



15 October 2019

Messrs Jonathan Coppel and Paul Lindwall
Commissioners
Productivity Commission
Via email: remotetax@pc.gov.au

Dear Commissioners

I refer to the MCA's submission dated 7 May 2019 to the Review of Remote Area Tax Concessions and Payments and the Productivity Commission draft report dated 4 September 2019. The MCA welcomes the opportunity to provide a response to the draft report.

The MCA represents Australia's exploration, mining and minerals processing industry with a common purpose in advocating responsible policies to promote growth, prosperity and sustainability. Advancing responsible business practices through policy advocacy and practical support is an important part of our work.

For the reasons expanded upon below, the MCA urges the PC to recommend in the final report;

- No changes to the tax treatment of Fly in Fly Out (FIFO) and Drive in Drive Out (DIDO) workforce Fringe Benefit Tax (FBT) exemptions in line with the draft report.
- Aligning the current 100 per cent FBT remote area housing exemptions to include subsidies to employees by way of contribution to mortgage and rental accommodation, rather than removing the partial exemption as per the draft report.
- Retain the existing 100 per cent FBT exemption for the provision of employer provided remote area accommodation, rather than reducing it to a 50 per cent exemption as per the draft report.
- Ensure that any change to the current definition of remote area is fit for purpose and recognises that changes to population levels since the 1981 census do not automatically mean a town is now not remote.

Mining Regions and Workforce Mobility

The mining industry is of critical importance to the Australian economy and it should be recognised that while there have been changes in contemporary living conditions and improvements in transport, there are still significant challenges in attracting sufficiently skilled employees to remote regions. The issues are now more complex than when the current FBT rules and exemptions were put in place but are just as relevant and important to the ongoing viability of remote mine operations. Proximity to a medium sized regional centre is no longer sufficient in attracting the required number of skilled employees and their families. Partners and families of employees not engaged in mine operations are looking for suitable career opportunities, education and lifestyles that may be available only within proximity of coastal capital cities. The mining industry faces increasing costs in providing suitable, flexible and attractive employment arrangements and this gives rise to an inherent disadvantage when compared to other less remote employment options. There is a strong case for retaining existing FBT exemptions and modifying them as we have recommended above.

The majority of operating mines and associated downstream infrastructure in Australia are in regional Queensland, Western Australia and New South Wales with growing industries in South Australia, Tasmania, Victoria and the Northern Territory. In most of these remote areas, employer built and provided accommodation was initially the only available semi-permanent accommodation. In addition, the choice of alternative accommodation to suit individual employee requirements is limited and not anywhere close to the choice and optionality available in the major cities.

Mining projects have life cycles that vary greatly depending on the project and changes in economic conditions throughout the cycle, and therefore have different labour demands throughout. Often there might only be work for an employee for a small number of years.

The workforce requirements of the mining company change as the requirements of the mine differ throughout its life making it difficult for employees to envisage remaining at a particular location for more than a few years.

Notwithstanding the challenges associated with mining in remote areas, mining regions have generally had the highest rates of employment growth. Employment in the mining sector is more than double what it was prior to the mining investment boom. The minerals industry recognises its ongoing responsibility to support the socioeconomic development of the communities and regions in which it operates.

Given the impact upon employees of changing employment opportunities in remote areas and the impact on housing availability and cost of entry in terms of house prices/rents that are experienced as workforce requirements change, employees are reluctant to assume the risk of remote area home ownership or fixed long term rental (assuming it is even available). The majority of remote area employees do not regard themselves as long term residents of that region in the same way that city-based employees do.

Furthermore, employee preference in terms of living in remote towns vary as their personal and family circumstances change and they demand an increased choice of housing, schooling, partner employment opportunities and other amenities offered by the cities. This is particularly the case as their children become older.

It would be unrealistic to expect a mining company to sustain a 100 per cent FIFO/DIDO workforce model and it is also unrealistic to expect a mining company to sustain a 100 per cent local workforce in a remote location. Workforce planning and logistical requirements including; flights, accommodation and employee demands, mean that mining companies generally need to provide flexible employment arrangements and utilise a mix of FIFO/DIDO and residential options. This is the reality of developing, operating and managing remote mining operations in Australia today.

Furthermore, companies have made long term and extremely costly mine and infrastructure investments and associated housing decisions based on the belief that well established, long standing and reasonable tax settings would remain in place, or be improved upon. For those settings to be altered in a way that would significantly increase the cost of maintaining a remote area workforce would penalise the companies and encourage them to review their current workforce arrangements.

In summary and as stated in the MCA's previous submission, there are clear operational reasons for an employer to provide remote area housing in all circumstances. The draft report recognises the operational reasons for the provision of remote area accommodation by employers.

Concessions to address inequities in the FBT regime are justified

The draft report (page 228) contains the above sub-heading and it is followed by this paragraph;

'The most compelling argument for FBT remote area concessions is that they address inequities inherent in the FBT regime. In some cases, employers have operational requirements to provide goods and services (such as housing) to employees, and it would be inequitable to apply the full rate of the FBT'.

The MCA agrees with the above mentioned important paragraph because it summarises the key fact that remote area accommodation is provided for operational reasons and to subject it to FBT would be inequitable.

The draft report then considers whether the provision of remote area accommodation constitutes the provision of a private benefit to employees.

There is little or No Private Benefit to the Employee

The draft report incorrectly determines that there is an overly generous private benefit to the employee from the provision of the remote area accommodation. The report assumes that because most people have to pay the costs associated with their usual place of residence from after-tax income, the provision of remote area accommodation provides the employee with significant tax savings.

The draft report fails to take into account the importance of the lack of alternatives to employer-owned or sourced accommodation in the remote location. Nor does it take account of the lack of choice in accommodation available to employees in remote locations or the financial risk of committing to ownership or long term rental in the remote location. The cost of housing and rents in most of Australia's remote mining locations are volatile because they are linked to commodity prices (industry activity) at any given time, making access and investment difficult and highly risky when compared with the conditions in major population centres.

The draft report also fails to take into account the volatility of the mining industry and effect on the tenure of employment prospects in remote locations and the fact that the personal circumstances for most employees will change through their working lifecycle. Partners of miners will look for employment opportunities and to advance their careers at different times, children's educational needs will change particularly as they progress past primary school, access to appropriate medical and treatment facilities is important to some families affected by illness or disability, access to cultural/sporting facilities or events could also mean that some are not prepared to reside in remote areas.

These lifestyle considerations or personal attributes of potential employees work against undertaking employment and residing in remote locations and mean that the provision of the remote area accommodation is not a form of private remuneration or benefit to the employee, but rather a necessary and unavoidable business cost for the employer. The imposition of FBT on the cost or value (however determined) of the provision of this remote area accommodation would add an additional financial burden to the already high cost of remote area employment.

Compliance Costs

The draft report notes the additional compliance costs associated with the implementation of the recommendation to reduce the 100 per cent exemption to 50 per cent. The report fails to adequately elaborate on those additional compliance costs.

A change to the FBT regime as recommended by the report would mean that employers would have to determine the market value of accommodation provided to employees in remote areas and then report 50 per cent of that value for FBT purposes. Most employers would need to engage external valuation firms to calculate the value and it will need to be done on a house-by-house basis and likely reviewed each year and at the time of change of employee tenant. The draft PC report estimates that there are approximately 36,000 to 46,000 homes impacted, thus highlighting the enormity of the additional compliance burden on employers. There is also an inherent interdependence between the mining operation and the value of nearby housing that could skew the value of the benefit. It would seem artificial and unfair if the very existence of the employer's mine operation were to raise property values or rents which, in turn, would increase the FBT cost to the miner. The valuation could be circular in these circumstances and result in unfair FBT outcomes.

Removal of customary to provide housing test

The draft report recommends the removal of the provision that enables employers to claim the FBT concession because it is “customary” to provide housing. The report argues that the ‘customary’ rule allows some employers to use the concession in locations where there is sufficient alternative accommodation available (refer page 239).

The draft report recommends that the test of whether it is necessary for the accommodation to be provided be limited to either the nature of the employer’s business is such that employees are required to move frequently from one location to another or that there is insufficient suitable accommodation available near the place of employment (other than that provided by the employer).

The MCA contends that the removal of the “customary” test is particularly harsh for our industry sector and effectively double counts the value of the perceived benefit. If the view is that a 50 per cent value of accommodation is a fringe benefit in a remote area, then removing the customary test means that 100 per cent of the value will be subject to FBT in situations where it is customary to provide remote housing because there is limited choice available. It is therefore inequitable to impose FBT due to the fact that the housing location is in a remote area with lack of choice, lack of large city amenities and always subject to the volatility of ongoing employment. There is no “overly generous” private benefit to an employee in those circumstances.

Alignment of employee provided accommodation with 100 per cent FBT Exemption

The draft report recommends that the current 50 per cent FBT concessions on employee-sourced housing (rent or mortgage assistance) be removed on the basis that there is no operational reason for employers to provide assistance. The draft report argues that if employees are able to secure their own housing, then employer assistance is substitutable with wage income.

The MCA contends that the employee-sourced housing should, at a minimum, continue at the current level of a 50 per cent FBT concession in recognition of the partial private nature of the benefit. Preferably, given the insignificant number of these arrangements and their low value, as noted by the PC in the draft report, the 50 per cent FBT concession should be increased to 100 per cent to align with the current treatment of employer provided housing. This would reduce FBT compliance costs as well as removing a slight distortion through the different FBT treatment that currently exists between employer and employee provided housing.

Provision of Holiday Transport

The draft report recommends that the existing partial FBT concession on holiday transport be removed because it directly benefits employees and the expenses are generally private in nature. The PC notes that the aggregate tax from the holiday transport concession is small-up to \$10 million (page 247).

The holiday transport FBT concession is targeted in that it is a partial concession, capped at the cost equivalent of transport from the remote location to either the place where the employee and their family lived prior to relocating to the remote area or the capital city of the state where the employee lives.

The MCA contends that the current FBT treatment should continue because the amount of the private benefit, if any, is clearly closer to 50 per cent rather than 100 per cent as suggested by the PC. The draft report fails to recognise that the cost of travel from the remote location back to a city or previous location is merely putting most employees in the same position as ordinary workers and that the cost only arises due to the fact that the employee’s place of work is a remote area. The continuation of the partial 50 per cent concession in limited circumstances with a dollar amount cap is a reasonable outcome that partially addresses the inequities in the FBT regime (which the PC notes is a compelling argument for FBT remote area concessions on page 30 of the Draft report).

No Changes to the FBT treatment of FIFO and DIDO Exemptions

The draft report concludes that in the case of FIFO and DIDO workers, there are operational requirements to provide temporary accommodation, meals and transport and no clear benefit to employees that would warrant the imposition of FBT. In other words, the FBT exemption is required to address a clear inequality in the overall FBT regime.

The MCA agrees with that conclusion.

Definition of Remote Area

The draft report notes the case for retaining geographical boundaries, but caveats it on the proviso that the FBT exemption for company provided housing is reduced to a 50 per cent concession.

The MCA agrees that retaining geographical boundaries is appropriate. The MCA also agrees with the proposition contained in the draft report that these boundaries be reviewed in the future. A review period of, say every 15 years is appropriate and reasonable taking into account the need for stability in tax settings and likely population changes. We recommend that the average of the last three census results be used every 15 years.

The MCA accepts that the use of the 1981 census data for determining population levels should be addressed. However, it is important to understand that just because the population of a remote town might now exceed the 14,000 level that is relevant for the test of remoteness for the FBT exemptions/concessions; this does not mean that they should cease being treated as remote. As noted above and in the draft report, personal needs and lifestyle choices have changed since the original criteria was set and other key factors now affect the choice of whether a potential employee moves to a remote location. Hardship factors and access to transport are not so relevant now but have been replaced by choice of suitable schools, availability of amenities, health services, partner and family employment opportunities, access to arts and cultural activities, all of which are important factors that are relevant to determining whether a town is remote. Indeed, an established town could become remote if sudden growth renders the community's essential services insufficient. For example, if an employer (miner) embarks on a large scale development near a town and brings in a large number of employees the town's existing resources and infrastructure (schools/medical centres etc.) may be unable to cope.

The MCA contends that the relativity of the remote area population as a percentage of Australia's population in 1981 compared to Australia's population in the recent 2016 census is a good approximation for redoing the boundaries and the test of remoteness.

For example, the population of Australia was 14.93 million in 1981 and it was 23.40 million in the most recent 2016 census. Take the 1981 14 000 population limit and multiply it by the fraction of the 2016 Australian population divided by the 1981 population number to arrive at the new threshold population number for the definition of remote for the purpose of the FBT remote area tax exemptions and concessions. This would mean the population threshold number became 22,000 (rounded up). We would recommend that this be rounded to a simple 25,000 test. This is a simple approach that produces a reasonable number that is consistent with the need to recognise that towns are still remote compared to cities in the 21st century.

However, as noted above we do not support a census test in isolation, as there may still be towns with a population of 25,000 which do not have the amenities to attract and retain the skilled workforces required by the mining sector. Accordingly, another test needs to be developed to supplement the simple census test, to ensure that towns greater than 25,000 can in appropriate circumstances still be classified as remote. That is, towns with a population of less than 25,000 will be deemed to be remote and those greater than 25,000 can also be remote if they satisfy other agreed criteria.

The MCA disagrees with the draft report statement that the geographical boundaries be retained on the proviso that the FBT housing concession be reduced to 50 per cent. For the reasons outlined in

this letter, the MCA contends that the existing FBT remote area housing exemption is fit for purpose and that it would create inequity if it were reduced. The geographical boundaries approach to determining remote locations is the best practical method to implement the FBT in a way that is clear, provides certainty and avoids potential disputes with the ATO. The approach should be retained and updated as per our suggested approach outlined above.

If you would like to discuss this letter please contact me

Yours sincerely

ROSS LYONS
GENERAL MANAGER - TAXATION