

# SUBMISSION 31



**HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS  
INQUIRY INTO TAX LAW AMENDMENT (2012 MEASURES No.4) BILL 2012**

**SUBMISSION BY AUSTRALIAN CONSTRUCTORS ASSOCIATION**

**13 July 2012**

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#### 1. INTRODUCTION

On Thursday 28 June 2012, the House of Representatives referred the Tax Law Amendment (2012 Measures No.4) Bill 2012, to the House of Representatives Standing Committee on Economics (The Committee) for inquiry and report.

The Committee has invited interested persons and organisations to make submissions to the Inquiry by Friday 13 July 2012.

The Australian Constructors Association Limited (ACA) welcomes the opportunity to make submissions to the Committee.

#### 2. AUSTRALIAN CONSTRUCTORS ASSOCIATION LIMITED

The ACA was formed in 1994, and represents the nation's leading construction contracting organisations. ACA is dedicated to making the construction industry safer, more efficient, more competitive and better able to contribute to the development of Australia.

ACA member companies operate in a number of market sectors including:

- Residential and non-residential building
- Engineering construction
- Process engineering
- Contract mining
- Maintenance and services
- Oil and gas operations
- Telecommunications services
- Environmental services

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The ACA members operate globally, with member companies operating in Australasia, Europe, Asia, North and South America and the Middle East.

Collectively ACA member companies have a combined annual revenue in excess of \$AUD50 billion and employ over 100,000 people in their Australian and international operations.

ACA is incorporated as a company limited by guarantee. The ACA Board of Directors consists of the chief executives of each of the member companies. Membership of the Association is open to national contractors with an annual turnover in excess of \$AUD500 million.

The Association has four (4) key objectives:-

1. To require the highest standards of skill, integrity and responsibility of member companies
2. To represent the interests of major contractors to government and other decision makers
3. To enhance and promote the status of construction contractors and the industry which they serve
4. To facilitate the exchange of technical information and encourage further research

### **3. GENERAL COMMENTS**

Now that the Government has introduced the new legislation relating to living away from home allowances (LAFH), more and more businesses in the construction sector are becoming aware of the proposed changes and are realising the full extent of the impacts that will flow from them.

The ACA is being approached to ensure that the views of its members and others in the industry are being heard by Australia's legislators, and to seek adjustments to the proposals that would avoid or contain what are considered to be the unintended, but significantly detrimental, consequences of aspects of the proposed changes.

While the current tax treatment of living away from home allowances and benefits has attracted the criticism that it has become subject to widespread misuse, the many businesses and their employees that are not misusing the current treatment stand to be unfairly disadvantaged by the changes proposed in the Bill. These changes would extend far beyond addressing misuse.

In many cases, the changes will unfairly impact on employees and employers where employment arrangements have been negotiated on the basis of the existing tax treatment. Contrary to press and general expectations, by far the largest group of employees in contracting firms that will be impacted by the changes are union and enterprise agreement staff.

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The current tax treatment of LAFH allowances has helped business in a wide range of industries attract and relocate staff, particularly in remote and regional Australia. The changes proposed will raise costs, reduce competitiveness and act as a barrier to attracting and relocating staff. In addition, the lack of clarity on provision/interpretation of any class orders around PAYG variations from the ATO means that employees will need time to deal with the changes.

## **4. THE TAX CHANGES WILL HAVE A WIDESPREAD AND DETRIMENTAL IMPACT**

The changes will have a very widespread impact and the detrimental effects will extend to the many businesses and employees in non-mining trade exposed industries that are under such intense pressures in the face of the strong dollar among other factors.

The impacts will also extend to the many businesses and employees in those parts of the construction sector that are also under intense pressures posed by current market conditions.

While employers and employees will appreciate the additional time provided to prepare for the commencement of the new provisions, a narrow interpretation on what constitutes a variation of contract may jeopardise transitional relief being available for the full period contemplated. If the tax changes are to proceed at all, they should not be the subject of reduction for material variations because most existing arrangements will be varied during their lifetime.

Importantly, the cost of the tax may be passed on to clients as construction contractors seek to maintain the viability of their businesses. This will not only increase the cost to private sector clients but also government sector clients (and through it the general community), thus potentially negating significant aspects of the underlying policy behind the tax proposals.

The proposed changes will:

- Make it more expensive for businesses to attract and retain the temporary residents who help many contractors across a very wide range of industries address skill shortages. This will also 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, or through the potentially significant increase in costs involved;
- Make it more expensive for businesses to relocate their resident workforce, especially in remote and regional Australia and, therefore, increase the costs associated with adapting to the rapid changes in industrial composition and the location of economic activity;
- Be unfair for temporary resident employees who have entered into residential leases on the basis of the tax concessions, especially employees on relatively low incomes, and create complexity in relation to temporary residents. It is a

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known fact that the cost of basic accommodation in remote areas is prohibitive, with annual rents often exceeding \$100,000.00 and purchase prices for residential accommodation exceeding \$1m.

- Significantly impact the movement and flexibility of employees across Australia and New Zealand which is important for businesses with large employee populations in both countries;
- Raise costs and intensify skilled labour shortages in the, already stretched, engineering construction sector;
- Impose additional liabilities for employers in respect of payroll tax, workers compensation premiums and superannuation contributions when amounts currently provided as fringe benefits are paid as taxable allowances against which employees can claim deductions. They also potentially affect income protection insurance and some long service leave calculations;
- Introduce confusing interpretations on taxation issues such as between PAYG and FBT liabilities. There will be increases in administrative costs for businesses eg accommodation and food/drink allowances that may be paid by a company when an employee is travelling that may now be taxable, and other costs may increase to track those on transitional versus new arrangements where there are many enterprise agreement employees and regular changes. Splitting the tax treatment of the food allowance between FBT and income tax will create an unnecessary complexity and administrative burden for employers;
- Reduce disposable incomes for employees including through their entitlement for family tax benefit and other income support programs; and
- Reduce the attractiveness for young people to take on remote work (often critical infrastructure work such as railroad maintenance) since they will not qualify for the proposed conditions to count as living away from home.

## 5. POTENTIAL FOR INDUSTRIAL DISPUTATION

In terms of the changes announced in November 2011, the absence of appropriate transitional provisions will mean that employment arrangements that include living away from home allowances will need to be re-negotiated. These re-negotiations will themselves be costly and will give rise to tensions and industrial disputation as employers and employees contest the incidence of the changed arrangements within the context of existing employment arrangements.

The requirement to maintain a place of residence to claim a tax deduction will not be able to be met by a significant proportion of existing allowance recipients including those on fly in/fly out arrangements with the potential outcome of industrial action to increase the take home pay of all workers on projects. Single employees residing with parents and those in share accommodation may be unable to benefit from the concessional tax treatment.

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There are other potential difficulties that include the treatment of LAFH allowances for superannuation purposes and the tax treatment of temporary accommodation provided to employees who are temporarily involved in LAFH arrangements.

The importance and relevance of transitional issues was recognised in the additional changes to the tax treatment of LAFH announced in the Budget on 8 May this year. Under the more recent proposals the date of effect of changes has been delayed until 1 July 2014 for employment arrangements in place on 8 May 2012. It is incongruous and poor tax policy not to put in place similar transitional arrangements in relation to the changes announced last November.

## **6. PROPOSED ACTION**

The ACA is seeking two primary changes to the Government's proposals together with the other issues referred to above being addressed:

- The introduction of transitional arrangements in relation to the measures announced last November; and
- An approach that is more closely targeted on the areas of abuse rather than the across-the-board changes which are currently on the table.

The breadth of detrimental impacts on business and employees would appear to be an unintentional outcome of the proposals, and ACA trusts that the Committee will recognise the sensibility of suggesting appropriate modifications along the lines suggested to ensure the changes are focused on areas of misuse with adequate transitional measures also being implemented.

L G Le Compte  
Executive Director  
13 July 2012

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## ANNEXURE A

### MEMBERS OF AUSTRALIAN CONSTRUCTORS ASSOCIATION

Abigroup Limited

Boulderstone Pty Ltd

BGC Contracting Pty Ltd

Bovis Lend Lease Pty Ltd

Brookfield Multiplex Constructions Pty Ltd

CH2M Hill Australia Pty Ltd

Clough Limited

Downer EDI Limited

Fulton Hogan Pty Ltd

Georgiou Group Pty Ltd

John Holland Group Pty Ltd

Laing O'Rourke Australia Construction Pty Ltd

Leighton Contractors Pty Ltd

Leighton Holdings Limited

Lend Lease Infrastructure Pty Ltd

Macmahon Holdings Limited

McConnell Dowell Corporation Limited

Thiess Pty Ltd

UGL Limited

Watpac Limited