

Living Away From Home Allowance Procedures

INTRODUCTION

The University is committed to compensating staff members for additional expenses incurred and/or for disadvantages that the staff member may be subject to, because the duties of the staff member's employment may require the staff member to live away from their usual place of residence for a period of twenty-one (21) days or more.

A Living Away From Home Allowance (LAFHA) may be provided to eligible staff members by the University under an effective Salary Sacrifice Arrangement in accordance with the Fringe Benefits Tax legislation. Staff members who think they may be eligible are strongly encouraged to seek expert independent financial advice.

COMPLIANCE

This is a compliance requirement under the [Charles Darwin University Act 2003](#) part 3, section 15.

INTENT

The document outlines the procedures, including eligibility criteria and responsibility, for staff members who may be entitled to receive the Living Away From Home Allowance. This document also clarifies the transitional arrangements for staff members with existing LAFHA arrangements.

RELEVANT DEFINITIONS

In the context of this document

Accommodation expenses means accommodation costs that an eligible staff member incurs because that eligible staff member is required to live away from their usual place of residence;

Allowance means a Living Away From Home Allowance as defined in section 30 of the FBTA, under a Salary Sacrifice Arrangement;

Application form means the [LAFHA Application Form](#), which must be completed and submitted by staff members in accordance with the University's procedures in order to claim the LAFHA;

ATO means the Australian Tax Office;

Casual staff members means staff members employed by the University on a casual basis;

Child means a staff member's child by birth, adoption, marriage or an ex-nuptial child;

Current relocating staff member means current staff members of the University who are required to move between campuses to perform work functions;

Declaration means the, [Living Away from Home Declaration](#), the Exempt Food Component Declaration, the Exempt Accommodation Component Declaration and the Transitional Declaration as relevant to particular staff members which must be provided to the University prior to commencing the staff member's temporary assignment;

Declaration date means the date on which the University is required to lodge its FBT return for the FBT year in which a LAFHA is provided to an eligible staff member, or if the University is not required to lodge an FBT return, by 21 May in the year in which the LAFHA is claimed by an eligible staff member;

Domestic staff member means an Australian resident who is recruited to a position at the University and is required to temporarily relocate to fill that position due to the workplace being such a distance from their usual place of residence that it would be impractical for them to commute to their place of work for their contracted position with the University. Employment may be for a period up to five (5) years with regular visits to their originating location;

Eligible staff member means a person who:

- Is a domestic staff member, international staff member, special project staff member or a current relocating staff member;
- Is required to relocate from their usual place of residence to the Northern Territory or to relocate from their usual place of residence to facilitate employment at a different University campus to take up a contract of employment at the University for a temporary period;
- Maintains their usual place of residence; and
- Will incur accommodation expenses and food expenses while living away from their usual place of residence.

Eligible family member's means:

- The eligible staff member;
- The spouse of an eligible staff member; and/or
- A child of the eligible staff member;

in respect of whom a LAFHA is paid and who lived with the eligible staff member during the period to which the LAFHA relates and whose usual place of residence during that period was the same as the usual place of residence of the eligible staff member;

Exempt Accommodation Component means the amount payable by the University to an eligible staff member for reasonable expenses incurred by the eligible staff member for additional accommodation expenses due to the eligible staff member living away from their usual place of residence, which will not give rise to an FBT liability for the University. This component equals the accommodation expenses actually incurred and substantiated by the eligible staff member;

Exempt Accommodation Component Declaration means the declaration available from the Office of People and Capability [website](#);

Exempt Accommodation Component documents means documentary evidence of the staff member's accommodation expenses (originals or copies of receipts, credit card statements, bank statements) or an Exempt Accommodation Component Declaration;

Exempt Food Component means the amount payable by the University to an eligible staff member for additional reasonable expenses above the reasonable food amount incurred by the eligible staff member to purchase food and drink due to the eligible staff member living away from their usual place of residence

which the eligible staff member can substantiate by providing to the University the Exempt Food Component documents;

Exempt Food Component Declaration means the declaration available from the Office of People and Capability [website](#);

Exempt Food Component documents means documentary evidence of the staff member's food expenses (originals or copies of receipts, tax invoices, credit card statements, bank statements) or an Exempt Food Component Declaration where the eligible staff member incurs expenditure on food or drink that exceeds the reasonable food amount;

FBTAA means the Fringe Benefits Tax Assessment Act 1986 (Commonwealth);

FBT means Fringe Benefits Tax;

Food expenses means food and drink expenses that an eligible staff member incurs or will incur because that eligible staff member is required to live away from their usual place of residence;

Home means a unit of accommodation including:

- A house, flat or home unit;
- Accommodation in a house, flat or home unit;
- Accommodation in a hotel, hostel, motel or guesthouse;
- Accommodation in a bunkhouse or any other living quarters;
- Accommodation in a ship, vessel or floating structure; and
- A caravan or other mobile home.

International staff member means a foreign national on a subclass 457 temporary working visa required to relocate for employment with the University for a period of up to four (4) years from a home that the staff member maintains in Australia for their own use and at which he or she usually reside and which is available for their immediate use during that period of relocation;

LAFHA means the Living Away From Home Allowance as defined in section 30 of the FBTAA;

Living Away From Home Declaration means the living-away-from-home declaration issued by the ATO which an eligible staff member must provide to the University before the declaration date or as otherwise determined by the University;

Maximum Exempt Amount means the amount consisting of the exempt accommodation component and the reasonable food amount (or, if negotiated with the University before the LAFHA is provided, the Exempt Food Component) in respect of which the University will not incur an FBT liability;

Non-deductible expenses means additional expenses for which a staff member is not entitled to claim an income tax deduction. This includes, but is not limited to, additional food costs, rent and telephone costs to keep in contact with home;

Ownership interest means a legal or equitable interest in a dwelling, or a licence or right to occupy a dwelling;

Reasonable Food Amount means the amount identified annually by the ATO Commissioner as the reasonable amount for food and drink expenses that may be incurred by an eligible staff member in receipt

of a LAFHA for which exempt food component documents are not required to be provided by the eligible staff member;

Salary Sacrifice Arrangement means an arrangement between the University and an eligible staff member where the eligible staff member, before performing any work, agrees to, for the period of the arrangement, permanently forgo part of their future entitlement to salary or wages in return for the University providing him or her with benefits (such as a LAFHA of a similar value) and which complies as a valid salary sacrifice arrangement in accordance with the ATO's Salary Sacrifice Arrangement Guidelines as they apply to the provision of a LAFHA;

Self-assessment checklist means the relevant checklists set out in *the* Office of People and Capability [website](#)

Special project staff member is a domestic staff member recruited to undertake a specific project for a period of up to three (3) years;

Spouse of an individual includes:

- Another individual (whether of the same sex or a different sex) with whom the individual is in a relationship that is registered under a State law or Territory law prescribed for the purposes of section 2E of the Acts Interpretation Act 1901 (Cth) as a kind of relationship prescribed for the purposes of that section; and
- Another individual who, although not legally married to the individual, lives with the individual on a genuine domestic basis in a relationship as a couple;

Staff member means a person employed by the University under a contract of employment including casual, part-time, full-time, temporary and permanent positions and includes where relevant, prospective employees who may be eligible staff member if they become legally employed by the University;

Transitional staff members means those staff members of the University who were claiming a LAFHA under an employment arrangement in place before 7.30pm (AEST) on 8 May 2012 that was not materially varied or renewed between 7.30pm (AEST) and 30 September 2012;

Transitional Declaration means the Living-away from home declaration-from 1 October 2012 under transitional rules, which must be provided to the University by the declaration date by transitional staff, available from the Office of People and Capability [website](#);

TSMIT means the Temporary Skilled Migration Income Threshold as determined by the Australian Department of Immigration and Citizenship;

Usual place of residence means a home in Australia at which a staff member usually resides and in which the staff member or the staff member's spouse has an ownership interest. The term "**usually resides**" is not defined for the purposes of the LAFHA. The University accepts that it means a staff member's place of residence in Australia at which they reside where a staff member would have continued to live in that place of residence if not for having to change place of residence in order to work temporarily for their employer at another locality and he or she intends to return to the original place of residence when the work at the temporary work locality ceases.

PROCEDURES

Qualification for a Living Away from Home Allowance

Section 30 of the [Commonwealth Fringe Benefits Tax Assessment Act 1986](#) (FBTAA), sets out the circumstances in which an allowance paid by the University to a staff member will qualify as a LAFHA.

The requirements for an allowance to constitute a benefit, are:

- At a particular time, in respect of the employment of a staff member of the University, the University pays an allowance to the staff member; and
- It would be concluded that the whole or a part of the allowance is in the nature of compensation to the staff member for:
 - Additional expenses (not being deductible expenses) incurred by the staff member during a period; or
 - Additional expenses (not being deductible expenses) incurred by the staff member, and other additional disadvantages to which the staff member is subject, during a period;

by reason that the duties of that employment require the staff member to live away from their usual place of residence.

The payment of the whole, or of the part, as the case may be, of the allowance constitutes a benefit provided by the University to the staff member at that time.

Concessional treatment of a LAFHA under the FBTAA

Concessional treatment of a LAFHA is limited to those staff members who:

- Maintain a usual place of residence for their immediate use and enjoyment at all times while required to live away from that residence for work; and
- Incur non-deductible expenses for accommodation and for food and drink for a maximum period of twelve (12) months while living away from their usual place of residence; and
- Have provided the University with a declaration about living away from their usual place of residence before the declaration date for the year of tax during which the benefit was provided.

If the payment to the staff member qualifies as a LAFHA, the payment is considered taxable for the employer as a fringe benefit reduced by the Exempt Accommodation Component and the Exempt Food Component, calculated in accordance, with reference to sections 31, 31A and 31B as relevant of, the FBTAA.

If, however, the payment does not qualify as a LAFHA, the full amount of the payment will be treated as assessable income of the staff member.

Staff Members Eligibility for LAFHA

A LAFHA is only available to eligible staff members who:

- Complete and submit to the University the [Self-Assessment Checklist](#) and the [Living Away From Home Allowance Application Form](#) at least one month before commencing a period of

employment with the University to which the LAFHA will apply to enable the University to document the Salary Sacrifice Arrangement for the staff member; and

- Have been pre-approved by the University as eligible staff members on the basis of information provided to the University by those staff members in the relevant [Self-Assessment Checklist](#); and
- Complete and submit the relevant Declarations with the University as required by the FBTA and this document; and
- Meet University, legislative and ATO requirements in relation to the LAFHA.

A staff member is only an eligible staff member if he or she falls into one of the following categories:

- Domestic staff member;
- International staff member;
- Special project staff member; or
- Current relocating staff member.

The University will only consider a staff member to be an eligible staff member and eligible for a LAFHA where:

- It can be clearly established that their contract with the University necessitating relocation is temporary;
- It is the staff members intention to return to their normal residence following completion of the contract;
- The staff member has completed and submitted the relevant [Self-Assessment Checklist](#) and [Living Away From Home Allowance Application Form](#) to the University to claim the LAFHA. (For staff members who have not previously claimed a LAFHA, this must be completed prior to commencing a contract);

Assessment will be based on:

- Any documentation outlining the duration and temporary nature of the position or contract with the University. For example, a fixed-term contract and an expectation that the staff member will return to their usual place of residence upon completion;
- The extent to which the staff member maintains ties to their usual place of residence. This includes location of family members and personal assets, bank accounts, professional and sporting memberships; and
- Whether the staff member has retained a usual place of residence in the originating location as per the information provided by the staff member pursuant to the relevant [Self-Assessment Checklist](#).

The following staff members are ineligible for LAFHA:

- Casual staff members;
- Secondary 457 visa holders (that is, a visa not sponsored by the University); and
- Foreign nationals working in Australia on a working holiday visa.

Staff members in receipt of LAFHA benefits must inform the University where there is a change in:

- Residency or visa status; or
- The staff member's intention to return to their usual place of residence.

By completing and submitting the relevant [Self-Assessment Checklist](#), the [Living Away From Home Allowance Application Form](#) and the relevant [Declarations](#) with the University as and when required pursuant to this document:

- Staff members are legally responsible for the information that is provided to be used to determine whether the staff member is able to receive a LAFHA; and
- Staff members accept responsibility for any tax liability (whether personal liability or by agreeing to indemnify the University for any FBT liability (including interest and penalties)) which may arise as a result of the staff member incorrectly claiming the LAFHA, accepting a LAFHA exceeding the Maximum Exempt Amount or upon a change of eligibility criteria.

Staff members who have previously claimed the LAFHA with the University

The previous claim of a LAFHA by a staff member during temporary employment with the University does not automatically entitle those staff members to claim the LAFHA under this document and all staff members intending to claim the LAFHA must complete the [Self-Assessment Checklist](#) and the [Living Away from Home Allowance Declaration Form](#) and submit them at least one (1) month prior to commencing a period of employment with the University to which the LAFHA will apply.

Staff members currently claiming the LAFHA with the University

Transitional staff members who were claiming a LAFHA under an employment arrangement in place before 7.30pm (AEST) on 8 May 2012 that was not materially varied or renewed between 7.30pm (AEST) and 30 September 2012 and which is still in place should refer the Manager Business Services, Office of People and Capability to determine how the transitional rules apply to individual situations. Staff members in this situation must complete the Transitional Declaration available from the Office of People and Capability website and provide it to the University before the declaration date.

Additional requirements apply to international staff members who should refer to the Manager Business Services, Office of People and Capability to determine how the transitional rules apply.

Terms of LAFHA provided by Charles Darwin University

The conditions which must be satisfied for an arrangement between an eligible staff member and the University to qualify as a LAFHA are:

- The University enters into an arrangement with an eligible staff member under which the University pays an allowance to the eligible staff member in respect of the eligible staff member's employment by the University;
- Payment of the LAFHA by the University must occur as part of a Salary Sacrifice Arrangement in respect of a maximum twelve (12) month period and which allows an eligible staff member to salary sacrifice an amount equivalent to the Maximum Exempt Amount;
- The whole of the allowance is in the nature of compensation for non-deductible expenses the eligible staff member might be expected to incur because the duties of the staff member's job require the staff member to live away from their usual place of residence;
- The duties of the staff member's employment require him or her to live away from their usual place of residence;

- The staff member or the staff member's spouse must maintain a usual place of residence for their immediate use and enjoyment at all times while required to live away from that residence for work;
- The payment only relates to all or part of the first twelve (12) months that the staff member is living away from their usual place of residence for the purposes of their employment with the University;
- All LAFHA payments will be limited to an amount being the Maximum Exempt Amount with such effect that the LAFHA is not taxable to the University;
- A staff member must provide the University with a [Living Away from Home Allowance Declaration Form](#) and the exempt food component documents and the exempt accommodation documents to substantiate the accommodation expenses and the food expenses which are incurred by the staff member over the initial twelve (12) month period (or lesser time if the period of employment in respect of which the LAFHA is being claimed is less than twelve (12) months) because of having to live away from their usual place of residence;
- A LAFHA will not be provided retrospectively as a reimbursement for a staff member's past expenditure as a LAFHA must be provided under a Salary Sacrifice Arrangement as an allowance in the current FBT year in order to comply with the ATO's Salary Sacrifice Arrangement Guidelines.

Any part of the LAFHA which does not form part of the Exempt Accommodation Component or the Exempt Food Component forms part of the taxable value of the LAFHA. In accordance with this document, the provision of the LAFHA by the University is limited to the Maximum Exempt Amount.

Applying for LAFHA

The staff member must:

- Read this LAFHA procedures document and self-assess their eligibility by completing the [Self-Assessment Checklist](#);
- Complete the Application Form;
- Forward the original signed [Self-Assessment Checklist](#) and the [Living Away From Home Allowance Application Form](#) to the University along with the information listed as follows:
 - Copies of birth certificates for each family member living with the staff member in the new location;
 - Copies of rental property agreement(s) in the staff member's name and/or any other documentation in the staff member's name to substantiate the Accommodation Expenses;
- Complete and submit the [Living Away from Home Allowance Declaration Form](#) with the University

If at any time when the staff member is claiming the LAFHA, the staff member's situation changes then a new Self-Assessment Checklist and the Living Away From Home Allowance Application Form needs to be completed and submitted showing the new details.

LAFHA - Accommodation Component

An allowance provided to a staff member for accommodation expenses due to the staff member being required to move away from their usual place of residence is exempt from FBT if the amount provided is considered reasonable and necessary to compensate the staff member for the cost of accommodation whilst living away from that usual place of residence.

The accommodation component is an allowance for accommodation expenses incurred by the staff member during the period that he or she is living away from their usual place of residence.

The University will only pay an accommodation component amount up to the Exempt Accommodation Component amount being the actual amount paid by an eligible staff member for their accommodation and/or furniture and appliances. A copy of the Exempt Accommodation Component Documentation substantiating the actual expenditure of the eligible staff member must be provided to the University by the Declaration Date.

In the event that any amount of the LAFHA claimed under the Salary Sacrifice Arrangement is not spent on Accommodation Expenses by the eligible staff member that part of the LAFHA is not part of the Exempt Accommodation Component and is taxable under the FBTAA to the University.

Any tax (and associated penalties and interest) that arises on account of the accommodation component of the LAFHA being taxable are payable by the staff member or recoverable by the University from the staff member.

LAFHA - Food Component

The food component is intended to compensate staff members for additional food costs he or she might reasonably be expected to incur including any accompanying eligible family members because they are required to live away from their usual place of residence for the purpose of the eligible staff member's employment with the University.

The ATO issues the Reasonable Food Amount annually specifying the reasonable amount for food and drink for a staff member required to live away from their usual place of residence for subsequent years. This provides the reasonable amount for which Exempt Food Component Documents are not required. The Reasonable Food Amount is not taxable to the University.

The University will therefore generally only allocate the Reasonable Food Amount as the food component of the LAFHA. Allowances paid within this limit are generally exempt from FBT and not subject to income tax.

If upon negotiation with the University by the staff member, the amount of the LAFHA allocated to Food Expenses is more than the Reasonable Food Amount, the eligible staff member must ensure that any excess Food Expenses above the Reasonable Food Amount form part of the Exempt Food Component by submitting the Exempt Food Component Documents to the University which required by the FBTAA and this document.

Ceasing to provide LAFHA

The University will cease providing a LAFHA if:

- Subject to the Staff Members Eligibility for LAFHA clause above, in the case of domestic staff members, current relocating staff members and special project staff members, an initial term of twelve (12) months has elapsed from the time the staff member last lived in their usual place of residence;
- In the case of International staff members, a period of twelve (12) months has elapsed from the time the staff member last lived in their usual place of residence;
- The staff member does not submit the Self-Assessment Checklist, the Living Away From Home Allowance Application Form, or the relevant Declaration and all required Exempt Accommodation

Component Documents and Exempt Food Component Document in relation to the staff member's accommodation expenses and food and drink expended or any other documentation to the University pursuant to this document;

- ATO or legal requirements change to exclude the continuation of LAFHA and/or the Maximum Exempt Amount;
- The University becomes aware that the staff member no longer intends to return to their usual place of residence. The University considers the following factors to be relevant in this regard:
 - If the staff member informs the University of their intent to remain in the work locality on a permanent basis;
 - Whether the staff member's personal details have been changed to reflect a more permanent residency in the work locality such as changing their voting registration; or
 - If the international staff member applies for permanent residency in Australia. [If the application is refused by the Australian Department of Immigration and Citizenship, the staff member will continue working to the rules and regulations of their current work permit and LAFHA can recommence subject to the staff member declaring that it is their intention to return to their usual place of residence].

International Staff Members

An international staff member can only salary sacrifice amounts above the current TSMIT. The University cannot include a number of allowances (including the LAFHA) in an international staff member's package if the gross amount excluding superannuation received by the international staff member would be lower than the TSMIT.

The University therefore requires an international staff member to have a minimum base salary of AUD\$50,000 (gross) per annum before it will permit salary sacrificing for the LAFHA.

Expert Independent Advice

Before entering into any arrangements for LAFHA, a staff member is strongly encouraged to seek independent expert taxation advice. Anything contained in this document does not constitute legal advice. Further information regarding the changes to the LAFHA can be found in the information guides and determinations in relation to LAFHA on the ATO website.

The staff member is legally responsible for the information that is provided to the University to be used to determine whether the staff member is eligible to receive a LAFHA.

If the current legislation or the ATO's view in relation to the LAFHA changes and, as a result, any tax (including FBT assessed to the University) is payable, these taxes (and associated penalties and interest) are payable by the staff member or recoverable by the University from the staff member.

Individual circumstances will determine whether a Salary Sacrifice Arrangement in relation to a LAFHA will be financially advantageous to a staff member. The University strongly recommends that eligible staff members seek expert independent advice regarding the legal and taxation requirements of salary packaging and LAFHA under a Salary Sacrifice Arrangement prior to applying for the LAFHA.

When entering into a Salary Sacrifice Arrangement, it is also very important that staff members fully understand their obligations and potential risk.

ESSENTIAL SUPPORTING INFORMATION

Internal

[Human Resource Policy](#)

[Living Away From Home Allowance – Declaration Form](#)

[Living Away From Home Allowance – Application Form](#)

[Living Away From Home Allowance – Self-Assessment Checklist – International Employees](#)

[Living Away From Home Allowance – Self -Assessment Checklist - Domestic, Special Project and Current Relocating Employees](#)

External

[Fringe Benefits Tax Assessment Act 1986](#) (Commonwealth)

Document History and Version Control

Last amendment:	15 Dec 2017	Next Review:	Sep 2015
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1.00	23 Feb 2011	Vice-Chancellor	Creation of original document and upload to CDU website.
1.01	30 Jul 2012	Governance	<ul style="list-style-type: none"> • Convert document to new template • Insert information re changes before introduction • Change contact officer from DSSG to Manager, Business Services, OHRS • Update hyperlinks • Minor changes to formatting and grammar
2.00	18 Sep 2013	Vice-Chancellor	Major review to reflect changes in legislation
2.01	15 Dec 2017	Governance	<ul style="list-style-type: none"> • Conversion to new template due to new University branding • Updated definitions • Updated hyperlinks • Amended all references to OHRS to Office of People and Capability • Amended Contact Officer from Manager, Business Services, Office of Human Resource Services, to Director People and Capability • Added sponsor Deputy Vice-Chancellor, Operations • Amended his or her to their to use more inclusive language