

## **Productivity Commission Review of Remote Area Benefits**

Agribusiness Australia welcomes the opportunity to contribute to the matters raised in the Productivity Commission's (**the Commission**) Issues Paper of March 2019 (**Issues Paper**) forming part of its review of remote area tax concessions and payments (**the Review**).

### **About Agribusiness Australia**

Agribusiness Australia is the peak national representative body for the whole of supply chain agribusiness sector. Our purpose is to promote an efficient, profitable and dynamic Australian agribusiness industry through influential advocacy, strong and credible leadership, and information sharing and debate.

Agribusiness is the business of food production and supply. At the farming level, it includes the production, processing and supply of agricultural goods, as well as the by-products of farming, including fuels derived from farm waste. Agribusiness also reaches beyond the farm to include all aspects of bringing food to consumers: food preservation and storage, processing and manufacturing of food products, business strategy and financial support, food transport, sales and promotion.

Agribusiness activities are an integral part of the Australian economy. Nationally, the sector generates \$155 billion per year, which represents a 12% share of gross domestic product, and provides employment to approximately 1.6 million people.

Agribusiness Australia represents organisations that have operations in and are significant employers across regional Australia. These organisations play a very important role in supporting the communities in which they are based. It is in the best interests of Agribusiness Australia and its members, both economically and socially, that regional communities remain vibrant and places of opportunity.

### **Purpose of Review**

In summary, the scope of Review requires the Productivity Commission to:

- Examine the operation of the zone tax offset and fringe benefits tax (**FBT**) remote area concessions
- Examine the economic and employment impacts of the zone tax offset, FBT remote area concessions, and Remote Area Allowance
- Examine the operation of the Remote Area Allowance
- Consider whether the zone tax offset, FBT remote area concessions, and the Remote Area Allowance are delivering on their policy objectives and whether these objectives remain appropriate in a contemporary Australia
- Consider if business in remote areas should be provided with similar support
- Consider if there are alternative mechanisms to better provide this support to Australians residing in specified geographic areas.

Our comments are confined to those remote area benefits that apply to organisations as opposed to individuals. As such, this submission is principally concerned with matters arising from the



application of the FBT remote area concessions. Any such limitation on the scope of our comments should not be read as diminishing Agribusiness Australia's support for well-designed taxation measures that operate to ensure individuals residing in regional Australia are not economically disadvantaged by their physical location.

### **Format of submission**

Questions raised in the Issues Paper were grouped according to 'information request'. Our responses follow the order in which the information requests appear in the Issues Paper.

Where relevant, we have provided responses to specific questions not included as part of an information request in the Issues Paper at the conclusion of this submission.

### **Information Request 1**

#### *Feedback and input on the Commissioner's analytical approach*

Agribusiness Australia supports the Commission's analytical approach as outlined in broad terms in the Issues Paper.

Given the rather broad range of the estimated cost of the FBT remote area concessions reported in the Issues Paper (est. \$120m to \$1.2b), it is apparent that a lack of meaningful data exists in relation to the breadth of application of these measures.<sup>1</sup> In light of this, it is our view that the Commission may need to survey a sample of eligible employers to obtain a reliable estimate of:

- The number of employers that are currently accessing or that have historically accessed the FBT remote area concessions
- The types of FBT remote areas concessions that employers are currently accessing or have historically accessed
- The quantum of the cost of the FBT remote area concessions.

Agribusiness Australia would be pleased to assist the Commissioner in discussing any aspect of the Review with its members.

As an aside, it is interesting to note the Commissioner's statement in the Issues Paper that it:

*[H]as been struck by how little is known about the operation of [the remote area tax concessions and payments] and their impacts.*

Regardless as to who this statement is directed (i.e. whether it is limited to the individuals and organisations accessing or eligible to access the concessions and payments, or whether it extends to the those charged with their administration), it is concerning. Specifically, we are concerned it may be symptomatic of a gap in the administration of the remote area tax concessions and payments.

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<sup>1</sup> We note that an employer is not required to make a specific disclosure on its FBT return for a particular FBT year indicating it has applied the remote area tax concessions. On the basis that the FBT return is likely to be an employer's sole mechanism for reporting FBT information to the ATO (outside of an ATO-initiated review), it is unlikely that the ATO would have any meaningful data on the number of employers applying the FBT remote area concessions.



While acknowledging that the Australian income tax and FBT regimes operate under a self-assessment basis, under which taxpayers have responsibility for applying the tax laws to their affairs, the ATO's *Taxpayer's Charter* provides that the ATO will:

- *make [taxpayers'] obligations and how to meet them easy to understand*
- *develop products and services that fit with everyday use*
- *design products and services with the community.*<sup>2</sup>

It may be that in the case of the remote area tax concessions and payments there is a gap between the provision of assistance by the ATO and taxpayers' practical understanding of these things. We recommend that this be scrutinised as part of any review into the effectiveness of the concessions and payments.<sup>3</sup>

## **Information Request 2**

*The impact of the concessions and payments on wage and employment decisions*

*The impact of the concessions and payments on labour mobility and retention, and changes to these impacts as real value has eroded*

While the Issues Paper acknowledges the absence of any formal empirical data on the impact of the concessions and payments on wage and employment decisions, and labour mobility and retention, Agribusiness Australia can provide anecdotal evidence of the impact of the FBT remote area concessions on these things.

The provision of a suite of FBT remote area concessions to an eligible employee can provide a significant economic benefit to that employee. Such an economic benefit has the potential to influence an individual's decision to seek and/or accept a role in a remote location.

Relevantly, our members have traditionally offered packages incorporating benefits subject to the concessions in seeking to fill roles requiring skilled or experienced individuals that are otherwise able to access employment opportunities in metropolitan areas.

For example, the following table sets out the potential net economic benefit derived from a package comprising salary of \$150k, the provision of accommodation worth \$25k and the provision of residential fuel worth \$5k under a remote location compared to a non-remote location, and also where the package comprises salary only.

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<sup>2</sup> Australian Taxation Office, *Taxpayers' Charter – Essentials* [NAT 75142-11.2018 C297-00008] (2018).

<sup>3</sup> Although, it should be noted that the ATO has confirmed it is considering whether further guidance is required regarding the technical interpretation of the remote area housing exemption, which forms part of the FBT remote area tax concessions – Anna Longley (Assistant Commissioner), *Fringe Benefits Tax 2019 ATO Update* (2019).



	Remote location	Non-remote location	Salary only
Base salary	150,000	150,000	180,000
Remote area benefit:			
<i>Accommodation</i>	25,000	25,000	
<i>Fuel</i>	5,000	5,000	
<b>Total package value pre-tax</b>	<b>180,000</b>	<b>180,000</b>	<b>180,000</b>
Tax on salary	(33,882)	(33,882)	(54,232)
Medicare levy <sup>4</sup>	(2,500)	(2,500)	(3,600)
Post-tax employer contribution			
<i>Accommodation</i>		(22,170)	
<i>Fuel</i> <sup>5</sup>	(2,444)	(4,888)	
<b>Net package value</b>	<b>141,174</b>	<b>116,560</b>	<b>122,168</b>

The example demonstrates the not insubstantial economic benefit that an individual in receipt of such a package can derive when eligible for the FBT remote area concessions. In this case, a \$24,614 benefit when compared to an identical package provided to an employee in a non-remote location, and a \$19,006 benefit compared to an employee offered the same pre-tax value package paid as salary only.

Our members have indicated that while the provision of FBT remote area concessions to skilled or experienced individuals is unlikely to influence wage and employment decisions (rather they are a product of such decisions), the economic provision of such concessions has the potential to impact labour mobility and retention decisions.

Although the potential net economic benefit derived by an individual is likely to be of primacy in a decision to accept a role in a remote location, the nature of benefits able to be provided under the FBT remote area concessions may be influential. For example, the provision of a unit of accommodation (e.g. a house) in a remote location to an employee not only attracts a full exemption from FBT but may also represent a not inconsiderable social incentive for the employee.

In addition to skilled and highly experienced individuals, our members have indicated that the provision of FBT remote area concessions can be an attractive force where offered to new entrants to the regional workforce. For example, it is not uncommon for our members to bundle benefits, to which the FBT remote area concessions apply, along with cash salary to trainees commencing employment in remote locations. These benefits principally tend to be those that assist the trainee in establishing themselves in a remote location (e.g. the provision of travel and accommodation) and may assist in retaining the trainee in the remote location subsequent to completion of their traineeship.

Our members have indicated that the real value of the FBT remote area concessions have not eroded since their inception. This is because the value of any exemption or reduction in taxable value associated with the provision of a remote area benefit is inextricably linked to the value of the benefit provided.

<sup>4</sup> Income tax and Medicare levy calculated using rates in place for the year ended 30 June 2018.

<sup>5</sup> Employee required to make a post-tax contribution to its employer to reduce associated FBT payable.



*The extent to which FBT remote area concessions influence employers' decisions between offering fly-in-fly-out and regular employment*

As our members do not have substantial fly-in fly-out operations, we cannot provide an insight into the extent to which the FBT remote area concessions influence employers' decisions between offering FIFO and regular employment.

*The materiality of the remote area FBT exemptions and concessions to business and industry*

The FBT remote area concessions have a material impact for many of our members. For example, in the FBT year ended 31 March 2019, one of our members provided remote area benefits to approximately 80 employees. Had the relevant concessions not applied, the estimated tax cost of these benefits would have exceeded \$1m, in which case the member indicated that there would have been a diminished likelihood that the benefits would have provided.

The same member estimates that it has approximately 700 of its employees located in remote areas (approximately 35% of its workforce) and that it is considering ways to structure remuneration packages to provide remote area benefits to eligible employees. The member views the FBT remote area concessions to be an effective remuneration tool for remote area employers.

*The likely impost on business and industry if the concessions or exemptions were removed*

It is likely that the removal of the FBT remote area concessions would give rise to a significant impost on our members and regional employers more broadly. It is our view that the removal of the measures would be of material detriment to employers with large remote area workforces and may lead to the restructuring of employment affairs.

### **Information Request 3**

*Which if any of the policy rationales given for special assistance for people in remote areas remain valid in contemporary Australia and why*

*Whether the policy rationales given to support the zone tax offset (and its previous incarnations) apply to the FBT remote area concessions*

The Issues Paper describes the 'original objective' of the FBT remote area concessions as lessening the impact of FBT on business operations in remote locations. While we cannot confirm that this was the rationale for the introduction of the concessions, we do not believe that there is evidence to demonstrate that this has changed.

While we do not disagree with the Commission's statement that changes in transport, communications and living conditions have improved aspects of life in remote areas, these things do not appear to have had any marked impact on the relative attractiveness of remote areas. Certainly, we cannot find any contemporary data to support such a conclusion.

Further, if population growth in remote areas is to be used as a measure of attractiveness of life in those areas recent statistics suggest that regional and remote Australia is certainly not keeping pace with the remainder of Australia.<sup>6</sup>

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<sup>6</sup> Consider estimates of the resident population of 'Remoteness Areas of Australia' produced by the Australian Bureau of Statistics (ABS) in *3218.0 Regional Population Growth, Australia* (released at 11:30am (Canberra time) on 27 March 2019). The ABS estimate that the population in what it designates 'Remote Australia' and 'Very Remote Australia' has declined since 2016 and that, while where there has been growth in the population of 'Outer Regional Australia', this has been outstripped by growth in both 'Inner Regional



Interestingly, a study of the legislative history of the FBT remote area concessions does not reveal any great insight into the reason behind their introduction. The FBT remote area concessions have been part of the FBT law, in one way or another, since the inception of FBT in 1986. It is noted, however, that concessions relevant to the provision of non-cash benefits to employees in remote areas were in place prior to the introduction of FBT.

Former section 26AAAA of the *Income Tax Assessment Act 1936* made clear that the Commissioner of Taxation had to take into account certain factors in valuing any housing accommodation provided to an employee.<sup>7</sup> As the then Treasurer and future Prime Minister, the Hon John Howard MP, pointed out in his second reading speech to the Income Tax Assessment Bill (No. 6) 1979,<sup>8</sup> 'remoteness or isolation of the area in which the accommodation is located [was] one such factor' with a tendency to reduce the amount of the taxable benefit.

There is, however, little detail provided in any of the extrinsic materials relevant to section 26AAAA that pinpoint the government of the day's rationale behind the inclusion of 'remoteness or isolation' as a factor in arriving at the appropriate value of a housing benefit provided to an employee.

While not strictly within the Commission's remit, in considering the future of the FBT remote area concessions it would make sense to recommend to Government that it annunciate a clear rationale for these concessions. In this regard, Agribusiness Australia consider that the policy rationales given for the zone tax offset and related arrangements, as set out on page 12 of the Position Paper, may be an appropriate rationale for the FBT remote area concessions.

#### **Information Request 4**

*What you consider to be policy objectives of the FBT remote area concessions*

As indicated in our response to the questions posed at information request 3, we believe that it is unclear from a review of the relevant extrinsic materials what the policy rationale for the FBT remote area concessions is.

It is, therefore, difficult to respond to the question of whether the FBT remote area concessions are delivering on their policy objectives.

Where the policy rationales given for the zone tax offset and related arrangements are treated as applying to the FBT remote area concessions, our members are of the view that the FBT remote area concessions are capable of aiding equity and regional development.

The example provided in our response to information request 2 attempts to demonstrate that at a personal economic level the FBT remote area concessions have a compensatory character likely to make up, at least in part, for the disadvantage associated with living in remote Australia. Further, as our members have indicated, to extent that the FBT remote area concessions can be used as an

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Australia' and 'Major Cities of Australia' – Australian Bureau of Statistics, *3218.0 - Regional Population Growth, Australia, 2017-18* (27 March 2019) Australian Bureau of Statistics  
<<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3218.02017-18?OpenDocument>>

<sup>7</sup> Section 26AAAA was repealed by the *Fringe Benefits Tax (Miscellaneous Provisions) Act 1986* as a result of the introduction of the *Fringe Benefits Tax Assessment Act 1986*.

<sup>8</sup> Subsequently enacted as the *Income Tax Assessment Act (No. 6) 1979*



incentive to attract skilled and highly experienced individuals as well as those entering the workforce to regional areas, they are likely to contribute to regional development.

*Whether the FBT remote area concessions should be kept*

*Ways to redesign the FBT remote area concessions so they are more efficient, equitable and simple*

*The anticipated benefits, costs and implementation issues associated with proposed reform options*

Agribusiness Australia believes that the FBT remote area concessions should be retained in their current format, albeit that a full exemption should apply to an expense payment benefit in respect of remote area housing rent connected with a unit of accommodation in a remote area.<sup>9</sup>

Our members have indicated that they find it difficult to comprehend why a full FBT exemption exists for the provision of a 'remote area housing benefit',<sup>10</sup> but why the reimbursement of a payment of 'remote area housing rent' attracts a limited reduction in taxable value.

Many of our members have sought to reduce their interest in residential property for use by employees (whether freehold or leasehold) for economic and commercial reasons. Accordingly, our members have advised that the actual provision of remote area housing to employees has become less common in recent times. Instead, it has been replaced by expense benefit arrangements (i.e. those in which the employer either reimburses or pays the employees rent expense directly).

The remote area housing rent concession is limited to a reduction in the taxable value of the benefit by 50% of so much of the recipient employee's actual expenditure.<sup>11</sup> Accordingly, rather than provide a benefit equal to the full amount of the employee's rental expense, our members have indicated that they are more likely to provide a benefit equal to half of the employee's rental expense so as not incur an FBT liability.

Agribusiness Australia does not consider that the extension of the existing remote area housing benefit exemption to remote area housing rent arrangements would have a cost to revenue as it is unlikely that FBT is being paid in respect of such arrangements due to the ability for employers to structure them without incurring an FBT liability.

### **Specific questions**

Our responses are limited to those questions that are pertinent to our membership.

*Is there scope to rationalise the three arrangements into one payment for people in remote areas?*

Rationalising the three arrangements into a single payment would represent a significant departure from the existing schemes under which the remote area tax concessions and payments are provided.

Our members have indicated they are pessimistic about such a change. Specifically, our members consider that the provision remote area concessions under the FBT law should remain intact as it is arguable private enterprise is more likely to have the ability to deliver non-insubstantial benefits that incentivise individuals to take up opportunities in regional Australia.

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<sup>9</sup> Subsection 60(2A) of the *Fringe Benefits Tax Assessment Act 1936*.

<sup>10</sup> Section 58ZC of the *Fringe Benefits Tax Assessment Act 1936*.

<sup>11</sup> Subsection 60(2A) of the *Fringe Benefits Tax Assessment Act 1936*.





*Should businesses in remote areas be provided with ZTO-like support?*

As a general rule, our members consider that any further tiering of the business tax system is undesirable as it is likely to result in additional complexity and it also may encourage entities to restructure their affairs in a manner to seek advantages to which they would not otherwise be entitled.

Instead, policy-makers should remain focused on incentivising individuals to take up opportunities in regional Australia.

*Are there alternative mechanisms to more directly support Australians residing in specified geographic areas?*

While perhaps outside the scope of the Review, our members firmly advocate for government to obtain a better understanding of regional Australia.

The Commission's statement that it was struck by how little is known about the operation of the remote area tax concessions is somewhat concerning but not unusual, and perhaps symptomatic of the ATO being geared toward taxpayers located in metropolitan Australia.

An example of this can be found in the ATO's recently released compliance approach to determining private use of vehicles, such as eligible utility vehicles, to access certain FBT exemptions. Where an employer meets the requirements outlined in the document, and relies on it, the Commissioner of Taxation not apply compliance resources to review the employer's ability to access the exemptions.<sup>12</sup>

Our members have indicated that the application of these exemptions is relatively wide-spread amongst employers in regional Australia where the provision of utility vehicles is relatively common-place. Further, many of our members would like the certainty offered by the ATO under its compliance approach. However, the practical requirements of the compliance approach, in particular the maximum distances drivers are permitted to travel, are unreasonable for employers located in regional Australia.

The ATO was made aware of concerns with the limited applicability of the compliance approach to regional employers, but was averse to providing different requirements for regional use for fear of increasing compliance costs.<sup>13</sup> Without dwelling on the fact that the FBT law already distinguishes between classes of employer based on their location as a consequence of the FBT remote area concessions, our members have expressed their disappointment with this apparent lack of flexibility demonstrated by the ATO.

In our members view, if the Government is concerned that the policy design of the remote area tax concessions is not operating effectively, it should also review those tasked with their administration.

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<sup>12</sup> Australian Taxation Office, *Practical Compliance Guideline – PCG 2018/3 Exempt car benefits and exempt residual benefit: compliance approach to determining private use of vehicles* (2018).

<sup>13</sup> Australian Taxation Office, *Practical Compliance Guideline – PCG 2018/3EC* (2018).