



Australian Government

Department of Jobs and Small Business

Joint Standing Committee on Treaties

**Inquiry into the Pacific Agreement on Closer Economic Relations
(PACER) Plus**

Submission of the Department of Jobs and Small Business

12 April 2018

1. Introduction

The Department of Jobs and Small Business welcomes the opportunity to make a submission to the Joint Standing Committee on Treaties (JSCOT) on its inquiry examining the Pacific Agreement on Closer Economic Relations (PACER) Plus.

This submission responds to allegations made about the Seasonal Worker Programme in submissions to the Standing Committee made by the Australian Council of Trade Unions and the Australian Fair Trade and Investment Network.

The department notes that the Seasonal Worker Programme is not part of the proposed treaty action under consideration by JSCOT, but nevertheless believes that a response to these allegations is appropriate.

2. Overview of the Seasonal Worker Programme

The Seasonal Worker Programme is a program administered by the Department of Jobs and Small Business and Department of Foreign Affairs.

The program is a key part of Australia's economic aid commitment to the Pacific region and Timor-Leste. The program contributes to the economic development of participating countries through employment experience, skills transfer and earnings to families and communities. It also assists Australian employers in the agriculture and accommodation sectors by allowing them to employ workers on a temporary basis during peak seasons where there are not enough Australian workers.

Since the Seasonal Worker Programme started on 1 July 2012, over 21,000 visas have been granted to seasonal workers. Seasonal workers and their families have benefited from participation in the program by working in Australia, earning Australian wages enabling them to send money home to build new homes, start new businesses and pay for their children's education.

The vast majority of participants have a positive experience under the program, as noted by the 2018 World Bank report '*Maximising the Development Impacts from Temporary Migration: Recommendations for Australia's Seasonal Worker Programme*'. Key findings from the report are:

- since 2012 the earnings by workers under the program have delivered approximately A\$144 million in net income gains for the region, directly contributing to economic growth
- seasonal workers reported a high level of satisfaction from participation – 8.6 on a scale of one to 10 with their experience in Australia
- the majority of seasonal workers surveyed would seek to return in future seasons, felt the skills they had learned in Australia would improve their employment prospects on return home and were willing to recommend the program to others in their village; and

- 65 per cent of participating workers move from being unemployed at home to achieving productive potential through a job in Australia.¹

3. Allegations made in the Australian Council of Trade Unions ACTU) submission

The department provides the following in response to specific claims made about the Seasonal Worker Programme in the ACTU submission to the Standing Committee.

a) “Reports of Pacific Island workers being exploited in Australia show the dangers of expanding temporary migration into Australia without ensuring their rights at work are fully protected” (page 2)

All seasonal workers are entitled to the same pay and conditions and are covered by the same work, health and safety laws as Australian workers.

Before leaving their home country, all seasonal workers receive a briefing from their government (subsidised by Australia) which covers what their work will entail, their hours of work, what they are entitled to be paid and what deductions their employer can lawfully make from their pay. Each worker’s contract of employment is explained to them in their local language at these briefings.

On arrival in Australia, all seasonal workers receive a comprehensive induction from their employer which covers pay and conditions in more detail, as well as other important matters (like how to access medical facilities). Representatives from relevant unions and the Fair Work Ombudsman (FWO) are invited to attend these inductions.

The Department of Jobs and Small Business undertakes site visits while seasonal workers are in Australia. During the visit, departmental officials meet with seasonal workers separately from the approved employer and explain what terms and conditions workers should be receiving and give workers the opportunity to raise any concerns they may have with their pay slips, accommodation or pastoral care.

Any concerns about pay that cannot be resolved are immediately referred to the FWO for assessment and appropriate action.

b) “Workers from Vanuatu have had illegal deductions taken out of their pay by unregulated labour hire companies and threatened with unemployment if they joined the union” (page 2)

The department and the FWO have had no notification of these matters, but will investigate all claims of illegal deductions and worker mistreatment including threats that it receives.

¹ World Bank Group (2017) *Maximising the Development Impacts of Temporary Migration: Recommendations for Australia’s Seasonal Worker Programme*

c) “Workers were given just bread and water to survive on and paid no money after deductions were taken out of their wage packets” (page 2)

The FWO has investigated a claim made against the Approved Employer, Maroochy Sunshine Pty Ltd in 2014.

As a result of Federal Circuit Court action the FWO has obtained an order that requires Maroochy Sunshine to pay the total outstanding underpayments to the employees.

Maroochy Sunshine is no longer an Approved Employer under the Seasonal Worker Programme.

d) “There have been 10 deaths in the program in five years suggesting that far greater scrutiny needs to be taken” (page 2)

Sadly 14 seasonal workers have died while in Australia as part of the Seasonal Worker Programme. No worker has died as a result of a workplace accident or incident. The leading causes of death for seasonal workers are motor vehicle accidents that occur outside the workplace and pre-existing medical conditions.

To help address these issues, the Department of Jobs and Small Business has partnered with the Queensland Police to trial a Road Safety Awareness program. The Australian Government, through its diplomatic posts, is also working with participating countries to improve the selection of workers to ensure they are medically and physically fit to undertake physically demanding work.

The Seasonal Worker Programme is strongly supported by Pacific and Timor-Leste governments.

e) “Unions must be included in the management of the SWP to prevent exploitation” (page 3)

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On arrival in Australia, all seasonal workers receive a comprehensive induction from their employer which covers pay and conditions in more detail, as well as other important matters (like how to access medical facilities).

It is a requirement under the Deed of Agreement between the Australian Government and the Approved Employer that the employer must invite a representative from the relevant union, and use reasonable endeavours to accommodate their attendance at on-arrival briefings (page 22 of the Deed of Agreement).

The Seasonal Worker Programme has robust safeguards in place for workers, including rigorous vetting of participating employers.

The department undertakes site visits while seasonal workers are in Australia. During the visit, departmental officials meet with seasonal workers separately from the approved employer and explain what terms and conditions workers should be receiving and give workers the opportunity to raise any concerns they may have with their pay slips, accommodation or pastoral care.

f) “The World Bank has noted with concern that the SWP “demand” is heavily skewed towards male workers from the Pacific Islands. Most SWP workers are men with sex discrimination in recruitment and unequal pay not addressed” (page 3)

The Australian Government recognises that men are more likely to be selected to participate in the program than women. Female participation in the program was 14.4% in 2017.

Male and female workers must be paid the same rates for equal work under Australian law. The department has received no complaints of female workers in the Seasonal Worker Programme being paid less than males.

Sending countries screen and select participants in the program.

The Australian Government is taking steps to increase female participation in the program, including:

- building the capacity of Pacific and Timor-Leste Labour Sending Units to screen, select and engage more women for the program, and
- in 2017-18 Australia’s Labour Mobility Assistance Program (LMAP) has prepared women from Papua New Guinea for participation in the program and undertaken marketing activities to encourage Approved Employers in Australia to engage these women.

The Australian Government’s establishment of a new Pacific Labour Scheme in July 2018 will provide greater opportunities for female participation given its focus on the food and accommodation (hospitality and tourism) and health care and social assistance (aged and disability care) industries.

4. The Department of Jobs and Small Business provides the following response to the specific claims about the Seasonal Worker Programme made by the Australian Fair Trade & Investment Network Ltd

a) "Seasonal workers have not been paid or received payment of less than the minimum wage" (page 14)

All seasonal workers who perform work under the Seasonal Worker Programme are protected by Australian workplace laws and are entitled to the same pay as Australian workers.

Seasonal workers who come to Australia under the program may be placed in the horticulture sector, under the *Horticulture Award 2010*. Piecework rates may be paid rather than an hourly rate of pay. The seasonal worker must agree to be paid on a piecework agreement prior to starting work with an Approved Employer. This is the same for Australian workers.

b) "Seasonal workers have been subject to long hours of work in extreme heat conditions, exceeding laws on maximum hours of work" (page 14)

The department and the FWO have had no notification that seasonal workers have been subject to long hours of work in extreme heat conditions or exceeding laws on the maximum hours of work, but will investigate all allegations that it receives.

All seasonal workers who perform work under the program are protected by Australian workplace laws, including relevant state and territory work health and safety legislation. There is the same work, health and safety requirements for Seasonal Worker Programme participants as there are for Australian employees.

There is scope within the Modern Awards covered by the program (Horticulture and Hospitality) for hours above 38 hours per week. Any increase in hours needs to be agreed by the employer and the employee, in many cases the Letter of Employment (employment contract signed by the seasonal worker) states that an average of 30 hours of work per week across the placement must be provided.

c) "Seasonal workers are housed in substandard and overcrowded accommodation" (page 14)

Accommodation provided to seasonal workers must meet all state/territory and local government regulations regarding fire, health and safety. It is also a requirement under the program that accommodation is clean and well-maintained, having adequate laundry facilities, separate bathrooms for men and women and an adequate ratio of guest to bathroom facilities.

Issues surrounding accommodation are not directly covered by the *Fair Work Act 2009 (Cth)* and are not under the jurisdiction of the FWO, unless related to unlawful deductions or an unreasonable requirement for a worker to

spend wages on accommodation. States and Territories have the bulk of responsibility for regulation of accommodation.

There is also a responsibility under Work Health and Safety legislation where an employer provides accommodation. Under the work, health and safety laws, a 'person conducting a business or undertaking' has a duty to maintain accommodation and ensure the health and safety of workers occupying the premises.

Accommodation is checked as part of the department's program monitoring and follows up all matters requiring attention. Additionally, the department investigates claims it receives of accommodation not being in accordance with state/territory and local government regulations or the agreement the employer has with the department.

d) "Exploitation by migration agents through misrepresentation and deductions of large sums from wages" (page 15)

The Memorandum of Understanding that Australia signs with countries provides that seasonal workers are not to be charged a fee for recruitment or be subject to upfront charges to participate in the program. This is critical for the program's success and maintains its integrity and good reputation with Australian employers.

The Australian Government works through its diplomatic posts in country to raise any allegations of fee-charging by agents, noting that only three countries use the agent model (Vanuatu, Solomon Islands and Kiribati).

There should be no charges to migration agents on payslips provided to seasonal workers while they are on placement in Australia.

e) "Employers violating rights to Freedom of Association and collective bargaining by banning union membership and threatening with unemployment if they joined the union" (page 15)

The FWO has not received a matter in relation to Approved Employers under the program violating rights to Freedom of Association and collective bargaining by banning union membership and threatening unemployment if workers join a union.

All workers under the Seasonal Worker Programme are protected by Australian workplace laws, in the same manner as Australian workers.

In Australia, union membership is a right and all employees are free to choose to join a union or not.

There are strong protections under the Fair Work Act's Freedom of Association provisions for workers who seek to join a union. The FWO has responsibility for enforcing these provisions.