

The Hon Josh Frydenberg MP
Treasurer of the Commonwealth of Australia
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

29 April 2019

Productivity Commission Consultation Submission - Remote Area Tax Assistance

Dear Sir

1. The National Automotive Leasing and Salary Packaging Association (**NALSPA**) welcomes the opportunity to make a submission to the Productivity Commission in relation to the issues and questions outlined in the consultation paper released for comment in March 2019, titled “Remote Area Tax Concessions and Payments” (**Consultation Paper**), which was prepared in response to Treasury’s request to undertake a study into the zone tax offset and related remote area tax concessions and payments.
2. We flag our interest and relevance as the representative body for Australia’s major salary packaging providers, who administer benefits relevant to the concessions. Further information regarding NALSPA is available at www.nalspa.org.au. Our submission specifically addresses the Fringe Benefits Tax remote area concessions (**FBT remote area concessions**) as outlined in the *Fringe Benefits Tax Assessment Act 1986 (FBTAA)*, based on our experience assisting employer clients operating in remote areas of Australia. We outline several policy considerations in relation to the current design and purpose of the FBT remote area concessions, including key areas for both reform and improvement.

Executive Summary

3. Remote and regional Australia is a key economic driver of Australia’s economy, accounting for around 30 per cent of our annual GDP¹, with a particular focus in the mining, farming and tourism sectors. The trend of internal migration away from these areas and towards cities has resulted in rising pressure of urban housing costs and urban congestion, whilst undermining the sustainability of remote and regional communities. Failure to sustain and build regional and remote communities has the potential to have significant detrimental economic and social impact for our nation.
4. We consider that the existing FBT remote area concessions are not optimally designed and are overly complex, leading to a lower take up than desirable by eligible individuals. As a result, the FBT remote area concessions, in their current guise, struggle to achieve the original purpose of encouraging and supporting employment in regional and remote Australia by helping to adequately combat challenges faced with overpopulation in our major cities, most notably through the reasonable mitigation of the heightened costs associated with living outside of major cities.

¹ https://infrastructure.gov.au/departments/statements/2018_2019/ministerial-statement/2018-19-Regional-Ministerial-Budget-Statement.pdf

5. We suggest a reform of the current FBT remote area concessions, to align with the original objectives of remote area assistance programs. We believe that a revamp would provide enhanced incentive for organizations to invest in remote and regional communities, allow for far greater and broader uptake by individuals, in turn addressing wages stagnation in remote and regional environments, helping to ease cost pressures of such locations and assisting to ease urban congestion pressure.
6. We propose the following reforms to the current FBT legislation, which are expanded upon below:
 - Update remote area definition
 - Remove customary requirement on remote area housing
 - Simplify remote area housing reductions classifications
 - Equalizing FBT outcomes for remote area housing and accommodation
 - Equalizing FBT outcomes for those who work in a remote area, but live in a non-remote area
 - Introducing Regional Employer concessions
 - Expanding fuel benefit to water

A. Overview and evolution of current arrangements

Origins of remote area support

7. The remote area concessions and exemptions were introduced as a necessary attraction and retention tool for employment in remote areas. The provisions were introduced to provide tax relief to those employers operating in remote areas, as a tool to counter some of the financial disadvantages of living and working in remote locations for employment, to ensure wages remain competitive with urban counterparts and to support employers who invest in remote locations.
8. When the FBTAA was introduced in 1986, remote area housing was not exempt from FBT, instead treated as a special category of housing assistance. Under the rules in place from 1986 to 2000, a choice could be made to either adopt statutory values based on whether or not the accommodation was shared, or to use a value based on a 40 per cent reduction from market value. This reduction was subsequently increased to 50 per cent.
9. In 1997, an exemption from FBT was introduced for remote area housing provided by a primary producer or mining employer. In 2000, following a period of consultation, this was extended to an exemption for all remote area housing where the provision of accommodation was necessary and customary in the industry in question. As outlined in the *A New Tax System (Fringe Benefits) Bill 2000 Explanatory Memorandum*, the purpose of widening the exemption to all employers operating in a remote area was to deliver cost savings and reduce record keeping costs for employers.

Current operation of remote area support

Who qualifies for the remote area concessions?

10. The FBTAA outlines the relevant concessions available to employers who operate in remote areas. Section 58ZC(2) of the FBTAA defines a remote area as a location that is not in, or adjacent to, an eligible urban area. Pursuant to section 140, there are three different types of classification of remote areas, as defined by the 1981 census population:

Classification 1:

- not in Zone A or Zone B for income tax purposes;
- at least 40 kms from an urban centre that had a population of 14,000 to less than 130,000; and
- at least 100 kms from an urban centre that had a population of 130,000 or more.

Classification 2:

- in Zone A or Zone B for income tax purposes;
- at least 40 kms from an urban centre that had a population of 28,000 to less than 130,000; and
- at least 100 kms from an urban centre of 130 000 or more.

Classification 3:

- the employer is a certain regional employer;
- the employer is providing a housing benefit; and
- the location is at least 100 kms from an urban centre that in the 1981 Census had a population of 130,000 or more.

11. Certain regional employers include certain hospitals, charitable institutions and police services.

Remote Area Housing Exemption

12. In order to qualify for the remote area housing exemption under current law, employers must meet the following criteria as outlined by section 58ZC of the FBTAA:

(a) during the whole of the tenancy period, the unit of accommodation was located in a State or internal Territory and was not at a location in, or adjacent to, an eligible urban area; and

(b) during the whole of the tenancy period, the recipient was a current employee of the employer and the usual place of employment of the recipient was not at a location in, or adjacent to, an eligible urban area; and

(d) it would be concluded that it was necessary for the employer, during the year of tax, to provide, or to arrange for the provision of, residential accommodation for employees of the employer because:

(i) the nature of the employer ' s business was such that employees of the employer were liable to be frequently required to change their places of residence; or

(ii) there was not, at or near the place or places at which the employees of the employer were employed, sufficient suitable residential accommodation for those employees (other than residential accommodation provided by or on behalf of the employer); or

(iii) it is customary for employers in the industry in which the recipient was employed during the tenancy period to provide residential accommodation for their employees free of charge or for a rent or other consideration that is less than the market value of the right to occupy or use the accommodation concerned; and

(e) the recipients overall housing right was not granted to the recipient under:

(i) a non-arm ' s length arrangement; or

(ii) an arrangement that was entered into by any of the parties to the arrangement for the purpose, or for purposes that included the purpose, of enabling the employer to obtain the benefit of the application of this section.

Remote Area Housing Assistance Concessions

13. In addition to the specific housing exemption outlined above, concessions also exist for alternate remote area accommodation benefits. Notably, these concessions have remained largely unchanged since the establishment of the FBTAA in 1986. As explained in the *Explanatory Memorandum* to the *Fringe Benefits Tax Bill 1986*, these concessions were introduced ‘to assist employees to acquire houses in remote areas instead of the employer supplying central accommodation.’
14. Given the current legislation under section 60 is complicated and difficult to follow, we have not provided specific extracts, but instead have summarised the reductions below, as outlined in the Australian Taxation Office’s *FBT – Guide for Employers*:

Concession	Criteria	Reduction available
Remote area loan	<ul style="list-style-type: none"> • you provide a loan fringe benefit connected with a dwelling to your employee; • the employee occupied or used the dwelling as their usual place of residence during part of the FBT year (the occupation period) when they had to repay some or all of the loan; and • the remote area definition as outlined in section 57ZC is met. 	<ul style="list-style-type: none"> • Reduction of 50% of the taxable value of the loan fringe benefit that relates to the occupation period.
Remote area interest	<ul style="list-style-type: none"> • you provide an expense payment fringe benefit for interest accrued by your employee on a remote area housing loan connected with a dwelling; • that employee occupied or used the dwelling as their usual place of residence during part of the FBT year (the occupation period) when the interest accrued; and • the remote area definition as outlined in section 57ZC is met. 	<ul style="list-style-type: none"> • Reduction of 50% of the taxable value of the expense payment fringe benefit that relates to the occupation period.
Remote area rent	<ul style="list-style-type: none"> • you provide an expense payment fringe benefit for rent accrued by your employee for a unit of accommodation; • the employee used the unit of accommodation as their usual place of residence during part of the FBT year (the occupation period) when the rent accrued; and • the remote area definition as outlined in section 57ZC is met. 	<ul style="list-style-type: none"> • Reduction of 50% of the employee's expenditure that relates to the occupation period. • The reduction applies to 50% of the employee's expenditure (the gross rent), not to 50% of the taxable value.
Remote area residential property	<ul style="list-style-type: none"> • you provide an employee with a property fringe benefit consisting of land, or house and land; • the employee's property is a remote area residential property; and • the remote area definition as outlined in section 57ZC is met. 	<ul style="list-style-type: none"> • Reduction of 50% of the taxable value of the property fringe benefit.
Remote area residential property expense payment benefit	<ul style="list-style-type: none"> • you provide an expense payment fringe benefit to your employee; • the employee's expenditure is in respect of a remote area residential property; and • the remote area definition as outlined in section 57ZC is met. 	<ul style="list-style-type: none"> • Reduction of 50% of the taxable value of the expense payment fringe benefit.
Remote area residential option fee	<ul style="list-style-type: none"> • you provide an employee with a property fringe benefit; • their property is a remote area residential property option fee; and • the remote area definition as outlined in section 57ZC is met. 	<ul style="list-style-type: none"> • 50% reduction of the taxable value of the property fringe benefit.
Remote area residential property repurchase consideration (section 65CC)	<ul style="list-style-type: none"> • you provide your employee with a property fringe benefit; • the property is remote area residential property repurchase consideration; and • the remote area definition as outlined in section 57ZC is met. 	<ul style="list-style-type: none"> • Reduction of 50% of the taxable value of the property fringe benefit. • However, the 50% discount is denied on that portion of a benefit, arising on repurchased, which is attributable to you paying a repurchase price excessively above market value under a buy-back clause in a remote area housing agreement.

15. We specifically note the variances across the concessions (some based on expenditure, some on taxable value), which unnecessarily increase the risk of taxation compliance errors and complicate employer policies.

Remote Area Fuel Reduction

16. Under section 59 of the FBTA, employers can reduce the taxable value of residential fuel provided to employees who are also eligible for remote area housing assistance by 50%, subject to certain criteria. Residential fuel means any form of fuel (including electricity) for use for domestic purposes. It does not include water, although free water provided to an employee under a residential tenancy agreement can be included as part of a remote area housing benefit.

Remote Area Holiday Transport

17. Pursuant to section 61 of the FBTA, under an award or industry custom, an employee working in a remote area may be reimbursed for the costs of travelling from (or may be provided with transport from) the remote area for the purpose of having a holiday and, similarly, back to the remote area after the holiday. The employee may also be entitled to be provided with accommodation and/or meals in connection with the transport from and to the remote area.
18. Employers may reduce the taxable value of the fringe benefits arising from the transport, accommodation and meals by 50% if:
 - the employee travels from the work locality to the town where they lived before being engaged to work at that locality;
 - the employee travels to the capital city of the state or territory in which the workplace is located (for this purpose, Perth and Adelaide are treated as if they were the capital cities of Christmas Island and the Northern Territory, respectively);
 - the holiday is of three working days or more; and
 - where the benefit is an expense payment fringe benefit, you are provided with proof of the expenditure.
19. The reduction in taxable value extends also to holiday transport, accommodation and food benefits given to the employee's family, whether accompanied by the employee or not. If a child or the spouse of the employee doesn't live at the employee's work locality, the concession will also apply if the holiday travel by the spouse or child is for the purpose of meeting the employee.
20. Pursuant to section 60, where a particular fringe benefit satisfies all but one of the requirements necessary to gain the concession described under Remote area holiday transport - not subject to ceiling, a reduction in taxable value may nonetheless be available. If the only requirement not satisfied is that of the locality of the place to which the employee travels from the remote area, and from which the employee travels to return to the remote area, you may reduce the taxable value of the fringe benefit by 50% of the taxable value, or 50% of a value defined as the 'benchmark travel amount' (whichever is less).

B. Economic and employment effects

21. The Consultation Paper outlined the difficulty in obtaining data regarding the FBT concessions, particularly at the level of detail required to examine whether policies are working. As the representative body for Australia's major salary packaging providers, we have exclusive access to a database of information regarding the materiality of the remote area FBT exemptions and concessions to business and industry.
22. Notably, FBT remote area concessions are highly valued by those who currently utilise the benefit, and it is not unreasonable to assume that for at least some of these employees their ability to relocate or remain in such employment is highly influenced by the availability of such benefits. However, based on our records, it appears the full extent of concessions are not being used effectively, due to a combination of complexity or unnecessary uncertainty.

23. Based on the 2016 Census, there are 904,633 workers living in small towns, and 860,425 workers living in rural locations.² As such, the potential reach of remote area concessions could be up to **1.7 million** Australians (subject to other remote area benefit criteria). However, based on data supplied by three major salary packaging providers, only **6,628** of their employee clients across the year ended 31 December 2018 had salary packaged remote area benefits. These salary packaging providers have calculated that between **31,019 and 67,658** of their total employee client population (who salary package benefits) work in a remote area.
24. Notably, the number of employees who salary package remote area fringe benefits are only a small percentage of the potential employees who would meet remote benefit eligibility criteria. It is viewed that the complexity in both eligibility requirements and benefit structure of the current law has led to a low take up of remote area salary sacrificing benefits. In turn, employees located in remote areas are therefore likely to be missing out on tax assistance opportunities, extending the financial gap between urban and remote employees, and likewise an undefined number of employees are likely to unfortunately not have considered such assistance (or considered it to be too minable) when making a decision relating to remote/regional job opportunities.
25. This is suggestive that re-consideration of the level and range of benefits, and the simplicity of the policy and law, may be required.
26. In terms of total amounts claimed, the three major salary packaging providers have estimated annual salary packaged benefits (expenses) totalling \$78,938,783 for the year ended 31 December 2018. This represents an average value per annum of \$11,909 of salary packaging per employee. NALSPA would welcome further dialogue with the Productivity Commission, should the Productivity Commission seek further dissemination of the types of benefits currently being salary sacrificed.
27. The most commonly reported industry of employment in small towns under the 2016 Census was health care and social assistance. However, NALSPA data indicates that the industries of employees who commonly use remote area benefits include Mining, Employment, and the Welfare sector. Given inconsistency between those who commonly work in a remote area and those who receive benefits, the “customary test” within the current law (as discussed further below) may be preventing those who do work in remote areas to be eligible for the concessions. Further, it remains unclear when an industry can demonstrate that providing remote area benefits is customary in their industry. Whilst the need for remote tax assistance is reaching some of the expected demography in the region, the most in need employees may not be able to access, or be utilising the benefit effectively.
28. It is our view that the remote area tax concessions have failed to keep pace with a changing Australia, and do not reflect changes in demography, infrastructure and cost of living. The concessions need to be reviewed to provide financial support to a larger number of people living in remote areas in Australia, and to better incentivize employees (and employers) to re-locate/invest in such areas.

C. Objectives of remote area assistance programs

29. The terms of reference ask whether the arrangements are delivering on their policy objectives and whether those objectives remain appropriate in a contemporary Australia. We submit that assistance for people living and/or working in remote areas is critical now more than ever, to compensate for the rising disadvantages of living in those areas. However, consideration should also be given to the benefits of encouraging and supporting employment in regional Australia, given the challenges faced with overpopulation in our major cities.

² <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2071.0main+features1132016>

Cost of living in regional and remote areas

30. As recorded by the 2016 Census, the weekly median personal income for small towns (\$557 per week) was less than that reported for large towns (\$600) and major cities (\$696).³ Small towns refer to any location with a population of 200 to 9,999, and therefore are likely to meet the criteria of a remote area location (or an extended regional area location). Given the large income disparity faced by those who work in small towns, remote or regional area tax concessions are critical to bridge this gap. In addition to the lower incomes, the cost of accommodation is often higher in remote locations due to limited supply and the increased cost of development.
31. For Aboriginal and Torres Strait Islanders, 'remoteness has a substantial impact on the employment to population ratio'. Aboriginal and Torres Strait Islander people in non-remote areas were much more likely to be employed than those in Remote areas.⁴

Changes in the cost living in remote areas over recent decades

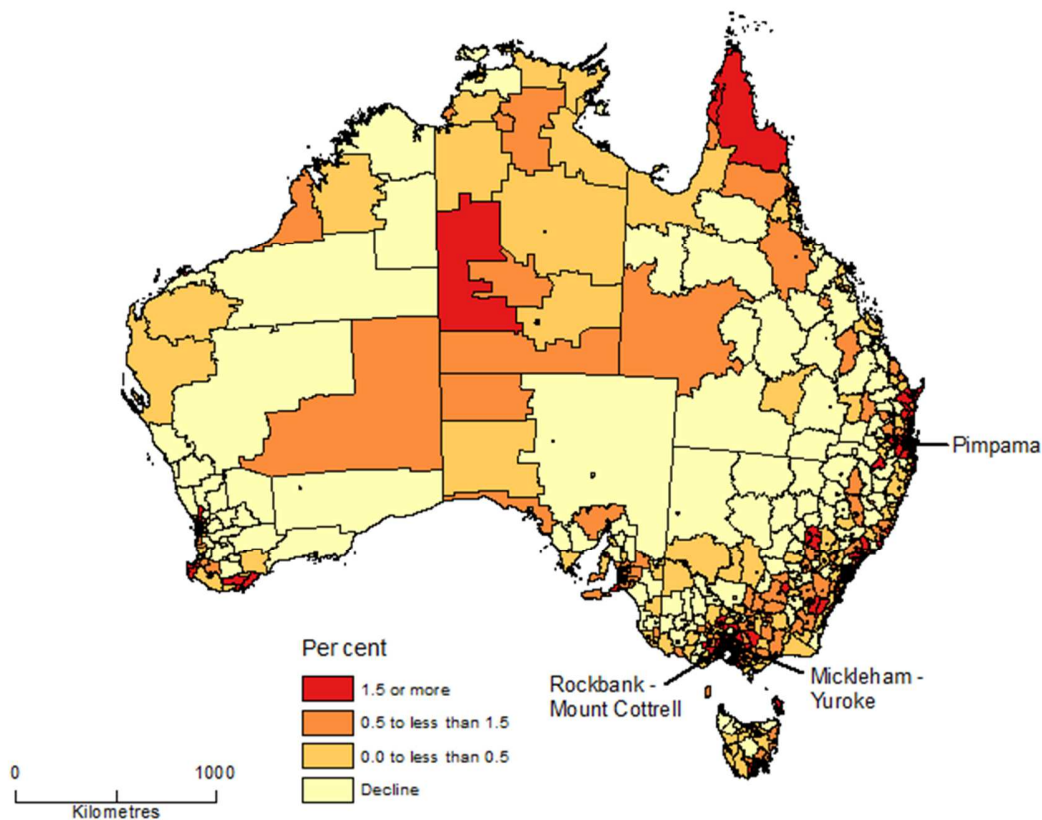
32. The 2016 Census also provides commentary regarding the contemporary population shift across Australia, declaring 'internal migration is the principal driver of population redistribution in Australia, leading to growth on the fringe of our major cities, as well as in selected regional and coastal centres, but also loss from parts of regional and remote Australia.'⁵ The current trend of employees migrating away from remote locations is a difficulty faced by remote area employers, and the remote area tax concessions are important incentives for workers to move away from heavily congested urban areas.
33. In terms of population growth between 2017 and 2018, capital city growth has accounted for 79% of Australia's total population growth.⁶ The only capital city to have a decline in population was Darwin, which experienced a net internal migration loss of 2,800 people, a perhaps unsurprising outcome given Darwin's relative remoteness to other capital cities.
34. The below map outlines Australia's population change from 2017 to 2018, clearly highlighting the decline in population growth in regional and remote areas:

³ <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Small%20Towns~113>

⁴ <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/2076.0Main%20Features1322016?opendocument&tabname=Summary&prodno=2076.0&issue=2016&num=&view=>

⁵ <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Population%20Shift:%20Understanding%20Internal%20Migration%20in%20Australia~69>

⁶ <http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/3218.0>



Changes in technology, transport, and infrastructure over recent decades

35. As outlined in the 2014 Census, ‘people aged 15 years and over living in outer regional and remote Australia were more likely than people living in major cities to experience difficulty accessing service providers ... The main services people had difficulty accessing were doctors, dentists, telecommunication services and government services such as Centrelink.’⁷
36. This is consistent with The Regional Australia Institute’s paper, *A submission to the Senate Standing Committees on Economics into the indicators of, and impact of, regional inequality in Australia*⁸, which outlines that a more rural a region, the lower the infrastructure and essential services. Specifically:

“Infrastructure and essential services support the activity and growth of local economies and the quality of life that a region needs to attract and retain residents and business. Distance is an inherent challenge to a region’s competitiveness in this theme. Areas that are close to metropolitan areas or that are regional Cities are competitive on both physical infrastructure and essential services measures. However, [remote areas] which have small populations relatively isolated from population hubs do not perform well on this theme. An increase in infrastructure quality can offset competitive disadvantage and should be a focus for policy.

⁷ <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4159.0>

⁸ <http://www.regionalaustralia.org.au/home/wp-content/uploads/2018/06/180503-RAI-The-indicators-of-and-impact-of-regional-inequality-in-Australia.pdf>

However, bridging the basic access gap requires engagement in innovative use of technology and other resources that alleviate the tyranny of distance.”

37. The Regional Australia Institute also suggests that availability of internet in regional and remote areas is far worse than in metropolitan regions, negatively impacting the workforce but also access to education.
38. Therefore, we consider the FBT remote area concessions an important tool to incentivise businesses to these areas, thereby improving access to technology, transport, and infrastructure and others services.

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

39. As set out in Box 3 of the Consultation Paper, key policy rationales to justify the zone tax offset include:
 - Equity: to compensate residents of remote areas for the various disadvantages of living in those areas. These were originally conceived of as uncongenial climatic conditions, isolation or higher costs of living; an alternative basis for comparison may be the level of access to public services.
 - Industry-specific assistance: to support industries located in remote areas by mitigating the higher costs of doing business (for example, freight).
 - Regional development: to actively encourage individuals to move to and work in remote regions. This includes historical justifications (an imperative to develop northern Australia’s resources, and to populate the north to shore up national security) and contemporary arguments (decentralisation).
40. We consider that the FBT remote area concessions, in its current design, only meet some of these policy rationales. As established earlier, the provisions were introduced to counter some of the financial disadvantages of living and working in remote locations for employment. As such, the first test regarding equality is met.
41. We submit that the FBT remote area concessions support industries located in remote areas by allowing businesses to provide competitive net of tax remuneration compared to those employers in major cities in a manner that is specifically tied to employment generation and support. We consider the review important to ensure the tax concessions provided to remote area employers remain equitable and wages remain competitive with urban counterparts.
42. As noted earlier, whilst the FBT remote area concessions do support and encourage individuals to work in remote areas, there needs to be consideration given to those working in a regional location that currently fall outside of the remote area defined regions, yet align with the abovementioned policy rationales. Given the current political landscape and focus on regional development, we submit that there needs to be an overhaul of the current legislative framework to more closely align the FBT remote area concessions with the zone tax offset.

Whether there is merit in moving away from remote area assistance based on concepts such as the relative costs of living, and instead basing assistance on more direct measures of disadvantage or need

43. Whilst we acknowledge the importance of concepts such as means testing for certain areas, we consider limiting the remote area concessions to only people with disadvantages would have negative outcomes. This would likely see the removal of FBT concessions for employers, removing the key benefits of providing support in a manner that drives employment and related investment in remote locations. By restricting to only disadvantaged individuals, employers in remote areas would lose their tax advantage over metropolitan employers, resulting in further migration away from remote areas by individuals to seek higher pay and living standards. The consequential employment shortage for remote area employers would lead to higher business costs and reduced output. The FBT remote area concessions are required as an incentive and direct means by which employers can motivate individuals to move into the more disadvantaged regions, and to support local employment.
44. Also, the salary packaging of fringe benefits is an efficient tool to government as it has several distinctive characteristics when compared to alternative concepts. These include:

Specificity: It provides government with a targeted tool that specifically supports the desired consumption behaviour. This contrasts with blunter tools, such as income tax policy, which delivers a cost to Government without providing an influence on consumer specific stakeholders or consumption behaviour more generally.

Majority of benefits provided to low-medium earners: A majority of the benefit provided to employees through salary packaging arrangements are generally provided to those in the low-medium income groups, due to the large market size for these earners.

Well accepted across industries: It is generally accepted across all industry sectors and is embedded as a 'Best Practice' remuneration tool by the majority of Australia employers, companies and Government departments.

Robust yet easily managed: The process is embedded in remuneration policy and payroll processes across a range of sectors. This helps make it an efficient mechanism for Government to use, control and manage a benefit program. It is well understood by the market and has well established structures that support high levels of user compliance.

Directly targets remuneration levels: It is an effective tool in improving the value of employee remuneration levels which could help address, in part, stagnant wage growth and cost of living pressures in remote and regional Australia.

Directly targets employment: The ability to salary sacrifice FBT concessional remote and regional benefits is a direct mechanism to influence both employers and employees to move to remote and regional areas.

45. As such, we consider that the salary packaging mechanism is an effective and efficient mechanism to deliver such benefits and that it has capacity to further educate, promote and deliver such benefits to regional/remote employers and employees.

D. Options for revising current arrangements

46. The Consultation Paper seeks information on whether the current system of remote area tax concessions and payments is the most efficient, cost-effective, equitable, and simple way to provide that assistance. We have provided commentary below on reform opportunities with respect to the FBT remote area concessions.

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

Update remote area definition

47. The remote area definition has remained unchanged since the FBTA was introduced in 1986. Given the remote area parameters are based on population levels at the 1981 census, we consider it necessary to update the definition to reflect current population and living arrangements, and to better target areas for support based on policy objectives.
48. The simplest way of updating the remote area parameters would be to refresh the population thresholds. There are several factors that should be considered when updating the remote area definition. Firstly, the population thresholds should be updated to reflect the current Australian population. The thresholds should also be increased to take into account the growing Australian population in 2019 compared to 1981. Further consideration must be made to contemporary living preferences. In the 1980s, a larger number of people opted to live remotely, whilst there has been a shift towards urban living arrangements in the past decade, as identified in the 2016 Census. The definition of remote area should be expanded to incentivize employees to live and work in remote and regional areas and achieve the stated goals.
49. Population data does, in some instances, lead to an answer unintended by the original principles of the law design. The definition of urban centre does not take into account the varying levels of advantages amongst cities. For instance, both greater Sydney and greater Darwin are considered non-remote areas by the ATO, however as evidenced by the census data, individuals located in Darwin face far greater hardships than those in Sydney. An employee who works 40km from Sydney and 40km from Geraldton are both considered ineligible for the FBT remote area concessions, and yet face far different measures of geographical isolation and economic infrastructure. We consider it imperative to draw conclusions on what is considered a remote area beyond just population data.
50. If not relying solely on Census data, we are faced with a further challenge of how to set the remote area parameters. Applying subjective criteria, such as an ATO approved list of remote areas, would further complicate the eligibility criteria and lead to confusion if these areas observed an acute population growth, or if other ineligible areas faced population decline. Accordingly, we consider it imperative to rely on statutory rules rather than distances. An equitable and easy way to set remote area parameters would be to set a boundary of all postcodes that are considered urban, and allow all towns that are excluded to meet the remote area definition. This would allow areas on the border of urban and remote areas, such as Howard Springs and Palmerston in the NT, to qualify for the concessions. To combat internal migration and the population decline trend for remote areas, we also suggest refreshing the list of urban towns at set intervals of time.
51. Modernising the remote area definition would remove the disparity witnessed by employers who face different concessional treatment on housing benefits provided to employees in the same remote town. Some of our employer clients provide their employees with housing in the same apartment block. However, one apartment does not meet the distance requirements under remote area definition and therefore cannot apply the FBT remote area concessions. Under current legislation, the distance is calculated from the entry point of the housing via the shortest practical surface route to an eligible urban centre. One of the apartments is considered within the distance parameters of an urban centre due to the front door location in the apartment complex. It seems unjust for one employee to receive a reportable fringe benefit amount (RFBA) on their payment summary, whilst the other is RFBA free, whilst living in the same block.

52. Extending this further, some houses in the same remote town meet the remote area criteria, whilst another house on the opposite end of the town just falls outside of the remote area net. This can lead to two different FBT outcomes depending on where the accommodation is located within the remote area town. We consider that our suggested update, on extending the definition of remote area beyond just population data and distances, would remediate this shortcoming.

Remove customary requirement on remote area housing exemption

53. Currently, the remote area housing exemption is only available to employers where it is customary for employers in the industry to provide accommodation free of charge or less than the market value. There is no assessment criteria on what is considered 'customary', leading to confusion on whether the concession can be applied. Several issues arise from the lack of guidance provided by relevant legislation and administratively by the Australian Taxation Office (ATO) in this respect.
54. Given the private nature of remuneration packages, in particular knowledge of non-cash benefits, there is no published data on industries where remote area benefits are 'customary'. Furthermore, it is subjective in determining when it becomes 'customary' for an industry to provide remote area housing – does one or two employers suffice, or does it need to be a percentage of the industry? How long do you have to provide housing in your industry before it is considered 'customary'? Concurrently, should the 'customary' test apply to geographical locations – the provision of remote area housing may be common practice in remote areas for the Department of Defence, but not applicable to Defence employees working from metropolitan cities. Should the inconsistent provision of housing depending on location cause the 'customary' test to fail? Similarly, in the mining industry, businesses facing rapid growth may have the money to provide housing, whilst other employers facing financial difficulties may be forced to terminate this employee benefit. Furthermore, the customary test is limiting concessional treatment for employers where there is no budget or it is not common to provide housing (such as in the welfare industry). We consider it inequitable to only qualify for the FBT remote area concessions if the general perception leans towards housing being 'customary' in that industry.
55. Given the large number of variables and subjective nature of the customary test, we submit that the customary test must be subject to legislative reform. Critically, thought must be given to the original intention of the customary requirement. As outlined in *Taxation Determination 94/97: Fringe benefits tax: what does the phrase 'customary for employers in the industry' mean in relation to the provision of fringe benefits to employees?* the provision was introduced to restrict industries where it would be unique, rare or unusual to provide the benefit. This would, in practice, restrict employers in a retail industry, where it would be uncommon to provide housing to employees. However, consider an employee who is relocating to a remote area – such as rural Western Australia – to work in an outlet in Derby. The customary test would deprive the individual of a concession. Therefore, to compensate individuals fairly, the customary test would also have to provide a distinction between individuals already based in a remote area, and those who elect to move there.
56. Given the complexities surrounding the definition of customary and, arguably more importantly, the absence of any clear policy objective supporting this restriction, we propose eliminating subsection 58ZC(d)(iii) from the FBTAA. Whilst this would allow for all industries to access the concession, which we consider appropriate given the isolation and hardships faced by those who live in remote areas.

Simplify remote area housing reductions classifications

57. Currently, there exists seven reductions associated with remote area housing. The current legislation is complicated and difficult to follow, leading in our opinion to a lower than achievable take up by employers. To simplify the concessions, we recommend reducing the number of reductions by

removing the low take up benefits such as remote area residential property expense payment benefit, remote area residential option fee and remote area residential property repurchase consideration. Further, as noted earlier, apply a consistency to the calculation of the concessions (taxable value vs expenditure base).

58. Further, the law becomes even more complex when overlaid with the ATO's interpretation of the law. For example, the ATO has stated that reimbursement of third party housing loan principle repayments is not a reimbursement 'in respect of' employee incurred property purchase costs, and therefore does not qualify for concessional treatment. This leads to an inequitable outcome for employees who choose to purchase their own home and those whose rent is reimbursed by the employer.
59. The remote area housing concessions only apply if the housing occupied by employees is their 'usual place of residence'. The ATO considers the following factors important when determining an employee's 'usual place of residence':
 - an employee's usual place of residence is normally found near to their fixed or permanent employment base
 - the terms of the employee's employment contract or award may indicate whether their move to a new place of residence is merely temporary or of a more lasting nature
 - the longer the employee is required to work at a place, the more indicative it is that the move is not temporary in nature.
60. The criteria, once again, is complicated and must be considered on a case by case basis. The determination difficulty leads to low take up and fails to maximise the benefit to taxpayers. We recommend introducing a clear, statutory timeframe (such as 12 months occupation) that indicates whether the residence is used on a permanent basis and therefore qualifies as usual place of residence.
61. On a separate note, the usual place of residence criteria fails to compensate for employees who operate on short or medium term projects, whereby they move from one remote area to another on a temporary basis. The rent incurred by these employees is not eligible for the reduction, which produces an inequitable tax outcome compared to other employees assigned long term projects.

Equalizing FBT outcomes for remote area housing and accommodation

62. The current framework for remote area housing exemptions and reductions produce discriminatory outcomes. Currently, remote area housing as provided by an employer is treated as 100% exempt, but all other forms of remote area accommodation is only treated concessionally with a 50% reduction. This does little to achieve the original intention of the legislation. The tax liability for two employers who provide housing to employees in the same remote area is then dependent on whether they provide the housing outright or reimburse relevant costs, which is inequitable and unfair.
63. To remediate the tax inequality issue faced by employers, we recommend increasing the reduction to 100%, which will also in turn promote remote areas and help employers relocate from congested urban areas.
64. This equalisation may also encourage employees to buy houses, in turn reducing the housing monopoly certain mining employers have in certain remote areas. Residents will potentially benefit from uninflated housing and rental prices.

Equalizing FBT outcomes for those who work in a remote area, but live in a non-remote area

65. The remote area concessions were designed to provide tax relief to those employees who live and work in a remote area. The current concessions give no consideration to those who work in an area so isolated, but choose to reside in an area closer to an urban centre for greater standards of living, which falls outside of the remote area net. Such individuals are excluded from any concessions, despite the fact that they are often required to travel long distances to work each day and are subject to the same disadvantages of their remote area residing colleagues.
66. Moreover, on occasion remote towns have such low levels of accommodation that employers are forced to provide housing in nearby areas, which sit outside of the remote area definition. It would be inequitable for some employees to receive concessional treatment, and other employees who live closer to an urban centre purely due to logistical reasons to not receive remote area housing. Some employees would receive RFBA on their payment summaries, and employers would be required to pay FBT on some houses.
67. To remain fair for an entire employee population, as well as individuals who choose to live closer to urban areas, we propose eliminating the requirement of living in the remote area for benefits such as remote area fuel reduction and remote area holiday transport. Alternatively, given the increase in individuals electing not to live in remote areas, but are still required to work in one, we recommend introducing a concession on personal travel costs.

Introducing Regional Employer concessions

68. Developing regional Australia is a major policy area amongst both the Liberal and Labor parties for the Federal election of 18 May 2019, with a focus on encouraging individuals to relocate to regional areas. Currently, no FBT concessions exist for those who reside in regional areas. A concession or exemption would have the benefit of incentivising employees to relocate to these areas. Not only would this move employees away from the heavily congested urban areas, but it would also help develop and stimulate the economy through job opportunities.
69. Concessional treatment for regional employers is already commonplace in State based taxes. In Victoria, regional employers are subject to a lower payroll tax rate – currently half of that faced by metropolitan employers. In Queensland, the Back to Work scheme gives eligible regional employers a rebate of up to \$20,000 to hire an unemployed jobseeker in a full-time position. We consider it important for the targeting of Federal concessions to be consistent with the State tax system and provide regional FBT concessions.
70. The reforms proposed to provide relief to regional employers must also be simple and easy to understand. Equity is also paramount – simply expanding the current remote area concessions to regional employers would be too generous. Providing the current FBT remote area concessions but at a lower rate (for instance, a 25% reduction for regional area accommodation instead of 50%) would further complicate the already unclear legislation. Expanding the concessions would also require having an additional list of towns that constitute as a regional area. This would create confusion for employers on the border of remote and regional areas. The different regions and areas and rates would overcomplicate the system, and lead to poor uptake or inconsistent application.
71. Similar to the payroll tax rate in Victoria, we suggest creating boundaries of what is considered a regional employer by postcode, and allow employers who are based in those regions to be entitled to a FBT rebate. This would operate similarly to the current system of FBT rebates for certain not-for-profit organisations. Similar to the current system for rebatable employers, we propose a **\$10,000**

capping threshold for each employee. By keeping the concessions and rebates separate, this will allow for optimum up-take and correct/compliant application.

Expanding fuel benefit to water

72. The current fuel reduction benefit only applies to gas and electricity, with water excluded from the reduction. Notably, water bills in remote areas are often more costly for residents than their urban counterparts, due to the lack of infrastructure and greater distance travelled. Notably, the CPI for water in Darwin rose 154.6% over the past decade, the largest increase in the country for capital cities, and three times the national average increase, according to the *Cost of Living Report* by NT Council of Social Service.⁹
73. Given it is common practice to include water under a residential tenancy agreement is part of the remote area housing benefit, we consider it practical to expand the current residential fuel reduction to also include all residential utilities. This would lead to a greater equitable outcome to employees are provided with remote housing, and those who are just provided with a remote area housing concession.
74. Further, given the added costs of utilities in remote areas, we recommend revising the 50% reduction to be a full reduction. This would lead to greater parity between remote and non-remote employees.

Specific questions based on terms of reference

75. The Consultation Paper also contains a number of specific questions based on the terms of reference and initial research and consultation for the study, several of which we have addressed below.

Should the ZTO special area boundaries be redrawn to reflect contemporary settlement patterns?

76. As addressed above, we submit that boundaries must be redrawn to reflect contemporary settlement patterns. However, we consider that 'remoteness' extends beyond just a population issue, and therefore boundaries must also be consider economic remoteness and infrastructure.

Are there criteria that would help better target assistance in line with whatever objectives are deemed appropriate for remote area support?

77. We agree with the Cox inquiry that 'dissatisfaction with the taxation system is increased when the necessarily arbitrary nature of the zone areas is realised and individuals recognise the wide variations in conditions within the zones'. As per our suggestion above, we recommend also including regional support, as well as consideration for areas that are economically remote.

Should larger regional centres continue to be included in the arrangements?

78. As above, we recommend including a FBT rebate for regional employers.

⁹ <https://ntcoss.org.au/wp-content/uploads/2014/09/NTCOSS-Cost-of-Living-Report-No.-12-Ten-Year-Snapshot-of-COL-changes.pdf>

NALSPA would welcome the opportunity to provide further input throughout the consultation process, and would be pleased to discuss our letter with you in further detail. Should you have any questions in relation to this please do not hesitate to contact me.

Yours faithfully

Rohan Martin
Secretary