Submission 26

Submission to the House of Representatives Standing Committee on Economics

Inquiry into the Tax Laws Amendment (2012 Measures No 4) Bill 2012

By the Australian Mines & Metals Association (AMMA)

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About AMMA

AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes. Having actively served resource employers for 94 years, AMMA's vast membership covers employers in every allied sector of this diverse and rapidly evolving industry.

Our members include companies directly and indirectly employing more than half a million working Australians in mining, hydrocarbons, maritime, exploration, energy, transport, construction, smelting and refining, as well as allied suppliers to those industries.

AMMA members that have helped to inform this submission are in industry sectors including:

- Mining;
- Engineering;
- Construction;
- Power and telecommunications;
- Oil and gas;
- Hydrocarbons;
- Mining exploration; and
- Aviation and transport logistics.

Executive summary

AMMA welcomes the opportunity to make a submission to the committee's inquiry into the Tax Laws Amendment (2012 Measures No 4) Bill 2012.

This submission builds on AMMA's February 2012 submission to the Treasury, Philanthropy and Exemptions Unit, Personal and Retirement Income Division on the reforms when they were at the draft proposal stage.

The stated aim of this particular suite of legislative reforms is to reduce what the federal government describes as the 'exploitation and misuse' of the current tax system for Living Away From Home Allowances (LAFHA).

In his second reading speech when tabling the Bill in federal parliament on 28 June 2012, Assistant Treasurer David Bradbury said the use of the LAFHA tax concession had 'dramatically increased' over the past decade.

That might be true, but in AMMA's view the government should be careful not to create disincentives for skilled workers from overseas and interstate to work on resource projects in Australia at a time of such a critical skills and labour shortage globally.

Summary of the changes

In November 2011, the Federal Government announced it would make two reforms to the LAFHA tax concession:

- Temporary residents would need to maintain a home for their own use in Australia that they were living away from for work in order to be able to access the tax concession; and
- All individuals would need to substantiate their actual expenditure on accommodation and food.

On 8 May 2012 (Federal Budget night), two further reforms to the LAFHA tax concession were announced:

- Permanent residents would also need to maintain a home for their own use in Australia that they were living away from for work to be able to access the tax concession; and

- There would be a 12-month time limit on how long all people (other than fly-in, fly-out workers) could access the tax concession.

When the government tabled the final Bill in federal parliament on 28 June 2012, there were a few more surprises.

But in short, the proposed changes will reduce the take-home pay of many employees whose employment contracts require them to work away from home. Employers, including many AMMA members, while not contractually obliged to compensate workers for any loss in pay, will be forced to at least consider doing so in order to remain attractive to overseas and domestic talent.

Even if workers manage to meet the new eligibility requirements and maintain their current rates of pay, they face an increased administrative burden in having to substantiate their expenditure on food and accommodation each week. This alone will make employment on Australian resource projects, especially away from friends and family, less attractive than it is now.

Whether or not businesses decide to top up employees' salaries or use other bonuses to make up the difference, they face higher labour turnover and increased recruitment costs, as wells as increased compliance costs as a result of the changes.

Many employment contracts for domestic and overseas workers will need to be repackaged by the HR departments of resource industry businesses. This will be time-consuming and will need to take into account complex issues around the total remuneration of employees versus company costs and market salary rates.

The government's deferral of the proposed changes to 1 October 2012 rather than 1 July 2012, in response to earlier submissions from stakeholders including AMMA, while an improvement is not long enough for employers to implement the required machinery changes, particularly given that the exemptions from the proposed 'transitional' provisions will exclude many arrangements from any extension of time.

Companies will have to amend their policies and procedures to incorporate the new LAFHA changes, including updating their payroll systems to reflect the complexity of the transitional provisions. This will mean additional costs to companies in terms of HR 'person hours'.

The cost of living in Australia is already extremely high compared with other countries. The less favourable tax treatment of LAFHA will present an even greater deterrent to employees from overseas coming to work in Australia, even if their current and prospective employers can meet their salary expectations after the changes take effect. The extra bureaucracy for all involved will be a big impost.

The changes will act as a disincentive to resource industry employees to move to where the work is given the requirement to maintain a home in Australia which they are living away from. Almost no overseas workers will be maintaining a home in Australia and will therefore not qualify for the tax concessions.

In some cases, the proposed changes will reduce employees' net salaries by 20 per cent.

The changes also mean significantly increased costs for business. One AMMA member currently claims the LAFHA benefit for expatriate employees to the value of around $2 million a year. This will disappear under the proposed changes and the company's tax bill will rise accordingly. This is in addition to the very real prospect of having to bump up employees' salaries as well.

The effects of the proposed reforms will be many and varied and go far beyond the scope of the government's original announcements.

One side effect of the proposals could be that companies decide to build camps as opposed to paying workers allowances and benefits that could flow into local communities in the form of money spent on food and accommodation.

It will also be a complicated and unenviable exercise for employers to explain the new rules to employees and managers with regard to their eligibility for the tax concessions going forward. This will undoubtedly have a knock-on impact to companies if their employees become disgruntled by the changes or feel they should be compensated based on representations the employer made at the time of signing the initial contract.

The changes will impact most of all on 457 visa workers and other skilled migrants.

The reforms are more unworkable in a project-driven environment like the resource industry where people are required to move and relocate for indefinite periods.

The changes will have broader implications on a larger number of stakeholders than the government may have initially envisaged.

One would imagine that unions will also have issues with the proposals which will affect their members, not just highly-paid executives.

The government's consultation with industry on these issues has not been as extensive as AMMA would have liked. For that reason, the changes fail to take into account the difficulties already being experienced in attracting people to work in an industry that is suffering from an acute shortage of experienced staff.

While some AMMA member companies are still determining their positions in relation to the proposed changes, there is little doubt employees will expect to be compensated for any loss in pay.

Employees have built their acceptance to work away from home on resource projects based on certain salary arrangements that will no longer exist if the Bill in its current form becomes law. As is to be expected, this will upset many employees.

There will almost certainly be pressure on employers to make up the difference in pay. As to how employers deal with that pressure, it will be up to them to decide while taking into account their own unique and complex set of commercial considerations before making a decision.

Key problems with the Bill

The Bill as currently drafted will:

- Require all employees entering new LAFHA arrangements after 7.30pm on 8 May 2012 to maintain a home in Australia away from where they are living for work in order to qualify for the tax concession. This will exclude most if not all temporary residents working in Australia on 457 visas and other skilled migration visas.
- Require all temporary residents, even those under pre-existing LAFHA arrangements, to maintain a home in Australia in order to qualify for tax concessions as soon as the changes take effect on 1 October 2012.
- Change the tax treatment of LAFHA from a tax-free fringe benefit to employees (and hence a benefit to employers) to part of an employee's taxable income,

thereby leading to reduced take-home pay for those employees who fail to meet the onerous new eligibility criteria.

- Limit tax deductions to a period of 12 months at any one location, thereby encouraging employees to reassess and potentially change their employment arrangements frequently.

- Require all employees, even the few who will benefit from the proposed 'transitional' period, to substantiate their expenditure on food and accommodation on a weekly basis.

- Define a 'material' change in the employment contract (for which workers will be deprived the benefits of the transitional arrangements) to include minor updates to employment contracts such as automatic pay rises or the rolling over of a collective agreement with the same terms, conditions and quantum pay rises in a previous agreement.

Recommendations

AMMA believes there will be significant negative impacts if the Bill is passed in its current form. AMMA therefore makes the following recommendations that we believe the committee should consider:

1. There should be no 12-month time limit on the ability to claim tax deductions while living away from home as this will only encourage employees to reassess their employment arrangements after 12 months when there is no longer any tax benefit to them.

2. Sensible transitional provisions should apply to all pre-existing LAFHA arrangements rather than separate eligibility criteria for temporary residents compared to permanent residents that will exclude virtually all temporary residents (and their employers) from the benefits of the transitional provisions.

3. The transitional period should run for four years from the date the legislation takes effect, being consistent for both temporary and permanent residents, and allowing all pre-existing arrangements to run their course under the current rules. There should be no exclusions from the transitional period for any pre-existing LAFHA arrangements for the entirety of that four years, or as long as the current employment contract lasts.

4. Employees should not be disqualified from the transitional arrangements because of minor updates to their employment contracts. An automatic CPI pay rise, a slight change in hours or the rolling over of a collective agreement covering an entire workforce should not constitute a ‘material’ change to the employment contract and activate the new rules.

5. A ‘material’ change to the employment contract should be defined in the same way as it is defined in employment law and relate to a change in role, status, job level, responsibility, etc. This definition should specifically exclude minor updates to the employment contract such as those mentioned above.

6. The implementation of the new rules for all employees who are not covered by the transitional arrangements should be deferred until at least 1 July 2013 to give employers time to update their systems and review their labour sourcing and

remuneration strategies. The proposed implementation date of 1 October 2012, while an improvement on the earlier proposal of 1 July 2012, is not enough time for employers to ensure compliance, particularly given the lack of consultation and information provided to businesses ahead of the tabling of the Bill.

7. There should be no retrospective aspect to the legislation. As currently drafted, while the changes will not take effect until 1 October 2012, they will capture all arrangements entered into after 7.30pm on 8 May 2012, thereby having a retrospective effect. Whatever the date on which the legislation eventually becomes law, it should only impact new arrangements entered into after that time.

8. The requirement for all new and existing LAFHA recipients to begin substantiating their expenditure on food and accommodation from 1 October 2012 should be delayed in line with the suggested transitional provisions for pre-existing LAFHA recipients.

9. Once the requirement to substantiate receipts for food and accommodation takes effect for particular employees, it should not have to be done on a weekly basis but should be able to be done annually.

10. Further consultation is needed with industry in order to arrive at a workable set of arrangements governing the exchange of information between the Australian Taxation Office (ATO) and the Department of Immigration & Citizenship (DIAC) in relation to overseas workers. Under the current drafting of the Bill, an employer is required to reduce the LAFHA if an employee does not meet the new eligibility criteria. However, employers are not allowed to change the pay of overseas workers without first receiving approval from DIAC. These obligations need to be coordinated so that employers do not find themselves in breach of either the tax laws or the migration laws through no fault of their own.

The value of the resource industry to the Australian economy

As of April 2012[1], there were 98 resource projects at an advanced stage of development (either committed or under construction), amounting to a record capital expenditure of $260.8 billion, an increase of 12 per cent on October 2011 figures which was in turn up by 34 per cent on April 2011 figures.

This record value of advanced minerals and energy projects reflects, in part, the decision to proceed with the development of the Ichthys LNG Project, the Greater Western Flank and the Nammuldi iron ore mine expansion. A $5 billion increase in capital costs at BG Group's Curtis Island project also contributed to the growth in the value of projects.

Of the 393 resource projects on the Bureau of Resources & Energy Economics (BREE's) April 2012 list, 295 projects (or 75 per cent) remain uncommitted, including 12 proposed LNG developments still undergoing feasibility studies. Those 295 projects combined have a potential capital expenditure of $243.3 billion.

Of the advanced and less advanced projects, many have a capital expenditure of $2 billion or more and a peak workforce requirement of 1,500 or more. They include:

- Gorgon LNG Project - $43b capex;
- Ichthys Gasfield (including Darwin LNG plant) - $33.3b capex;
- Wheatstone LNG Project - $28.4b capex;
- Queensland Curtis LNG Project - $20b capex;
- CSG - $16.2b capex;
- Gladstone LNG Project - $15.6b capex;
- Australia Pacific LNG Project (Train 1) - $13.7b capex;
- Sino Iron Project - $6.1b capex;
- Worsley Refinery Efficiency and Growth Project - $3.4b capex; and
- Cape Lambert Port & Rail Expansion - $3.07b capex.

[1] Mining Industry Major Projects Listings, April 2012, Bureau of Resources & Energy Economics (BREE)

The prevalence of LAFHA arrangements in the resource industry

AMMA members that have had input into this submission are providing their employees with a Living Away From Home Allowance (LAFHA) under the current rules. The proposed changes will have profound negative impacts on them in terms of their ability to attract and retain staff and structure their operations as they see fit.

The number of employees who receive LAFHA payments at AMMA member companies range from just a couple at some organisations to several thousand at others. One AMMA member reported at one stage paying the LAFHA to 3,000 employees.

Those receiving LAFHA in AMMA's member companies include workers from within Australia and overseas. Overseas workers receiving LAFHA include those from:

- Asia;
- Canada;
- Chile;
- China;
- Egypt;
- Fiji;
- Greece;
- India;
- Indonesia;
- Ireland;
- Italy;
- Malaysia;
- Namibia;
- New Caledonia;

- Norway;
- Paraguay;
- Russia;
- Scotland;
- Singapore;
- South Africa;
- South America;
- The Middle East;
- The Philippines;
- The United Kingdom; and
- The United States.

One AMMA member that currently has 36 international employees eligible to receive LAFHA says all of them will lose the tax concessions under the proposed changes. On top of that, at least 50 per cent of their local employees would no longer be eligible (23 out of 46).

Further, some of their interstate employees have already rented out their primary residences and are legally locked in to leases and would not meet the criteria of maintaining a home for their own private use after the changes take effect.

Changes to the tax treatment of LAFHA

On 28 June 2012, the Federal Government introduced a bill to parliament to give effect to its previously announced changes to the taxing of the living away from home allowance (known as LAFHA) for those working in Australia.

The draft legislation was tabled following a small amount of consultation with industry and included some ‘surprises’ not previously flagged, one of which will exclude a significant proportion of current LAFHA recipients from transitioning more gradually into the new arrangements.

In broad terms, the effect of the proposed changes will be to move the payment of LAFHA from a tax-free fringe benefit to employees to part of their taxable income, which is how the payments were administered prior to 1986.

If the proposed changes are adopted in their current form, the allowances an employer pays to an employee as compensation for being required to live away from home will become part of the employee’s assessable income. Some employees will be able to claim tax deductions against those amounts if they substantiate their expenditure on food and accommodation to a ‘reasonable’ amount. However, the other onerous aspects of the eligibility criteria will exclude many employees, including almost all temporary workers from overseas, from being eligible to claim tax deductions.

The government recently announced a delay in the implementation of the changes, from 1 July 2012 until 1 October 2012. It also announced that transitional provisions would apply to some LAFHA arrangements that were already in force so that some employees would not be brought under the new rules until 1 July 2014. But looking at the fine print of the Bill, the arrangements that will qualify for a transitional period will be few and far between.

The requirement to maintain a home in Australia

Under the proposed changes, the favourable tax treatment of LAFHA will be restricted to permanent and temporary residents who are working in Australia but living away from a home that they maintain in Australia for their own personal use, i.e. that they are not renting out to someone else. At present, there is no requirement for those receiving LAFHA to maintain a home in Australia, whether they are temporarily or permanently residing in Australia.

For employees entering into employment arrangements after 7.30pm on 8 May 2012, unless they maintain their own home in Australia that they are required to live away from for work, they will not be eligible for the LAFHA tax concessions.

This change, putting aside the transitional provisions for the moment, will affect interstate and international employees' decisions to relocate to Australia given the impracticality of having to maintain two residences, thus creating difficulties for companies in attracting talent.

Labour turnover will then be expected to increase due to losing existing interstate and international employees and it will become more difficult to move employees around Australia depending on where the projects are.

It will be difficult if not impossible for some people to maintain two houses in Australia, particularly if they are working fly-in, fly-out rosters and have no roots in any particular city.

Employees will not go out of their way to retain a home just to receive an allowance or tax credit. Australian workers who have a primary place of residence will maintain it as they have done previously while working away from home. But foreign workers who only have a single residence in Australia will have to either pay full tax on LAFHA and either sustain a lower net income or ask the company to increase their wages.

International staff, particularly those who already retain a residence overseas, will be unlikely to want to maintain another home in Australia. As a result, their take-home pay will be adversely affected.

For many resource industry businesses, most of their employees are seasoned contractors who do not necessarily want to make Australia their home. Businesses are very much project-based and may not require people to be employed for an ongoing or extended period.

If it becomes more difficult to find staff, as it will under the proposed changes, it will detrimentally affect Australia's economy given the importance of the mining industry.

If workers are expected to take a role living away from home for six to 12 months, in some cases paying rent as well as maintaining a primary residence, it can cripple their ability to move geographically. This is a huge problem for the resource industry which is built on flexibility.

The requirement to maintain a home within Australia that they are working away from will exclude most if not all those working in Australia on 457 skilled migration visas as they will not be eligible to receive tax deductions for LAFHA. This in turn will reduce the size of the skill pool that will be willing to migrate to Western Australia and Queensland, if they do not maintain a home elsewhere.

With the inflated cost of accommodation in Perth, for example, it will place more of a financial burden on staff, encouraging them to seek work closer to home.

This proposal will have a huge impact on employers' ability to incentivise their employees to move where the work is.

The 12-month limit on tax deductions

Under the proposed reforms, those eligible to claim tax deductions for food and accommodation expenses while living away from home for work will only be able to do so for the first 12 months at each location.

There is little doubt this will increase turnover in the resource industry after this 12-month period has elapsed. It will therefore create significant direct and indirect costs for businesses associated with replacing employees.

In some cases, and it is difficult to determine how many, employees will actually leave a company after the 12 months is up because they are no longer eligible for the tax deductions.

This will have a huge impact on employers as they will need to review all salary arrangements after 12 months to see if it makes more commercial sense to bump up employees' take-home pay to make up for the loss of the tax concessions, or whether they simply cannot afford to do that.

From an employee's perspective, their pay will be reduced from one day to the next due to no change in their working arrangements. This will seem incredibly unfair to employees working longer than 12-month stints away from home.

Alternatively, the 12-month time limit for tax deductions will put employers under pressure to move their teams around to different client sites every 12 months so that staff will not be adversely impacted by the changes financially. This will create a logistical challenge for many resource projects and will represent a complex juggling of commercial pressures. The impacts will be felt by the employees, the client and the direct employer who will all be impacted by constraints around moving staff around their businesses.

A 12-month time limit on tax deductions for LAFHA purposes is an unnecessary imposition from a business point of view and unfair from the point of view of employees. Typically, employees can be required to move to work on projects for up to three or four years.

Twelve months seems to be an arbitrary limit that does not take into account the practicalities of construction schedules which can require three-month to three-year rotations. Climactic and industrial issues can also delay construction projects, rendering the 12-month time limit for tax benefits more unworkable for all concerned.

Employees cannot be expected to sell their homes and move interstate every 12 months in situations where there is no guaranteed longevity of employment.

A 12-month time limit is far too short and will lead to many businesses losing good employees for absolutely no benefit to local communities.

Workers will perceive that they are performing the same job for less money and will naturally look for alternatives. In many cases, workers will return home earlier than planned.

The immediate requirement to substantiate food and accommodation expenses

LAFHA-eligible employees who maintain a home in Australia will, under the new rules, be able to claim tax deductions for 'reasonable' food and accommodation expenses. Those tax deductions will be available for food expenses incurred in excess of the 'ordinary' amount of $42 a week for each adult and child aged 12 and over, and $21 a week for each child aged under 12. At least that is what AMMA assumes the age distinction is as there is a mistake in the Bill which breaks it down as '12 and over' and '12 and under', thereby capturing 12-year-olds in both definitions.

Unlike under the current rules, expenditure will have to be substantiated with receipts and will only be tax deductible up to an amount deemed 'reasonable' by a future determination of the taxation commissioner. The parties are yet to be told what a 'reasonable' amount will be up to which they can claim tax deductions, further adding to the uncertainty of the arrangements.

Employees will be required to calculate and substantiate their expenditure every seven days rather than annually, which is an unwarranted administrative burden.

The new requirement to substantiate expenditure, which kicks in for all new and existing LAFHA arrangements from 1 October 2012, even those qualifying for a transitional period, will significantly increase administrative costs for employees and employers who both have to keep track of receipts in order to process deductions.

A degree of productivity will be lost as employees will allocate time within the working week to perform that function.

The low rate of $42 a week for 'ordinary' food expenses for those aged 12 and over means all expenses will exceed that and more paperwork will have to be managed by all the parties involved.

This time-consuming and difficult task for employees will act as a disincentive to work in Australia on projects, thus making scarce resources even harder to attract for employers.

It is already challenging to find staff who are willing to work in remote locations and be away from their home and families. These types of bureaucratic requirements will make things even less appealing.

Employees will not only be frustrated with the burden of having to keep records and the uncertainty of what constitutes ‘reasonable’ expenses (both of which will be an irritation to daily living), but on top of their work tasks. This will make for a very long day for some employees.

AMMA can see no reason why that requirement cannot be annualised.

The administrative burden of the current proposals is difficult to quantify.

Transitional arrangements

The Bill's proposed transitional arrangements for permanent residents are inconsistent with those applying to temporary residents.

For permanent residents

For permanent residents who entered into LAFHA arrangements prior to 7.30pm on 8 May 2012 (Federal Budget night), their current LAFHA arrangements and tax concessions will continue until 1 July 2014 when the new rules kick in for them, unless they enter a new employment contract in the mean time. For those permanent Australian residents, there will be no requirement to maintain a home in Australia and no 12-month time limit on tax deductions until 1 July 2014 when those new requirements will kick in.

There is, however, one big proviso to the eligibility for transitional arrangements for permanent residents. Put into the Bill without any prior warning is that the transitional arrangements will cease to apply for any workers whose employment contracts undergo a 'material' change at any time during the transitional period. The way the Bill is currently drafted, a 'material' change will include a CPI pay rise, a roll-over of the existing collective agreement, or a change in working hours.

For temporary residents

All temporary residents will only be eligible for LAFHA tax concessions after 1 October 2012 (when the new rules kick in) if they maintain a home in Australia which they are required to live away from for work. If they meet that requirement, their current arrangements can continue until 1 July 2014 as long as they entered those arrangements before 7.30pm on 8 May 2012.

However, for all permanent and temporary residents, the requirement to substantiate expenditure takes effect from 1 October 2012 as it does for those entering new arrangements. There will be no transition for the requirement to substantiate expenditure, with the bureaucratic nightmare beginning immediately for employees and employers.

The current legislation allows permanent and temporary residents to claim LAFHA amounts based on 'reasonable' accommodation and food expenses, whether or not they actually incur those expenses. There is no need under the current system to substantiate expenses.

The 'material' change definition will rule many more people out of the transitional arrangements who would otherwise have qualified, rendering any sense of an orderly transition to the new arrangements a farce.

Most if not all employees will receive some adjustment to their remuneration package between 8 May 2012 and 1 July 2014, which will exclude them from continuing under the transitional arrangements if and when it occurs.

The Bill has only just been tabled in parliament, yet resource industry employers have already incurred huge costs in terms of the time they have had to spend trying to understand the LAFHA provisions and seeking advice and clarification in relation to existing employees' arrangements and eligibility going forward. Added to that is the need to communicate in advance with their employees about the upcoming changes with a view to getting employees onside to have their existing LAFHA arrangements changed. This will be an unenviable task.

Not only will employees expect larger pay rises in bargaining rounds and individual negotiations to compensate for the loss of tax deductions, many of them will be confused and find their lack of eligibility to continue under their current arrangements unfair.

There is no real benefit to any business of the transitional provisions as they are currently drafted. A two-year grace period for a small minority of arrangements, with a myriad of arrangements expiring progressively in the mean time, will not bring any relief or cost savings for the bulk of resource industry employers.

On the current interpretation of the changes, most current LAFHA arrangements will effectively cease on 1 October 2012.

As discussed, if the receipt of an automatic, pre-determined pay rise constitutes 'material' change to the employment contract, then the transitional provisions will have a very minor effect in smoothing the changes.

Many companies review all salaries on 1 July or 1 January each year. EBA employees may well receive an automatic pay rise every six or 12 months.

A longer lead time is needed to allow employers time to address the confusion and uncertainty as well as the lack of consultation that has preceded these proposals.

If receiving an annual pay rise constitutes a 'material' change to the employment contract, or similarly if a change in hours compared to the previous roster does, it defeats the purpose of having transitional provisions as nobody will qualify.

This change was unexpected and unforeseen and only appeared in the tabled version of the legislation. It will require an even greater degree of consultation and compensation, not to mention negotiation between the company, managers and employees.

AMMA maintains that a 'material' change to the employment contract should be the same as that defined in employment law and relate to a change in role, status, job level, responsibility, etc.

Most pay rises are related to performance and as such reward employees for their endeavours. To then say that because you have received a pay rise, that changes your LAFHA status, is a slap in the face to excellent employees. In any case, a pay rise, unless substantial, would not cover the additional tax deductions associated with the removal of the LAFHA concessions.

The bottom line is a change in pay or hours does not materially vary the need for the capability and should not be considered a 'material' change in the employment contract.

Workers from overseas

Under the proposed changes, all temporary residents who do not maintain a home in Australia that they are living away from for work will lose access to the existing LAFHA concessions as of 1 October 2012. This will be most if not all workers currently temporarily residing in Australia under 457 and other skilled migration visas. Those workers are incredibly unlikely to meet the requirement of maintaining a separate home within Australia for their private use.

For temporary workers from overseas, that represents the loss of a tax concession worth thousands of dollars a year. The current LAFHA rules allow workers on eligible 457 skilled migration visas to claim back their rent and living costs against tax even if they did not maintain a home in Australia.

Under Australia's migration laws, a sponsoring employer is required to notify the Department of Immigration & Citizenship of any changes to an employee's earnings. This would include any changes to the LAFHA resulting in a decrease in employees' take-home pay.

In such cases, employers would need to lodge a new business nomination that the Department must approve before a change in pay could take effect. At present, it can take several months for employers to receive such approval from the Department.

What this means is that under the proposed changes, employers will be unable to reduce the amount of LAFHA payments until the Department approves a new business nomination. This potentially puts employers in breach of the new LAFHA rules through no fault of their own. Either that or they risk being in breach of Australia's migration laws. Employers should not face that kind of double jeopardy scenario.

The main impacts of the changes in relation to overseas workers will be rising costs for employers in order to equalise workers' net salaries to maintain company market attractiveness to overseas workers.

At the end of the day, however, it will be less attractive for employees from overseas to come and work in Australia if there are no tax concessions.

Companies will have to incur significantly greater costs in order to attract people or seek to maintain people with a much lower net income.

It will have huge impacts on companies' staffing and operational needs as it is difficult to run a business while always waiting for approval from a government agency.

The increase in bureaucracy associated with these proposals will make Australia a less attractive commercial proposition to overseas nationals who possess niche skill sets that are in very high demand on the global market.

While the changes will not stop companies from recruiting from overseas, it will significantly increase the employment costs associated with those endeavours.

Sometimes it is the LAFHA benefits that get overseas workers over the line in terms of coming to work in Australia, particularly when a company cannot afford to pay the same salary as some of their larger clients with whom they also compete for skilled workers.

The proposed changes will add to the costs of bringing in skilled workers from overseas who are required to deliver projects and will reduce the incentives for workers to come and work in Australia. This has the potential to affect many mega projects.

In cases where companies offset the removal of LAFHA with another allowance so that employees' net position is unchanged, the net effect on international employees will be practically nil. However, companies will have significantly increased costs associated with employing international employees at a time of skills shortage and increased demand for labour.

The highly sought-after worker will go where it is easier to work and the most financially beneficial, which will mean companies have to work harder to attract those workers.

Conclusion

AMMA is of the view that the proposed changes have not been sufficiently canvassed with industry stakeholders. The Bill extends further the reforms that were originally flagged, including elements over which there was no consultation or prior warning.

While being aimed at a small group of people that may have rorted the system, the proposals unnecessarily punish many other businesses and workers in the resource industry, with particularly negative impacts on workers from overseas.

The most unfair impacts will be on those workers who are currently receiving full LAFHA tax benefits and will lose those as of 1 October 2012 because they do not meet the new eligibility criteria. Overseas workers will effectively be excluded from receiving LAFHA tax concessions from that date, driving them to seek employment in other countries or, alternatively, to pressure employers to make up the difference in their salaries.

Employers will face severe impediments to attracting enough skilled labour to work in regional areas, as well as greatly increased recruitment and labour sourcing costs, not to mention increased salary and benefits costs.

AMMA strongly urges the government to reconsider the bill and urges this inquiry to make the sensible and fair changes that AMMA recommends in this submission.

AMMA would be pleased to answer any further queries the committee might have. Please contact AMMA director of industry services Minna Knight on (07) 3210 0313 or AMMA senior workplace policy adviser Lisa Matthews on (02) 9211 3566.