

PO Box 4073,  
South Maroubra LPO,  
Sydney, NSW, 2035  
Ph: 0411 398 202  
Email: [sarah.husselmann@gmail.com](mailto:sarah.husselmann@gmail.com)

The Manager,  
Philanthropy and Exemptions Unit,  
Indirect Tax Division,  
The Treasury,  
Langton Crescent,  
Parkes, ACT, 2600

Monday 28<sup>th</sup> May 2012

Dear Sir \ Madam,

I am the owner \ author of **Mum's gone 2 Aus**, a website that provides essential support, advice and information for families relocating to Australia. I am a British freelance writer, Australian permanent resident, and relocated to Sydney in January 2010 with my husband and two children.

I created **Mum's gone 2 Aus** six months after arriving in Australia and the site and Facebook page are followed by a growing community of families planning their move, or who have moved, to Australia.

Since the Treasury announced the Fringe Benefits Tax (FBT) \ Living-Away-From-Home Allowance (LAFHA) reform last year I have published several articles at **Mum's gone 2 Aus** that analyse the impact of the reform on families living in Australia. I submitted one of my articles and accompanying comments to you as part of the initial consultation period (that ended on 2<sup>nd</sup> February 2012).

Following further statements from you and in particular the announcement that there will be no transitional arrangements for overseas temporary residents already living and working in Australia, I have written to you and published further articles about the inequality of the reform for those who have already committed to employment contracts as temporary residents.

I am now submitting further articles and their comments as part of the final consultation stage of the reform. On subsequent pages of this document you will find;

1. **Submission 1: *Breaking news: LAFHA and the 2012 – 2013 Budget Update*** published on 10<sup>th</sup> May 2012 and related comments.
2. **Submission 2: *Letter to the Treasury: A fair go for NSW temporary residents*** published on 12<sup>th</sup> May 2012 and related comments.

I hope the analysis and views detailed in these articles, and comments from **Mum's gone 2 Aus** readers, will be considered when agreeing and approving the implementation of the reform.

In summary, our readers accept that the reform is needed and that from 1<sup>st</sup> July 2012 LAFHA will not be available to overseas temporary residents (unless they are living away from an Australian home); however many temporary residents already living and working in Australia face significant financial hardship by the abrupt removal of LAFHA on 1<sup>st</sup> July 2012 and would ask the Treasury to reconsider the application of transitional arrangements.

Thank you for your time and consideration.

Yours faithfully,

Sarah Husselmann

## **Response to consultation paper: Submission 1**

**Article title:** Breaking news: LAFHA and the 2012 – 2013 Budget Update

**Article published:** 10<sup>th</sup> May 2012

### **Article body:**

Over the past 24 hours there has been wide discussion and debate regarding a 2012 – 2013 Budget announcement and the Australian government's proposed LAFHA reform. Mum hopes to set the record straight...

### **Update on LAFHA Reform**

On Tuesday 8th May, in a joint media release with the Hon David Bradbury Assistant Treasurer and Minister Assisting for Deregulation, the Australian government announced further reforms to the Living Away from Home Allowance. One of the additions to the reform is that an Australian resident "maintaining a home for their own use in Australia, that they are living away from for work" will be eligible to receive LAFHA for "a 12 month time limit." This detail has been added to the wider reform announced last November. When the reform was announced last year we wrote about the impact on overseas temporary residents here: [LAFHA changes for Australian temporary residents](#).

In this week's Budget statement the Treasury also wrote that that the proposed LAFHA reforms "will apply from 1 July 2012 for arrangements entered into after 7.30pm (AEST) on 8 May 2012, and from 1 July 2014 for arrangements entered into prior to that time."

### **Good news or not for overseas temporary residents?**

Like others who have been following the LAFHA reform in online forums and press releases from the Treasury, Mum read the above statement and understood the 1 July 2014 delay to be good news for overseas temporary residents currently receiving LAFHA. Many people read the media release and felt the "1 July 2014" statement applied to the full LAFHA reform announced last November; this is not the case.

We have had confirmation from The Treasury that the statement made this week, specifically the July 2014 delay in the implementation of the reform, refers to the additional measures announced in the 2012-2013 Budget i.e. the 12 month time limit mentioned above. The measures announced last November still have an implementation date of 1st July 2012.

We wish we could share better news.

### **Response(s) from the Treasury**

Before the Budget announcement we asked the Treasury for an update on the FBT \ LAFHA reform and in particular what the reform means for overseas temporary residents; this is what we received on 7th May:

*“The Government announced that the reform measure will commence from 1 July 2012 and employers and employee should act on that basis.*

*The Government will be issuing an exposure draft for further comment before the amending legislation goes into Parliament. Hopefully this will not take too long but depends on other Government priorities.”*

Earlier in the year we asked for an update and on 13th March we received this response:

*“Submissions in relation to the consultation paper Fringe Benefits Tax (FBT) Reform – living-away-from-home benefits were due by 3 February 2012. The Government is **currently considering issues that have been raised in submissions**. As announced in Media Release No. 148 of 29 November 2012 **one of the issues for consultation is transitional arrangements** that should be put in place.*

*The changes to the LAFHA provisions are due to commence on 1 July 2012. It is expected that the Government will issue an exposure draft within the next couple of months which will also be the subject of a further round of consultation. When available the exposure draft of the LAFHA amendments will be available on the Treasury consultation website.”*

These responses from the Treasury indicate that there will be further opportunity to comment before the reform goes to parliament. In March, the Treasury mentioned “transitional arrangements that should be put in place”, although this wasn’t explicitly in relation to overseas temporary residents.

### **A two year delay makes sense**

The reason many of us misunderstood the recent budget announcement is because delaying the implementation of the LAFHA reform for overseas temporary residents already living and working in Australia makes sense. We were hoping for sensible transition steps; giving existing “arrangements” a two year reprieve is a good idea.

Mum has spoken with a representative from the Treasury and unfortunately there appear to be no plans (or specific transitional arrangements) to make the implementation of the LAFHA reform easier on overseas temporary residents. The 1st July 2012 date stands and whilst there will be a further consultation paper, to be released next week, it is expected that this paper will cover the technical tax detail of the implementation rather than the broader concerns of the temporary resident workforce.

From the Treasury’s perspective employers and employees have had notice of the reform since November 2011 and should be prepared for the 1st July implementation. From comments left here on the blog and over on our Facebook page we know this is not the case.

### **Were we given false hope?**

Sadly, the management of the reform process by the Treasury may have given false hope. LAFHA recipients were asked to comment by 3rd February; which they did (and Mum did on your behalf). In March we were told that “The Government is currently considering issues that have been raised in

submissions...one of the issues for consultation is transitional arrangements that should be put in place.”

Given that a huge number of temporary residents raised issues in the submissions, it seems normal that temporary residents felt the transitional arrangements ought to apply to them.

As one of our readers commented on Facebook today, the fact that these reforms are proceeding without any transitional arrangements for overseas temporary residents who legitimately need LAFHA to survive, is more than disappointing; “it means financial devastation.”

### **What do you think?**

Mum is awaiting the publication of the final exposure draft relating to the LAFHA reform, due next week. We will (re)send concerns and comments left at Mum’s gone 2 Aus to the Treasury.

Throughout the reform process we have been hopeful of a positive outcome for temporary residents living in Australia, but as we get closer to the 1st July implementation date, and following our discussion today with the Treasury, we’re not as confident.

What do you think? Is there any hope left for Overseas Temporary Residents currently receiving LAFHA in Australia? If you’re receiving LAFHA what plans have you / your employer made to cope with the changes from 1st July? Thank you.

### **Key article comments:**

#### **Written by Ryan Jones on May 12, 2012:**

“Thanks very much for this post. Unfortunately for my family, it looks like we will need to leave Australia as soon as possible. Between paying ~\$400/month in health care and paying \$85/day for one kid’s day care (health care and child care are either wholly provided or subsidized for Australians), we won’t be able to afford to stay. As it is, we have taken a huge financial hit b/c of the costs it took for us to move here and start up a new home. Given that our employer (The University of Sydney) recruited us from the USA b/c they cannot find qualified Australian applicants and used the LAFHA as one big benefit to lure us here, it seems like Australia will be worse off with these changes as they do not have the qualified workers and have lost a significant motivation to bring them here.”

#### **Written by RaoulDuke66 on May 11, 2012**

“Update: giving the transitional period to Australians but not to British workers contravenes Article 25 of the UK/Australia Double Taxation Convention 2003 – Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. UK nationals need to contact the foreign office asap <http://ukinaustralia.fco.gov.uk/en/help-for-british-nationals>.”

#### **Written by jean cave on May 11, 2012:**

“I am pretty sure Mr & Mrs AverageOZ would want their government to have a more kindly face. The art of forward-wise planning and hypothesizing outcomes from budget changes each year, seems to

have been lost in both OZ and the UK.! Sometimes these oversights have to be corrected with exceptions or temporary run-in periods. Nobody loses face when ministers admit it in either country, when they come to the realisation that tinkering affects lives as well the statistics and popularity with voters.

It would be such a shame that Sydney's special multicultural bonhomie (It's main attraction) may be eroded because of this ill-thought through and incompetently clarified ruling. Six months notice would be the minimum period needed to make proper arrangements to leave. Do Oz's in UK get subjected to this same sort of thing? I think not."

**Written by CathyK on May 12, 2012:**

"We came over for 2 years in January 2011 with 2 children and 2 dogs. We always meant to come for just the two years, have an adventure and then return back to the UK.

My husband's company has flatly refused to negotiate terms as they have been 'waiting for further clarification' from the govt. We finally got an email from them on Friday night explaining that our celebration on Tuesday night was premature (it felt as if we'd won the OzLotto).

It added that they were still waiting for clarification – I suspect that they will not be willing to make up the difference, and I can understand that. (I should add that we tried, on at least 7 occasions to get them to talk about the changes but were denied, hence the feeling that it's not going to end well).

I can also understand changing the arrangements, but to give effectively 7 weeks notice of such a change feels blatantly unfair. We can't afford to live here on 20% less. Australia is lovely but not worth going into debt for."

**Written by OZnew on May 15, 2012:**

"I came here last year as an academic and can definitely not be classified as a highly paid executive. And unlike in the private sector, we do not have any room for negotiations, so once LAFHA is gone I will face an effective 15% pay cut (\$600/month less, a massive hit) and that's that. Like some of my colleagues I will have to strongly reconsider locating to Europe or to the US (and take the research grant money I brought to Australia back with me)."

**Response to consultation paper: Submission 2**

**Article title:** Letter to the Treasury: A fair go for NSW temporary residents

**Article published:** 12<sup>th</sup> May 2012

**Article body:**

**To:** The Hon Wayne Swann MP – Treasurer, The Hon David Bradbury MP – Assistant Treasurer

**CC:** The Hon. Joe Hockey MP – Shadow Treasurer, The Hon Barry O'Farrell – NSW Premier, The Hon. Adrian Piccoli MP – NSW Education Minister, Australian and UK media.

I am writing to urge you to give overseas temporary residents, in particular families living in NSW, a fair go regarding the Fringe Benefits Tax (FBT) \ Living Away from Home Allowance (LAFHA) reform.

Fairness is a big theme in the 2012 – 2013 Budget statement you issued this week; I hope there is time for the Treasury to consider transitional arrangements for overseas temporary residents due to lose LAFHA on 1st July 2012. This is particularly critical for families living in NSW.

It is clear, from reading the reform consultation paper, that LAFHA has evolved into a benefit for overseas temporary residents, beyond the scope of its original intention. However, in recent years LAFHA has been presented to foreign workers as an entitlement and an enticement to bring their skills to Australia.

The temporary residents I know are not over-paid executives trying to rot the Australian tax system. They are average people wanting to earn a living and experience a new lifestyle.

On paper it isn't fair that temporary residents pay less tax. However, if you're a family living in NSW, what is given with one hand is taken by the other.

Overseas temporary residents are not eligible for Medicare and generally pay higher annual fees than Australian citizens or permanent residents for private health insurance.

Overseas temporary residents in NSW do not get free public schooling. Government school tuition fees in NSW are \$4,500 per year per child for Primary School and \$5,500 per year per child for High School.

Families with younger children, who benefit from the social interaction of attending preschool, pay up to \$10,000 per year for them to attend two days a week. Temporary resident families are not eligible for Family Assistance payments such as the childcare rebate, which covers up to 50% of preschool costs for Australian citizens and permanent residents.

**Temporary resident families in NSW are rarely better off than Australian citizens and permanent residents.**

To analyse the financial reality of receiving and losing LAFHA, I have looked at example taxation and essential cost of living figures for a family of four living in NSW. I have assumed that through their LAFHA arrangement, a temporary resident family receives 30% of their annual salary tax free.

By analysing these figures I am paying particular attention to financial equality (fairness) between overseas temporary residents and Australian citizens and permanent residents.

According to online resources \$90,000 – \$110,000 represents the average annual salaries of individuals working in several common industry sectors (IT, Healthcare, and HR/Recruitment) in NSW.

The difference between the take home pay received by temporary residents, and citizens and permanent residents, depends on the annual income. I have found that a temporary resident family earning \$110,000 does have more in their pocket after tax than a citizen or permanent resident. However, on the other salaries we analysed the additional take home pay that temporary residents receive, thanks to LAFHA, is so minimal that describing temporary residents as having an unfair advantage over citizens and permanent residents is incorrect. In fact, once schooling and healthcare costs have been covered temporary residents have less disposable income than citizens and permanent residents.

According to "MyCareer Salary Centre" the average annual salary in NSW for Human Resources, Healthcare and Financial Services Industries is \$83,000 - \$90,000.

	Australian citizen \ permanent resident	Australian temporary resident receiving LAFHA	Notes
Annual salary	\$90,000	\$90,000	
Taxable salary	\$90,000	\$63,000	
Tax deducted	\$21,250	\$18,530	
Medicare Levy	\$1,350	\$0	
Total Take Home	\$67,400	\$71,470	
Difference before schooling and healthcare.		\$4,070	After tax temporary resident is \$4,070 better off.
NSW School fees for temporary residents:		\$9,000	
Higher health insurance premium for temporary residents:		\$1,000	
Total additional costs for temporary residents:		\$10,000	
Difference after schooling and healthcare.		\$5,930	After school fees and higher health insurance costs temporary residents have \$5,930 less in their pocket than citizens and permanent residents.
A temporary resident family living in NSW has \$5,930 additional out of pocket expenses per year compared to Australian citizens and permanent residents.			

#### Example tax and cost of living figures (NSW)

In NSW, a typical temporary resident family spends at least \$9,000 per year on schooling (for two children at Public Primary School) and an additional \$1,000 per year on higher health insurance premiums – a total of \$10,000 per year more than citizens and permanent residents.

On an annual salary of \$90,000 a temporary resident family receiving LAFHA has \$4,070 more after tax than Australian citizens and permanent residents – annual education and healthcare costs are more than this. On a salary of \$130,000 the after tax advantage of temporary residents is \$10,300; this just covers the typical cost of NSW schooling and higher health insurance premiums. If a family living in NSW has children at High School, or has more than two children, the financial burden and inequality increases.

Many overseas families genuinely come to Australia temporarily, for a two to four year period, and maintain a home in their country of origin. The state of the global economy means that some families make regular payments towards keeping a property in their country of origin (i.e. rental income does not cover home loan payments).

For relocating families, employers don't necessarily pay for travel and shipping costs. Employers definitely don't help with the cost of all the little things families need to buy when setting up home here.

LAFHA isn't intended to compensate for the additional expenses temporary residents encounter when relocating to Australia, or indeed NSW; but the reality is that most temporary resident family budgets don't work without it.

**Families living in Australia temporarily do not want special treatment, they want a fair go.**

The exposure draft relating to the FBT reform, released last year, required submissions by February 2012. A large number of overseas temporary residents submitted their comments and outlined their concerns regarding the abrupt removal of LAFHA for those already fulfilling employment contracts in Australia.

Once submissions had closed a statement from the Treasury said that "the Government is currently considering issues that have been raised in submissions. ...one of the issues for consultation is transitional arrangements that should be put in place."

Recent comments from the Treasury suggest that transitional arrangements are not being considered for temporary residents, despite the fact that they were surely the largest group to raise issues relating to the reform.

In a recent telephone conversation I had with the Treasury, your representative explained that employers and employees have known about the reform since November 2011 and therefore had adequate time to plan for the loss of LAFHA on 1st July. This statement does not reflect the experience or expectations of temporary residents living in Australia.

Because the Treasury stated that "one of the issues for consultation is transitional arrangements that should be put in place", most employers and employees have done nothing to prepare for the reform. They have anxiously awaited further guidance from the Treasury. How can they and why would they act when the expectation set by the Treasury was that transitional arrangements may be put in place?

The fact that transitional arrangements might not be considered for overseas temporary residents is devastating news for families.

Without LAFHA families in NSW may not be able to afford schooling for their children; home schooling becomes the only option. Families with younger children can't afford preschool. Many families can't afford to live in Australia, and they cannot afford to leave.

It is disappointing that the Treasury has left overseas workers in a state of limbo for so long. It is disheartening that the Treasury would consider leaving families living and working (and paying tax) in Australia in financial ruin by implementing a reform without transitional measures.

Either the Treasury needs to put measures in place to ensure that employers compensate employees for the loss of LAFHA, or the arrangements of existing LAFHA recipients need to be honoured – abruptly removing the benefit is unfair.

I understand international tax professionals are exploring the legalities of implementing the reform and hope there is time for the Treasury see sense on the removal of LAFHA for people already living and working in Australia. In the meantime, the aim of this letter is to provide an insight into the reality of losing LAFHA, for average families, on average salaries, living and working in NSW.



I am publishing this letter on my blog and forwarding to Australian and UK media to raise awareness regarding the reform and the financial reality for families who stand to lose LAFHA.

Your sincerely,

Sarah Husselmann

Author of **Mum's gone 2 Aus**

**Mum's gone 2 Aus** is a blog providing support, advice and information for families relocating to Australia.

**Note:** I have chosen to highlight the situation for families living in NSW because I am a resident of NSW and better understand the circumstances. The loss of LAFHA may be equally devastating for families and individuals located in other Australian states and territories.

#### **Key article comments:**

##### **Written by Michelle Calder on May 12, 2012:**

"Thank you for doing this on everyone's behalf Sarah. You are so right in what you say, and may I just say that some employers are not willing to help out in this matter, certainly my husband's employers don't want to make up the difference and I fear what some may do is find a reason to get rid of the foreign employee and just employ a resident here. Michelle"

##### **Written by Sarah on May 12, 2012:**

"Very well put Sarah! I have also written my own letter to our local MP and also to Barry O'Farrell putting our personal case across which is fairly similar to the example you have in your letter!

We can but hope!"

##### **Written by Claire Brown on May 12, 2012:**

"Hi Sarah, What a great letter, I hope you get through to them, thank you!

Just for additional info, living in the ACT, the cost of sending your child to a government Primary school whilst on a 457 visa is over double that of NSW. For that reason we now send our child to a private school which is still more expensive than NSW but actually saving us money in the ACT. Trouble is, now we are committed to those fees beyond us becoming permanent residents should we decide to apply.

Is there any further clarity on the new 'blanket' tax for temporary residents, as that is just add to our financial shortfall? Many thanks for your efforts Claire"

##### **Written by Ellie Thackray on May 12, 2012:**

"My family and I relocated to Brisbane last September, and LAFHA was sold as part of my husband's salary package. His (Australian) company have stated they will not make up any shortfall by loss of LAFHA. We have to use our LAFHA to make up the shortfall between rent and mortgage payments in the UK. We were originally going to stay for two years, but we love it over here, and are hoping to apply for PR as soon as possible.

I now work full time as well (also in a position on the skills in demand list) and what we would receive from the Australian government in childcare rebates is far greater than what we currently receive in LAFHA.

The treasury had stated that we have had enough notice to prepare for losing LAFHA, however we signed a 12 month lease on our rental property in October, as well as buying a car on finance, based on our LAFHA supplemented salary. 8 months is just not enough notice.

In addition, as we will struggle to pay or mortgage in the uk we will have to make a choice between selling our house in a very poor market and terrible exchange rate, or taking our family away from a country, people and way of life we have fallen in love with. I love it here, please don't force me to leave."

**Written by Kelly on May 13, 2012:**

"Thanks for writing such a detailed and well reasoned letter.

In our case, we arrived in Australia last September and committed to a 12 month rental agreement in November, just 2 weeks before the LAFHA changes were originally announced.

The reality for us is that we could manage without LAFHA – even with the inequity of the NSW school fees – however to do so we have to do move house and break our rental agreement early. The implications for us in doing that are one month's rent, as well as having to find moving fees earlier than expected, as well as the ongoing reduction in net pay which is certainly significant.

Finding a month's rent plus moving fees at a time when our net pay is about to substantially reduce is a real problem and one that has caused month's of worry for us, at a time when we had more than enough to worry about as it was. Since this occurred just after we arrived in Australia, and just after we committed to our house, I feel really let down by the Australian government.

Even bearing in mind the unfairness of NSW school fees, surely it's only fair that temporary residents get the same transitional period as permanent residents, so they can make the adjustments to their lifestyle and housing commitments without incurring penalties for early termination. I think it's a disgrace to lure people here with such an incentive and then make such a big change with no transition period."

**Written by Richard Francis on May 14, 2012:**

"Great letter, well written and based upon fact. My partner and I are here in NSW with 4 children and know that the LAFHA component does not come close to compensating for the extortionate school fees that we pay plus additional private medical insurance, plus the fact that our children (as temporary residents) are not entitled to free transport to school.

I have also tried to contact Paul Madden, British High Commissioner in Canberra, for his views on this matter. You will not be surprised to hear that I have not received a reply as yet.

Keep up the great work, we all need to pull together on this one. Kindest regards, Richard"

**Written by Fiona on May 18, 2012:**

“I can understand why Australians dislike this benefit, however in not allowing the transitional period to cover all workers I think that it is discriminatory and apparently is in breach of Tax legislation that Australia is a signatory to. Good democratic governments rarely make up the rules as they go along in contravention to whatever they thought of 5 minutes ago...and I thought Julia was a Lawyer...

I quote from another website here

“the relevant transitional elements as they are set out in the exposure draft legislation (Tax Laws Amendments (2012 Measures No.3) Bill 2012: deducting expenses for living away from home) are unlawful, as they breach all of Australia’s double-taxation treaties. These treaties are incorporated into Australian domestic law through the International Tax Agreements Act 1953.

This is because, in respect of existing LAFHA arrangements until July 2014, temporary residents and foreign residents will be subject to an additional restriction to which permanent residents will not be subject – namely the requirement to maintain a dwelling in Australia – in breach of the non-discrimination clauses in each treaty.

Taking the UK as an example, this contravenes Article 25.1 of the UK/Australia Double Taxation Convention, because it is subjecting UK nationals to requirements connected with income tax/FBT which is “other” and “more burdensome” than requirements to which Australian nationals are subject in the same circumstances.”

**Note:** I have not included all comments relating to the article as some are too lengthy and repeat comments left by others. To read fuller feedback you can view the article here: <http://www.mumsgone2aus.com/2012/05/12/letter-to-the-treasury-a-fair-go-for-nsw-temporary-residents/>