



Supplementary Remarks –  
Mr Steven Ciobo MP, Deputy Chair,  
Ms Kelly O’Dwyer MP, Mr Scott Buchholz MP  
and Mr Scott Morrison MP:  
Liberal Party of Australia

**REVIEW OF THE TAX LAWS AMENDMENT (2012 MEASURES NO. 4) BILL  
2012**

The Coalition members of the Committee will not be opposing any of the three schedules to the Bill.

In relation to Schedule 1, Coalition members will make a number of general observations regarding the Committee’s report and will also make some specific comments.

**Transitional arrangements – temporary and foreign residents**

The Coalition will not oppose this Bill however the government’s handling of the changes to the Living Away from Home allowance, particularly its failure to consider the ramifications for 457 visa holders or investigate transitioning options, and consequences for reliant industries is highly concerning.

Australia’s success and prosperity has, in part, been due to its skilled and productive workforce. It is critical that appropriate policies be implemented if Australia is to have a workforce that is capable of ensuring the nation’s strong growth and continued economic success while meeting our future skilled needs.

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Despite the small number of foreign workers in Australia on 457s visas, their economic contribution is substantial. Foreign labour on 457s accounts for less than one percent of Australia's labour force<sup>i</sup>. There were 90 280 primary 457 visa holders in Australia at May 2012<sup>ii</sup>

[http://www.scottmorrison.com.au/info/speech.aspx?id=457&page=-1 - \\_edn19](http://www.scottmorrison.com.au/info/speech.aspx?id=457&page=-1 - _edn19). Of these, around 7,500 were in construction and 5,200 in mining<sup>iii</sup>.

According to Access Economics estimates, the 90,120 457 visa entrants in 2010/11 will generate \$2.2 billion over three years or more than \$27,000 each while permanent skilled migrants generate a net fiscal impact of \$22,000 each over three years<sup>iv</sup>.

The current Labor Government does not have appropriate policies to address the current and future labour shortages in Australia. The Coalition believes that temporary labour migration is a useful mechanism to manage labour market fluctuations, demands and gaps.

The Living Away From Home Allowance (LAFHA) has been one incentive used by employers to attract skilled workers to Australia and especially regional areas where the jobs are, especially in the field of mining and resources.

By introducing a tax on the Living Away from Home Allowance without warning, the Government has threatened Australia's capacity to attract skilled migrants and will have a detrimental impact upon industry decision-making at a time when important investment decisions are being made and need to be encouraged, especially but not limited to the mining and resources sectors.

To assume investors won't take their money elsewhere if Labor continues to undermine investment conditions is not only foolish, it is arrogant and dangerous.

Yet the Government has made no transitional arrangements available for temporary residents and Treasury has not even undertaken to model such a possibility, despite widespread industry submissions pointing to the detrimental effect and hardship this would cause for both current and prospective 457 visa holders.

Consequently, all temporary residents who are not maintaining a home in Australia (that they are living away from) will lose access to the concession, even though transition arrangements will be made available.

The government's response on this matter indicates a serious disregard for 457 visa holders and indicates, more broadly Labor's complete lack of interest and empathy for business and in particular, the mining and resources industry.

There are many people currently working in Australia on 457 visas who have made deliberate financial and career decisions to work here on the understanding and on the basis that they would be eligible for LAFHA. To remove this condition

without warning does not assist in creating confidence amongst current and future temporary migrants.

The Coalition will not oppose this Bill however the government's handling of the changes to the Living Away from Home allowance, particularly its failure to consider the ramifications for 457 visa holders or investigate transitioning options, and consequences for reliant industries is highly concerning.

Labor has damaged Australia's reputation and created sovereign risk by creating uncertainty.

Introducing this change midstream will trigger great uncertainty for temporary migrants and potentially damage Australia's attractiveness as a destination for temporary skilled migration. This is particularly pertinent in the mining sector where guaranteed labour supply of skilled workers is time critical in providing investor security to get mega projects off the ground and ensure long term investment in Australia and Australian jobs.

Extensive consultation with industry has consistently raised concerns that these measures will create widespread uncertainty and may dissuade people from pursuing temporary visas in Australia and leave many industries with chronic skills shortages and gaps.

In its submission to the parliamentary inquiry on these changes, the Australian Mines and Metals Association stressed that "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"<sup>v</sup>.

The Australian Constructors Association argued the government's proposed changes will "impact the relative attractiveness of Australia for resource sector investments and may result in projects being delayed or shelved because of the inability to attract appropriately qualified employees"<sup>vi</sup>.

Price Waterhouse Coopers surveyed 121 businesses in June to gauge their response to the proposed reforms<sup>vii</sup>. 77% of respondents said they expected they would have to fork out additional costs as a result of the changes – 14% of participants claimed they had already had an employee go home because of the reforms. 55% said they would have difficulty attracting new talent.

The Association of Mining and Exploration Companies (AMEC) said that the proposed changes have a considerable potential to impact particular regions, such as Perth.

The Minerals Council of Australia (MCA) told the committee that the government can address "the perceived areas of abuse without removing the concessions

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altogether for temporary residents”<sup>viii</sup>

[http://www.scottmorrison.com.au/info/speech.aspx?id=457&page=-1 - \\_edn36](http://www.scottmorrison.com.au/info/speech.aspx?id=457&page=-1 - _edn36).

In a 41-page submission to Treasury’s Consultation Paper in November 2011 concerning the FBT Reform, Deloitte warned that employers may find it difficult to retain workers who lose LAFHA.

“The vast majority of skilled migrants are attracted to a position based upon a guaranteed net income position. If businesses are unable to afford the increased costs to maintain this net income, given the considerations previously discussed regarding attracting skilled migrants, businesses may fail to retain existing employees who will in turn depart Australia,ix” the professional services firm stated.

In its submission to the Treasury Consultation Paper in February 2012, Ernst and Young stated that the proposed changes “will affect a subset of the labour market that is mobile and highly skilled. As a result, it is likely that the impact of the proposed changes will fall on the consumers of labour, without any offsetting productivity increase. The proposed changes could severely impact (457 visa holders) who have entered into their current living arrangements based on a certain remuneration package and expected after tax earnings. If the reforms are implemented, many temporary residents could find themselves living beyond their means and in financial difficulties.x”

The LAFHA changes effectively amount to a retrospective tax on Australian companies for employing foreign workers - another punishment tax that will fall disproportionately on the mining and resources sector.

The Coalition members are concerned about the lack of consideration given to the flow on effects for 457 visa holders and consequently Australia’s sovereign risk. Furthermore, there have been industry suggestions that the revenue predictions are grossly underestimated.

The government has estimated that the measure will provide \$50 million in 2012-13 and \$217 million in 2013-14. An additional \$353 million is expected in 2014-15 and \$399 million for 2015-2016.

Treasury noted in response to Question on Notice 2 that “given the uncertainty around how individuals choose to respond to the policy, there is a high degree of uncertainty about the respective contribution of different revenue components to the total fiscal impact”.

Since Treasury has admitted there is great uncertainty surrounding the revenue components, it is not unreasonable to assume there is great unpredictability surrounding the total collective revenue.

It is also therefore reasonable to conclude that Treasury may err on the side of caution and may have significantly underestimated the fiscal impact of the measure.

Conclusions drawn from two scenarios extrapolated from Department of Immigration and Citizenship data suggest the additional tax revenue to the government could exceed \$550 million per financial year.

Treasury modelling was based on the assumption that 50,000 457 visa holders were accessing LAFH allowance and benefits. The Coalition has sought clarification as to the predications and assumptions included in Treasury modelling which were not disclosed to the committee despite questions being posed in writing.

An explanation as to how this figure was derived was not offered, nor were the sources disclosed with Treasury simply citing that “an estimate of 50,000 was derived based on data provided by the ATO. DIAC data was looked at but due to LAFH allowance and benefit limitations could not be fully utilised.”

Treasury noted that “revenue from 457 visa holders is not expected to increase significantly year on year” yet no further details were offered as to modelling scenarios that may have involved fluctuating 457 numbers, given this visa program is market driven.

Treasury indicated that for the purpose of modelling it was assumed that around 50 per cent of employees will convert LAFH allowances and benefits into salary wages. However, they have not indicated how they arrived at this assumption nor have Treasury explained the additional assumptions used in modelling in relation to the other 50 percent of employees who would not convert the allowance into salary wages.

Treasury have indicated that costings were modelled “on the notion of average rate of LAFH allowances or benefit, which reflected a range of family compositions”. Treasury did not indicate what the ATO considered to be the average rate of LAFH allowance or the nature of family compositions that were taken into account, and whether these family compositions were informed by DIAC or ATO data.

Treasury have not provided their costing using in calculations relating to food and accommodation allowances.

In answer to Question on Notice 10, Treasury indicated that “assumptions in relation to accommodation amounts were made based on observed arrangements, informed by data provided by the ATO”.

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Treasury did not indicate what arrangements were observed by the ATO, nor what Treasury assumed the weekly accommodation allowance was in its calculations or whether its observation were in fact 'reasonable'.

Treasury has not provided any indication as to what marginal tax rate was assumed in modelling. This would have significant impacts on the potential costs of these changes to employees.

In answer to Question 2, Treasury noted that "the relative composition of revenue impacts is dependent on how individuals choose to respond to the policy. In estimating this composition, the scenarios considered by Treasury included: individuals being paid more cash salary by their employer instead of the fringe benefit; individuals moving completely out of the LAFH system and not receiving additional pay; and individuals staying within the system and incurring additional fringe benefits tax".

However, it is not clear for modelling purposes, of the 50,000, 457 visa holders, how many Treasury estimated would move completely out of the LAFH system and not receive additional pay; would be paid more cash salary by the employer instead of the fringe benefit or how many individuals were assumed to stay within the system.

In answer to Question 14, Treasury stated "employer and employee behavioural assumptions were incorporated to account for how individuals and employers will possibly react to the new system. This included some employees converting LAFH allowances and benefits into salary and wages, some employers paying extra remuneration, some people staying in the FBT system and some alternative FBT concessions being accessed. The net result of these changes was then computed."

In answer to Question 18 concerning modelling parallel transitional provisions for 457 visa holders, Treasury noted simply it did "not have a costing for the scenarios".

It is disappointing that further consideration was not given to the consequences these changes would have to 457 visa holders and consequently to industries dependent on this temporary supply of skilled labour, including the mining, resources and construction sectors. Most importantly, however, it calls into question the uncertain assumptions of the Government in relation to the fiscal impact on the Budget and the costs to employers.

In many instances, employers will be forced to bear significant costs in order to offer competitive incentives to replace the LAFHA.

Whilst not opposing any of the recommendations made by the majority members, the Coalition members note that there are still a number of unanswered questions

on notice to the ATO and Treasury that would have more properly informed the Committee's deliberations.

The Coalition will not oppose this Bill however the government's handling of the changes to the Living Away from Home allowance, particularly its failure to consider the ramifications for 457 visa holders or investigate transitioning options, and consequences for reliant industries is highly concerning.

## Policy intent

The Assistant Treasurer's press release of 15 May 2012 refers to the policy intent of the measures now contained in Schedule 1 to the Bill as to "ensure that Australian taxpayers are not funding the unfair exploitation of concessions by employers or employees".

Despite this statement of the Assistant Treasurer and the following passage from the explanatory memorandum, "The current law is being interpreted broadly and the concession is being used in a manner that is outside the original policy intent", Coalition members of the Committee acknowledge the Tax Institute's submission that

"the Bill provides a clear advantage to permanent Australian residents as compared to temporary residents and non residents, whereas the current provisions are consistent across all types of residents. ...

As such, we submit that the Bill represents a change in the policy intention underpinning the LAFH rules rather than a mere countering of exploitation of the current rules and that this intention should be clearly stated in the EM as a change in the circumstances in which the Government considers it appropriate for LAFH concessions to be accessed."

In this context it is relevant to note that the concern regarding the exploitation of the LAFH rules has been around for some years and could have been addressed by the Government much earlier.

Administration of the LAFH legislation has been the subject of two reviews by the Inspector-General of Taxation.

In the review of 2010 it was observed that the Australian Taxation Office had only partly implemented a recommendation made by the Inspector-General in 2007 that "*The Commissioner of Taxation should conclude a corporate view on whether the Tax Office should formally advise the Treasury, in accordance with Practice Statement CM 2003/14, that legislative change is required or not.*"

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The result, therefore, was that the ATO had not revised its position on the administration of the LAFHA ruling since 1986, despite this being a source of frustration for taxpayers, their advisers and, as the Inspector-General noted, officers of the ATO themselves.

### **Recommendation 5**

The Coalition members strongly support the Committee's Recommendation 5 *"that the Living-Away-From-Home-Allowance and associated benefits be treated within one taxation system. The Committee supports retaining the taxation treatment for the Living-Away-From-Home-Allowance wholly within the fringe benefits tax system."*

The Coalition in Government will cut excessive regulation of business to drive growth and productivity.

This Bill shows again that the Government doesn't get it when it comes to red tape.

The Government is out of touch when it comes to business and community organisations.

The Government has already added 18,000 regulations to the books since its election in November 2007.

Labor's instincts are always wrong. The Bill contains clear evidence, if any more evidence were needed.

The Bill would split the taxation treatment of the food and drink allowance between the first \$42 ('ordinary weekly food and drink expenses' treated under the fringe benefits tax legislation) and additional reasonable expenses for food and drink (treated as a tax deduction under the income tax legislation).

In arguing that the approach of splitting the tax treatment of food and drink in this way should be abandoned, the submission to the Committee by the legal firm Ashurst stated that *"such a system is likely to be unworkable in practice, will significantly increase compliance costs for employers and employees and will give rise to uncertainty"*.

Why burden people with having to comply with both fringe benefits tax legislation and the income tax legislation?

The Tax Institute also observed that the approach in the Bill would present an additional compliance burden on the Australian Taxation Office as well.

Recommendation 5 shows that at least this Committee, including its Government members, is on the right track.



### **Recommendation 6**

The Coalition members of the Committee support the recommendation that *“the Government must provide clear and concise documentation outlining the new compliance obligations for employers and employees”*.

### **Recommendation 7**

Taxpayers want certainty regarding the interpretation of legislation and its application to their affairs.

In the current economic conditions, where business confidence is low, lack of certainty around the meaning of legislative provisions will mean that taxpayers are unlikely to have the confidence to invest, to expand and to employ.

Legislative uncertainty cannot always be remedied by resort to explanatory materials.

For these reasons the Coalition members support recommendation 7 which proposes to clarify the scope of one of the Bill’s transitional rules. It is important that the scope of the expression “the first time that eligible employment arrangement is varied or renewed” is more clearly set out in the Bill.

The explanatory memorandum states that any material variation to an existing employment arrangement will adversely affect the duration of transitional relief. It goes on to illustrate a material variation by reference to a change in salary and a change in working hours.

Deloitte raised this issue directly with Treasury and were informed that a salary increase as part of an annual salary review should not result in an employment contract being varied for the purposes of the transitional relief. However a pay increase on promotion may give rise to a variation.

In Recommendation 7 the Committee states that *“the Government provide as a matter of urgency a clear and inclusive definition of what constitutes a ‘material variation’ to a contract”*. The Coalition members support the recommendation.

Coalition Committee members refer to the Tax Institute’s view of the policy intent in this regard. It should be picked up in the Bill (not only in the explanatory memorandum) and consequently would provide certainty as to what type of change will amount to a relevant variation.

The Tax Institute’s suggestion is *“that taxpayers continue to be protected by transitional rules where there is no fundamental change in the underlying LAFH benefit arrangement”*, as opposed to a change to which the LAFH arrangement is

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inherently tied, such as an increase in LAFH benefits. Evidence given by industry at the Committee's Roundtable supports this approach, for example the statement by Mr Paul Ellis, partner in Ernst and Young: "*it should only be if there is some sort of variation in the arrangements relating to you living away from home*".

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<sup>i</sup> DEEWR 2012 *Australian Jobs* pg 5

<http://www.deewr.gov.au/Employment/ResearchStatistics/Documents/AustralianJobs.pdf>

<sup>ii</sup> DIAC 2012 "Subclass 457 State/Territory summary report 2011-12 to 31 May 2012" p.8

<<http://www.immi.gov.au/media/statistics/pdf/457-stats-state-territory-may12.pdf>>

<sup>iii</sup> Question on Notice, Budget Estimates Hearing 21-22 May 2012 - BE12/0204

<sup>iv</sup> DIAC 2012 'Table 11.1 Migrants' net impact on the Australian Government Budget by visa category 2010-11' [Source: Access Economics and DIAC Migrants' Fiscal Impact Model] in *Trends in Migration: Australia 2010-11 Annual submission to the OECD's Continuous Reporting System on Migration*, pg 110

<<http://www.immi.gov.au/media/publications/statistics/trends-in-migration/trends-in-migration-2010-11.pdf>>

<sup>v</sup> Australian Mines and Metals Association 2012 Submission to the House of Representatives Standing Committee on Economics Inquiry into Tax Law Amendment (2012 Measures No.4) Bill 2012 pg.6

<sup>vi</sup> Australian Constructors Association 2012 Submission to the House of Representatives Standing Committee on Economics Inquiry into Tax Law Amendment (2012 Measures No.4) Bill 2012 pg 4

<sup>vii</sup> PWC 2012 Submission to the House of Representatives Standing Committee on Economics Inquiry into Tax Law Amendment (2012 Measures No.4) Bill 2012 page 2

<sup>viii</sup> Minerals Council of Australia 2012 "Consultation on Fringe Benefits Tax (FBT) Reform – Living Away From Home Benefits

<[http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/2011/FBT%20Reform/Submissions/PDF/61\\_Minerals\\_Council\\_of\\_Australia.ashx](http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/2011/FBT%20Reform/Submissions/PDF/61_Minerals_Council_of_Australia.ashx)>

<sup>ix</sup> Deloitte 2012 *Submission to the Federal Treasurer – Fringe Benefits tax Reforms: Living away from home benefits* p.17

[http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/2011/FBT%20Reform/Submissions/PDF/66\\_Deloitte.ashx](http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/2011/FBT%20Reform/Submissions/PDF/66_Deloitte.ashx)

<sup>x</sup> Ernst & Young 2012 'Submission to the Treasury Consultation Paper concerning the Fringe Benefits Tax (FBT) Reform: Living Away from Home benefits', 2 February 2012

<http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/2011/FBT%20Reform/Submissions/PDF/51ErnstYoung.ashx>

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**Mr Steven Ciobo MP**  
**Deputy Chair**

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**Mr Scott Buchholz MP**

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