, there should be a phased introduction to ensure that those receiving it should continue to do so until the end of their current temporary work visa validity period.

Consideration must also be made for the costs that temporary skilled migrants incur that domestic workers do not. Consult Australia makes further recommendations to:

1. Abolish the fees that 457 visa holders currently pay for children who attend public schools.
2. Retain mechanisms to reduce the burden of education and relocation costs.
3. Consider the impact of the changes on payroll taxes, workcover and superannuation liabilities for employers.

# ISSUES FOR CONSIDERATION

## Skills shortages and Australian reliance on temporary migration

Consulting services in the built and natural environment are closely linked to the minerals, energy, building and construction sectors.

The federal Government acknowledged the extent of the minerals and energy sectors' growth in the 2011-12 budget, saying that "Australia is facing the largest mining investment boom in its history" and that "investment in the resources sector will drive above-trend GDP growth in the period ahead, generating strong jobs growth."<sup>1</sup>

The Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) reported that at the end of April 2011 there were 94 projects at an advanced stage of development, with a record capital expenditure of \$173.5 billion. The Government, in the 2011-12 budget, noted that "this investment surge will ramp up further in coming years, led by very large projects in the liquefied natural gas (LNG) sector" with a "total pipeline of resources investment of over \$380 billion."

The building and construction industry is growing too. Over the past decade, industrial and commercial building has grown by 12 per cent per year, engineering construction by 17 per cent per year, and new housing by 8 per cent per year.

As part of a knowledge-based economy, growth in professional services is a core driver of productivity, with growth in trade services often part of the broader economic response to that increased output. Consulting engineering services form a significant component of that professional services sector, with some 46,800 firms (including about 22,000 sole practitioners), employing about 221,600 people and generating revenues of around \$40 billion a year.

It is estimated that consulting revenues will increase by seven per cent by the end of financial year 2011-12, and by 10 per cent in the two following years. The four biggest markets for consulting, based on estimated consulting engineering fees earned are: mining and heavy industry; roads; electricity and pipelines; and bridges, railways and harbours.<sup>2</sup>

Finding enough staff to fully exploit the business opportunities available is a major issue: the Consult Australia 2011 Skills Survey shows that two-thirds of all member firms surveyed, and 90 per cent of large firms, are experiencing a skills shortage.<sup>3</sup>

Domestic supply of people with the relevant skills, especially engineering, is not sufficient to meet demand. The number of domestic students graduating with a bachelor's degree in engineering and related technology courses is stagnant at about 6,000 per year. Engineers Australia notes that over the past decade the average growth in demand has been about 13,000 per year and as high as 22,000.<sup>4</sup> Australia is therefore particularly reliant on the skills of temporary migrant workers to bolster domestic supplies of these in-demand skills.

This is illustrated by the experiences of Consult Australia member firms. Some report that about 15 per cent of their workforces are recruited from overseas under various visa subclasses. One large member firm with over 4,000 employees reports that over eight per cent of its workforce, for example, is employed with a visa subclass 457.

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<sup>1</sup> Budget 2011-12, *Budget Overview*, Commonwealth Government, p5.

<sup>2</sup> Bills, G, *2011 Outlook: An economic forecast for consulting firms in the built and natural environment*, Consult Australia (2011), p 3.

<sup>3</sup> Consult Australia, *The Consult Australia 2011 Skills Survey: An analysis of skills in the consulting industry for the built and natural environment* (2011), p4. Available at:

<http://www.consultaustralia.com.au/Home/Advocacy/Skills/SkillsSurveys.aspx>

<sup>4</sup> Kaspura, A, *The engineering profession: A Statistical Overview, Eighth edition*, Engineers Australia (2011), p72.

Government acknowledgement of the skills shortage has seen the establishment of a Senate committee inquiry into the shortage of engineering and related employment skills in November 2011.

It is incongruous of the Government to simultaneously announce reforms to LAFHA that will have a significant impact on the ability to attract skilled temporary migrants, and will have an immediate and negative impact on the cost structure of a sector that relies heavily on skilled migrants that currently receive LAFHA benefits.

## **LAFHA is needed to attract and retain foreign workers**

The characterisation in the consultation paper of the use of LAFHA by these valuable temporary skilled migrants as "rotting" is inaccurate and unfairly inflammatory. Australia needs skilled migrants and relies primarily on temporary working visas. Rather than rotting the system, the use of LAFHA ensures that the relatively high cost of living in Australia, and relocation costs at the beginning and end of assignments, do not act as barriers to attracting the best global talent on temporary terms.

One Consult Australia member with operations in 160 countries reports that, for many negotiations with potential recruits, "the tax free status of the LAFHA is the differentiator." They anticipate competition for talent from Asia, South America and Canada will increase if the proposed LAFHA reforms proceed. This is because the skilled engineering workforce operates at a global scale, and the skills shortage exists in many countries.

Several Consult Australia member firms report that there will be existing staff who will be forced to leave Australia if the proposed reforms proceed. URS, a Consult Australia member firm, shared the views of one of its employees:

### **Case study: an American in Adelaide**

"The LAFHA was a significant factor in the decision by my wife and me to come to Australia. Absent any substitute arrangement, we will probably accelerate our return to the United States if it is abolished." This employee provided an overview of their circumstances: As his employment in Australia is temporary, he retained his house in America while renting in Adelaide. The economic situation of America is such that renting the house would not deliver payments sufficient to cover mortgage commitments, and storage costs for personal effects would add to the prohibitive nature of that option.

The employee notes that although he is on what he considers to be "an attractive salary in Australia", it "will not overcome the financial disincentive of housing costs if the LAFHA is abolished." Adding to the strain of temporary relocation, the employee's wife, "as with most expat couples [they] have met", has been unable to secure professional employment. Potential local employers have not recognised her abilities and qualifications. This is a situation they did not anticipate.

He made one final observation: "It seems clear to me that Australia simply does not have the technical work force to support the large number of world-class resource projects which are currently planned for the country. I believe that absence of the LAFHA would be a serious disincentive to non-Australians who might consider coming here for a few years to work on those projects, and I don't think Australia can afford that."

LAFHA was introduced to ease the burden of working away from home. The above illustrates how this is precisely the situation of those in Australia on temporary working visas.

The Consultation paper states that temporary resident employees will be required to maintain a home for their own use in Australia (which they are living away from for work) to access the concession. Consult Australia recommends that the concession also be available to temporary residents who maintain a home for their own use in another country.

### **Recommendation 1:**

- *The fringe benefit tax (FBT) treatment of LAFHA benefits should be reformed so temporary resident employees will be required to maintain a home for their own use in Australia or overseas (which they are living away from for work) to access the concession, and in those cases the expenses will need to be substantiated.*

## **Phased introduction for any change**

The Treasurer said in his 29 November 2011 media release that LAFHA “is being increasingly misused by...foreign workers, at the expense of Australian taxpayers.”<sup>5</sup> This ignores the legitimate use of LAFHA in accordance with Australian Tax Office (ATO) guidelines.

The Discussion paper notes that a tax concession for LAFHA was introduced as an incentive for employees to move to difficult locations and promote job mobility. It goes on to explain that ATO guidelines for the use of LAFHA have been repeatedly released and withdrawn, leaving uncertainty over how it should be applied.

Latest advice from the ATO states, “Examples of employees on appointments of finite duration who will generally be living away from their usual places of residence are foreign nationals employed in Australia (expatriate employees)”.<sup>6</sup>

Temporary resident workers in Australia, particularly those on a visa subclass 457, who utilise LAFHA are doing so in accordance with this ATO guideline.

It is therefore wholly unfair for the Government to implement changes to LAFHA that will have a severe financial impact on people who have made significant work and life decisions based on the legitimate availability of LAFHA. Hyder Consulting, a Consult Australia member, shared the views of one of their employees who would be affected by the proposed changes to LAFHA:

### **Case study: The impact of sudden changes**

The employee relocated to Australia from Scotland in 2009 with his wife who is currently 8 months pregnant with her first child. He has been receiving the LAFHA benefit which has been factored into decisions about where to live, the decision to start a family and into household budgets that will become even tighter with the arrival of a child.

<sup>5</sup> The Hon Wayne Swan MP, *Tax Measures in Mid-Year Economic and Fiscal Outlook*, (29 November 2011). Available at:

<http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/148.htm&pageID=003&min=wms&Year=&DocType=>

<sup>6</sup> Australian Tax Office, *Fringe benefits tax - a guide for employers*, (August 2011) Chapter 11. Available at: <http://law.ato.gov.au/atolaw/view.htm?DocID=SAV%2FFBTGEMP3%2F00012>.

"Based on the ATO guidelines, I knew that I was eligible to receive the LAFHA benefit. With the extra take-home money that it provides me, I have been able to rent a better home for my family. If LAFHA is taken away, I will really struggle to meet the rental payments in my contract. My wife will need to return to work sooner than intended and this is at a time when she needs stability to focus on being a mother!"

This example is common. Workers in Australia on temporary work visas have made personal financial decisions based on the receipt of LAFHA benefits. This includes entering rental agreements that cannot be broken, or car loans that must be repaid. The proposed changes to LAFHA would, for many, have the same impact as if their salary were suddenly and significantly lowered.

In the interests of the financial wellbeing of those who have made significant financial commitments based on the receipt of LAFHA, and indeed in the interests of fairness, any proposed changes should have a phased introduction.

#### **Recommendation 2:**

- *If reforms to the LAFHA benefit are implemented, there should be a phased introduction to ensure that those receiving it should continue to do so until the end of their current temporary work visa validity period.*

## **Removing LAFHA will increase costs**

The Consultation Paper states that the use of LAFHA provides temporary residents "with an unfair advantage over local Australian workers." This ignores the high cost of relocation to Australia, and added costs incurred by temporary residents when they arrive.

A leading example is the requirement of those who enrol children in public school in NSW and the ACT to pay very high fees. In NSW, for example, parents must pay between \$4,500 and \$5,500 per child per year, and in the ACT fees can be as high as \$13,000. These fees are despite the parents contributing to the economy through the provision of their much-needed skills, and payment of income tax and goods and services taxes.

The federal Government should urge state and territory Governments to cease imposing these school fees. Furthermore, any reforms to the fringe benefits tax system should not affect the existing FBT reductions available for the payments to cover the costs of an employee's children's education.

#### **Recommendation 3:**

- *Urge state and territory Governments to cease imposing fees for the public education of children of temporary working visa holders.*

#### **Recommendation 4:**

- *Do not reduce existing FBT reductions available for payments to cover the costs of an employee's children's education.*

Relocation costs are a significant burden on those moving to Australia on a temporary basis. Until now, LAFHA has helped many to cope with those costs but if the proposed reforms are introduced that will no longer be the case.

Without a financial allowance to cover removal, flight and temporary accommodation costs, the high cost of moving is likely to stop many potential skilled migrants from choosing to move to and work in Australia. To overcome this, some employers may assist employees by meeting the cost of relocation (transport, storage of personal items etc). Current exemption of such support from fringe benefits tax is essential to limit the negative impact of the proposed removal of LAFHA.

#### ***Recommendation 5:***

- *Maintain exemptions from fringe benefits tax for employee relocation costs.*

The fact that many existing temporary workers will consider leaving Australia has been demonstrated. If the proposed changes are implemented, employers are likely to be forced to increase employee base salaries to retain their services.

Companies forced to offer higher salaries to retain the services of temporary migrants will incur unplanned increases to payroll tax, workcover and superannuation liabilities. This will increase costs to business that may not be able to be passed on to clients. Pay parity issues with the local workforce will also emerge.

An examination of payroll tax and superannuation liability changes for one Consult Australia member that employees over 250 overseas workers who receive LAFHA benefits offers an example of this impact. If each employee requires a conservative \$10,000 boost to their base salary to keep them in Australia, at a NSW payroll tax rate of 5.45 per cent this leads to an additional payroll tax liability of \$136,250. The employer superannuation payments would also increase by \$225,000.

When extrapolated across the entire workforce, this becomes an enormous cost to industry. Employers need time to plan for these kinds of wage increases. For example, firms will have entered service contracts based on current wage structures and will struggle to deliver projects at planned costs without entering negotiations for fee adjustments. Any reforms to LAFHA that increase payroll tax and other employment liabilities must have a phased introduction.

#### ***Recommendation 6:***

- *If reforms to the LAFHA benefit are implemented, there should be a phased introduction to ensure that salaries, payroll taxes, workcover and superannuation liabilities for skilled migrants do not suddenly increase and impose a significant and immediate burden on industry.*

## **SUMMARY OF RECOMMENDATIONS**

**Recommendation 1:** The fringe benefit tax (FBT) treatment of LAFHA benefits should be reformed so temporary resident employees will be required to maintain a home for their own use



in Australia or overseas (which they are living away from for work) to access the concession, and in those cases the expenses will need to be substantiated.

**Recommendation 2:** If reforms to the LAFHA benefit are implemented, there should be a phased introduction to ensure that those receiving it should continue to do so until the end of their current temporary work visa validity period.

**Recommendation 3:** Urge state and territory Governments to cease imposing fees for the public education of children of temporary working visa holders.

**Recommendation 4:** Do not reduce existing FBT reductions available for payments to cover the costs of an employee's children's education.

**Recommendation 5:** Maintain exemptions from fringe benefits tax for employee relocation costs.

**Recommendation 6:** If reforms to the LAFHA benefit are implemented, there should be a phased introduction to ensure that salaries, payroll taxes, workcover and superannuation liabilities for skilled migrants do not suddenly increase and impose a significant and immediate burden on industry.

## Contact details

To discuss the issues and recommendations raised in this submission, please contact Jonathan Russell, Senior Policy Adviser for the skills portfolio at [j.russell@consultaustalia.com.au](mailto:j.russell@consultaustalia.com.au) or call on (02) 9922 7411.