



# **Submission to the Working Holiday Maker Review**

1 September 2016

### NFF Member Organisations





The National Farmers' Federation (NFF) is the voice of Australian farmers.

The NFF was established in 1979 as the national peak body representing farmers and more broadly, agriculture across Australia. The NFF's membership comprises all of Australia's major agricultural commodities across the breadth and the length of the supply chain.

Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF represents Australian agriculture on national and foreign policy issues including workplace relations, trade and natural resource management. Our members complement this work through the delivery of direct 'grass roots' member services as well as state-based policy and commodity-specific interests.

# Statistics on Australian Agriculture

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Australian agriculture makes an important contribution to Australia's social, economic and environmental fabric.

## **Social >**

There are approximately 123,091 farm businesses in Australia, 99 per cent of which are Australian family owned and operated.

Each Australian farmer produces enough food to feed 600 people, 150 at home and 450 overseas. Australian farms produce around 93 per cent of the total volume of food consumed in Australia.

## **Economic >**

The agricultural sector, at farm-gate, contributes 2.4 per cent to Australia's total Gross Domestic Product (GDP). The gross value of Australian farm production in 2016-17 is forecast at 58.5 billion – a 12 per cent increase from the previous financial year.

Together with vital value-adding processes for food and fibre after it leaves the farm, along with the value of farm input activities, agriculture's contribution to GDP averages out at around 12 per cent (over \$155 billion).

## **Workplace >**

The agriculture, forestry and fishing sector employs approximately 323,000 employees, including owner managers (174,800) and non-managerial employees (148,300). Approximately one quarter of all employees are working holiday makers.

Seasonal conditions affect the sector's capacity to employ. Permanent employment is the main form of employment in the sector, but more than 40 per cent of the employed workforce is casual.

Approximately 60 per cent of farm businesses are small businesses. More than 50 per cent of farm businesses have no employees at all.

## **Environmental >**

Australian farmers are environmental stewards, owning, managing and caring for 52 per cent of Australia's land mass. Farmers are at the frontline of delivering environmental outcomes on behalf of the Australian community, with 94 per cent of Australian farmers actively undertaking natural resource management. The NFF was a founding partner of the Landcare movement, which recently celebrated its 20<sup>th</sup> anniversary.

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# Executive Summary

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The 2015 Federal Budget announced that from 1 July 2016, all working holiday makers would be taxed as non-residents – that is, at 32.5% on all income.

Currently, backpackers are treated as residents for tax purposes if they stay in Australia for more than six months. This gives them access to the tax-free threshold, low income tax offset (LITO) and a lower tax rate of 19 per cent for income above the tax free threshold up to \$37,000. The budget measure is estimated to raise \$540.0 million over the forward estimates. Reducing the tax payable to 19% would mean estimated revenue of \$315.7 million over the same period.

The Government has previously stressed that any revenue lost from the budget bottom line through changes to the ‘backpacker tax’ would need to be found elsewhere. Reversing the annual decline in backpacker numbers coming to Australia would generate over \$300 million each year. For each \$100 million in additional revenue needed, an additional 6666 working holiday makers is needed – an outcome that is readily achievable when one considers that a recent release of 5000 visa places for working holiday makers from China was virtually filled overnight.

Increasing the number of visitors to Australia is one solution and there are also others. The farm sector is looking to this review to identify the solution that will best address deeply held concerns within the farm and tourism sector about the impact of such a high rate of tax on working holiday makers.

In the longer term, broader agricultural workforce supply issues must also be addressed. However, there are many complex issues involved in designing and delivering a sound agricultural workforce strategy for the future. It would be selling the sector short to attempt to achieve this in a matter of weeks.

We look forward to working with government to fix the ‘backpacker tax’ and to establish a process for the development of a future agricultural workforce strategy in the months and years to come.

## 1. Introduction

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Agriculture is a source of strength in the Australian economy, positioned to capitalise on growing global demand for safe, high quality food and fibre over coming decades.

To achieve our vision, the sector needs regulatory and public policy settings that foster growth and productivity; innovation and ambition. This includes securing access to labour throughout the year and particularly at peak harvest times – we cannot achieve our productive potential without it. The agriculture sector is unique in its reliance on overseas workers: in 2015-16, around 92% or 33 362 working holiday makers worked on Australian farms, supporting strong growth in total annual farm production value of up to 8 per cent.

Temporary migration for seasonal agricultural work is nothing new. It has a long tradition in many OECD countries, including the United Kingdom, Canada, the USA and New Zealand. Each of these countries have dedicated programs for seasonal agricultural migration: the United Kingdom was one of the first to establish a Seasonal Agricultural Workers Scheme in 1945. The scheme no longer operates, but 90% of UK fruit and vegetables are still picked and packed by overseas workers, mostly from the European Union. In Canada, the Seasonal Agricultural Workers Program (SAWP) dates from 1966 and draws in workers from the Caribbean and Mexico. The US relies heavily on seasonal agricultural workers from Mexico. New Zealand now has a Recognised Seasonal Employer Scheme (RSE), and Australia has followed suit with the Seasonal Worker Program which is still in its infancy in relative program terms.

In a survey of 535 horticultural growers in February 2016, 65 per cent of respondents indicated difficulty finding workers in their local area. The overwhelming majority of working holiday makers who undertake regional agricultural work do so because it gives them access to a second year visa – without this critical incentive, many will choose other forms of work and miss out on the unique experience of living and working on farms and contributing to local rural and regional economies.

The problem with the ‘backpacker tax’ is that it will do just that. Working holiday makers will no longer see the value in regional agricultural work – and they won’t

come. This will have a dampening effect on rural and regional Australia – in an environment where the number of working holiday makers is already declining on average by around 10-12 per cent each year.

Our experience suggests that the looming backpacker tax is already changing behaviour. In a recent survey of 1434 working holiday makers, 52 per cent had decided not to stay working in Australia after 1 July 2016 and 84 per cent had heard of others changing their plans about coming to Australia. Similar surveys have recently been released with similar results. Overwhelmingly, working holiday makers are telling us they will leave if the tax rate is too high. A petition against the tax attracted almost 50,000 signatures in a matter of weeks. That alone should give government cause to reconsider.

We need to encourage, not deter, working holiday makers to come and work on the farm, and we need to do this as soon as possible. This means abandoning the ‘backpacker tax’ and finding a better way forward.

The National Farmers’ Federation (NFF) will work cooperatively through this review and with government to identify that solution, whatever it may be. We did just that in the initial review, and we will continue until a solution is found. Because whatever the politics, farmers will always need access to overseas workers. Without these workers, who supplement our local workforce, Australian agriculture cannot capitalise on the opportunities ahead and one of the five future growth sectors of the economy will instead grind to a halt.



## 2. The Working Holiday Maker Program

There are two separate working holiday maker visa subclasses: the 417 visa subclass and the 462 visa subclass. The table below describes each visa subclass in more detail.

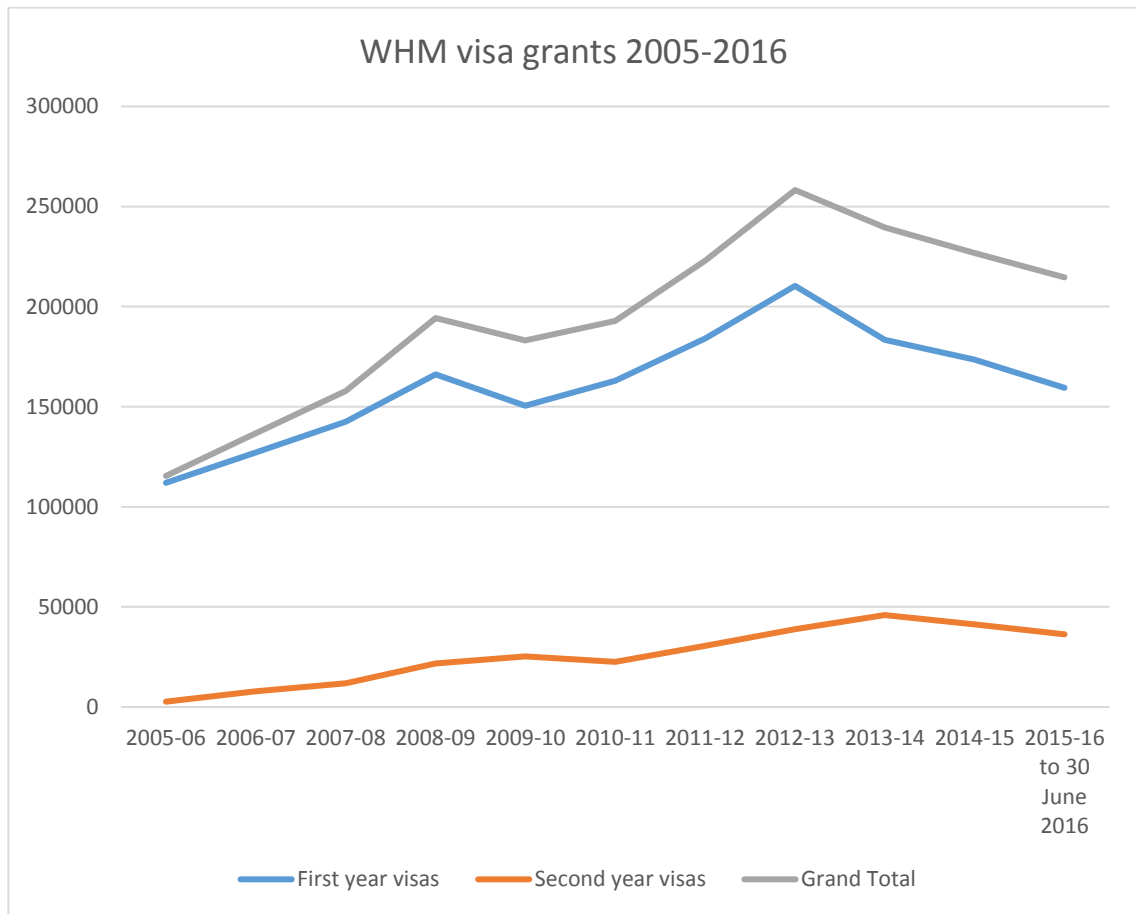
Working holiday maker (417) visa	Working holiday maker (462) visa
12 month visa, must be aged 18-30, max 6 months with one employer	12 month visa, must be aged 18-30, max 6 months with one employer; must have done at least 2 years university study and have functional English
2 <sup>nd</sup> year visa if at least 88 days work done in regional agriculture, forestry and fishing, mining or construction	No current option for a 2 <sup>nd</sup> year visa.  From late 2016, 2 <sup>nd</sup> year visa will be open to those who work in Northern Australia in <b>aged and disability care</b> , agriculture forestry and fishing, mining, construction, <b>tourism or hospitality</b> for at least 88 days. Covers work in NT and areas of WA and Qld above the Tropic of Capricorn (north of Rockhampton).
Can study for up to 4 months	Can study for up to 4 months
Applies to visitors from Belgium, Canada, Cyprus, Denmark, Estonia, Finland, France, Germany, Hong Kong, Ireland, Italy, Japan, Korea, Malta, Netherlands, Norway, Sweden, Taiwan, United Kingdom	Applies to visitors from Argentina, Bangladesh, Chile, China, Greece, Indonesia, Israel, Malaysia, PNG, Poland, Portugal, Slovak Republic, Slovenia, Spain, Thailand, Turkey, USA, Uruguay, Vietnam
Tax: 19% + tax free threshold (residents); 32.5% (non-residents)	Tax: 19% + tax free threshold (residents); 32.5% (non-residents)

Subtle differences have a large impact on their level of contribution to Australian agriculture. For example, very few, if any, 462 visa holders undertake regional agricultural work because there is no option of a second year visa if they do. This may change if commitments made in 2015 are implemented to make 462 visa holders eligible for a second year visa after working in certain industries in Northern Australia. Even then, few 462 visa holders are likely to undertake agricultural work as they will also qualify for the second year visa by working instead in cafes and hotels.

Working holiday makers now contribute over \$3.2 billion to the Australian economy. In 2015-16, a total of 214,643<sup>1</sup> working holiday maker visas were granted (417: 195,673; 462: 18,970. First year visas were down approximately 8%

<sup>1</sup> Working Holiday Maker visa programme report, 30 June 2014.

(159,409) and second year visas were down 12% (36,264). This decline is costing the economy more than \$320 million each year.



Source: DIBP, *Working Holiday Maker visas granted pivot table 2015-16 to 30 June 2016 - comparison with previous years*

There are 34 countries currently participating in the working holiday maker (417 and 462) visa programs. Most 417 arrangements were implemented prior to 2005 and provide for participation on an uncapped basis, with the United Kingdom the primary source of visa holiday makers, followed by Germany and France. Under the 462 visa subclass, participation is capped, with limits varying from country to country as agreed through bilateral arrangements. The largest cap applies to China (5000), followed by Chile (1500) and Indonesia (1000), as the table below shows.

Commencement Date	Country / Region	Type of Agreement	Cap
1975	United Kingdom	Working Holiday (SC 417)	N/A
1975	Ireland	Working Holiday (SC 417)	N/A
1975	Canada	Working Holiday (SC 417)	N/A
1 December 1980	Japan	Working Holiday (SC 417)	N/A
1 July 1995	South Korea	Working Holiday (SC 417)	N/A
1 July 1996	Malta	Working Holiday (SC 417)	N/A
1 July 2000	Germany	Working Holiday (SC 417)	N/A
1 July 2001	Sweden	Working Holiday (SC 417)	N/A
1 July 2001	Norway	Working Holiday (SC 417)	N/A
1 July 2001	Denmark	Working Holiday (SC 417)	N/A
15 September 2001	Hong Kong (HKSAR of the PRC)	Working Holiday (SC 417)	N/A
1 May 2002	Finland	Working Holiday (SC 417)	N/A
1 July 2002	Cyprus	Working Holiday (SC 417)	N/A
2 January 2004	Italy	Working Holiday (SC 417)	N/A
20 February 2004	France	Working Holiday (SC 417)	N/A
1 November 2004	Taiwan	Working Holiday (SC 417)	N/A
1 November 2004	Belgium	Working Holiday (SC 417)	N/A
20 May 2005	Estonia	Working Holiday (SC 417)	N/A
1 August 2005	Thailand	Work and Holiday (SC 462)	500
1 March 2006	Chile	Work and Holiday (SC 462)	1500
1 July 2006	Netherlands	Working Holiday (SC 417)	N/A
31 March 2007	Turkey	Work and Holiday (SC 462)	100
31 October 2007	United States of America	Work and Holiday (SC 462)	N/A
1 February 2009	Malaysia	Work and Holiday (SC 462)	100
1 July 2009	Indonesia	Work and Holiday (SC 462)	1000
31 December 2010	Bangladesh	Work and Holiday (SC 462)	100
29 February 2012	Argentina	Work and Holiday (SC 462)	700
1 April 2013	Uruguay	Work and Holiday (SC 462)	200
1 August 2014	Poland	Work and Holiday (SC 462)	200
23 November 2014	Portugal	Work and Holiday (SC 462)	200
23 November 2014	Spain	Work and Holiday (SC 462)	500
21 September 2015	China (excl. SARs)	Work and Holiday (SC 462)	5000
1 January 2016	Slovak Republic	Work and Holiday (SC 462)	200
1 January 2016	Slovenia	Work and Holiday (SC 462)	200
Signed 12 October 2011	Papua New Guinea*	Work and Holiday (SC 462)	100
Signed 14 May 2014	Greece*	Work and Holiday (SC 462)	500
Signed 22 October 2014	Israel*	Work and Holiday (SC 462)	500
Signed 18 March 2015	Vietnam*	Work and Holiday (SC 462)	200

\* Not yet in effect as at 31 December 2015

Source: Department of Immigration and Border Protection *Working Holiday Maker Visa Programme Report 31 December 2015*

In 2015-16, around 92% per cent of working holiday makers (33,362) qualified for the second year visa through agricultural work. Working holiday makers earn an estimated average of \$15,088.01<sup>2</sup> each year while in Australia and spend approximately the same amount, after tax, while they are here. Their average tax contribution is \$1324.22. Their remaining earnings are largely spent on tourism (travel, accommodation, experiences). Older working holiday makers (ages 25-30) spend 70% more than those aged 18-19 years.<sup>3</sup>

<sup>2</sup> Figures provided by Taxback.com, reflecting analysis of 8378 working holiday maker tax returns to the end of July 2016.

<sup>3</sup> Tan Y, Richardson S, Lester L, Bai T and Sun L *Evaluation of Australia's Working Holiday Maker (WHM) Program* 27 February 2009.

<b>Working holiday makers</b>	<b>2016 TY</b>
Average Gross Earnings:	\$15,088.01
Average Income Tax Withheld:	\$2,778.30
Average Post Tax Return Contribution:	\$779.54
Average Tax on Departing Superannuation Claims*:	\$544.68
Total tax contribution	\$1,324.22
Total tax contribution – all working holiday makers	\$3.237b
Total tax contribution – working holiday makers in the agriculture sector	\$503.3m

Source: Taxback.com

A survey<sup>4</sup> of 1434 mostly working holiday makers after the 2015 Budget found that:

- 69% knew about how Australian taxes worked before they came here;
- 86% thought they were eligible for the tax free threshold;
- 52% had decided not to stay working in Australia after 1 July 2016; and
- 84% had since heard of backpackers changing their plans about coming to Australia.

A second survey of 5000 working holiday makers in January 2016<sup>5</sup> showed similar results:

- 89% of respondents said if they knew about the backpacker tax before coming to Australia they would have considered going elsewhere;
- 90% of respondents said they would not do fruit picking / harvest / 2nd year visa work if taxed 32.5%;
- 89% of respondents said paying 32.5% would deter them from working in Australia altogether; and
- 95% of respondents thought the tax would deter future working holiday makers from visiting Australia.

More recently, in the Northern Territory, a comprehensive survey<sup>6</sup> to determine the extent of skills and labour shortages experienced by farm businesses and their level of reliance on overseas workers in March/April 2016 highlighted the

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<sup>4</sup> Agrilabour *Working Holiday Visa Tax Survey 2015*.

<sup>5</sup> Working Holiday Jobs *Working Holiday Visa Tax Survey*  
<https://www.workingholidayjobs.com.au/working-holiday-visa-tax-survey/>.

<sup>6</sup> Survey conducted by NT Farmers, in partnership with the NT Department of Business and Migration NT.

contribution of the 'backpacker' cohort as a source of employees for the farm sector in the NT. According to survey results:

- Working holiday makers and other overseas workers make up approximately 90% of the total NT agricultural workforce (approximately 2700 backpackers)
- 70% of employees in management and permanent positions are Australians or Permanent residents
- 1 in 5 full time employees in management and permanent positions are overseas workers on an employer sponsored visa
- Jobs growth in the farm sector is expected, with 28% of farmers indicating they would have new full time positions available within 12 months. In the mango sector this increased to 37%
- The mango sector, which the NT is renowned for, expected an increased need of an average of four employees per farm and the melon sector, an average of 14 additional employees per farm
- The jobs are primarily casual farmhand/fruit/ vegetable pickers and fruit packing positions that are usually filled by overseas workers (i.e. backpackers and employer sponsored workers). Farmers also indicated that these same positions had been the most difficult to fill in the last year and have concerns about whether they will be able to be filled if the backpacker tax is introduced
- 62% of farmers believe that the backpacker tax will negatively affect the number of workers available to them
- 50% of farmers expected the number of working holiday makers working in their business to reduce by 20-80%
- 40% of farmers indicated they would not be able to access workers from any other source to overcome the anticipated decrease in backpacker labour

These studies confirm that the proposed change to the taxation status for working holiday makers is likely to be a major limiter to the productivity and growth of the farm sector. While the latter results are specific to the Northern Territory, similar results are likely to flow in all agricultural regions of the Australian economy.

## 2. Australia's competitive position in attracting seasonal and temporary foreign labour

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Remaining globally competitive is a challenge for Australian farmers in circumstances where Australia has some of the highest labour costs in the world, and one of the highest average annual wages in the OECD<sup>7</sup>. In 2015, Australia had the second highest real minimum wage in the OECD behind Germany.<sup>8</sup>

Recent scrutiny on treatment of workers in the sector and high profile media attention has drawn attention to the conditions of employment on Australian farms, and not always in a positive light. Anecdotal reports suggest that reductions in working holiday makers from countries including South Korea may have been exacerbated by negative media stories about worker mistreatment. Similarly, the 2015 survey referred to above found that 84% of respondents had heard of backpackers changing their plans about coming to Australia after becoming aware of the proposed 'backpacker tax'. Addressing these issues is very important if we are to encourage greater participation in the working holiday maker program, including in the agriculture sector.

As one of the more labour intensive industries within the agriculture sector, labour costs are of particular significance to the horticulture industry. As a result of higher labour costs, horticulture is relatively uncompetitive on the world market and must drive value through premium market niches. Much of horticulture is seasonal work – grapes, for example, or tree crops, have one harvest each year. Spikes in labour needs are difficult to manage, and must be 'imported' to supplement the small core workforce of local workers who prefer consistent work and tend not to choose an itinerant lifestyle following the harvest trail.

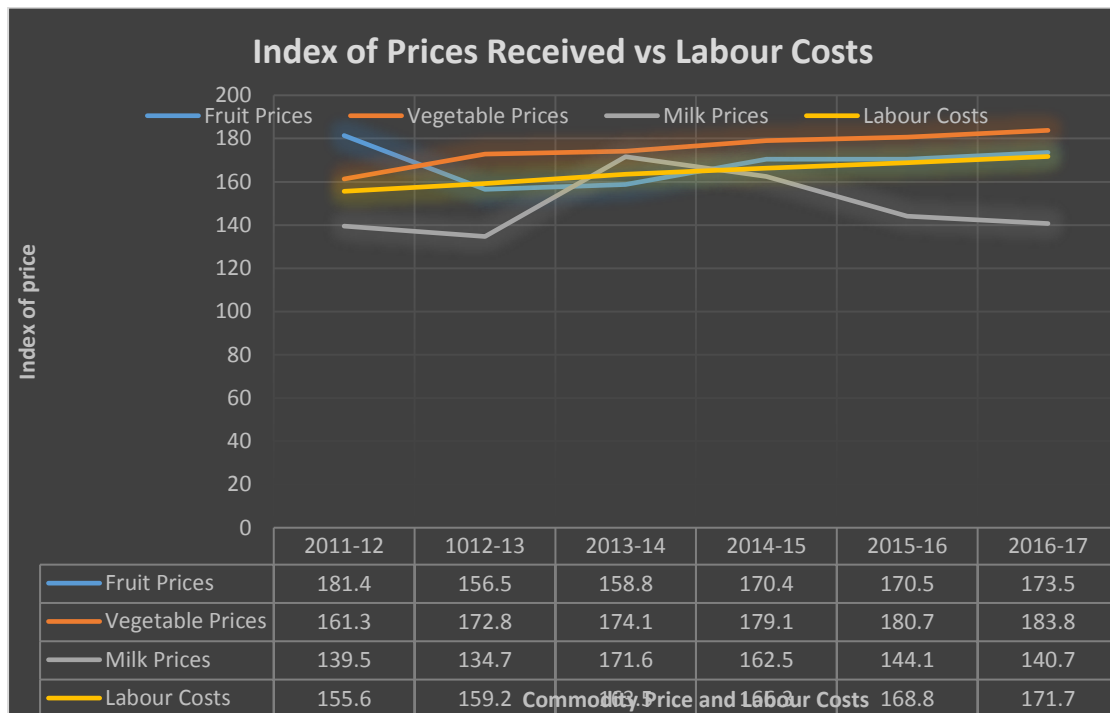
Finding enough labour is an ongoing challenge, as is sourcing accommodation for harvest labour for short periods. This includes packing shed labour for perishable crops which operate within a small window of the calendar year. Without reliable labour, business confidence and global competitiveness of agriculture plunges and affects exports as well as the domestic market.

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<sup>7</sup> Organisation for Economic Co-operation and Development (OECD), (2015); *Average Annual Wages* <<http://stats.oecd.org/Index.aspx?queryname=343&querytype=view>>.

<sup>8</sup> OECD (2015), *Real Minimum Wages*, <<http://stats.oecd.org/Index.aspx?queryname=343&querytype=view>>.

According to statistics released by the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES)<sup>9</sup> agricultural labour cost increases over the past five years have kept pace with the rising price of vegetables, while the price that farmers receive for fruit and milk has decreased. As the graph below shows, agricultural labour costs have risen faster than the price received by farmers for horticultural commodities covered by these statistics.



Perhaps the only advantage of high labour costs for Australian farmers is that the earnings potential of farm employees is greater in Australia than it is in comparable countries overseas. The following table illustrates the position in Australia (both at 32.5% and 19%) compared to that of New Zealand and Canada.

*Comparative hourly rates (gross and net)*

Country	Australia (32.5%)	Australia (19%)	NZ	Canada
Min. hourly wage	\$17.70	\$17.70	\$15.25	\$11.07
Tax rate	32.5%	19%	10.5%	15%
Net hourly wage	\$11.95	\$14.34	\$13.65	\$9.41

<sup>9</sup> ABARES ‘Agricultural Commodities – vol 6 no 2 June quarter 2016.

### *Comparative wages, entitlements and conditions*

In Australia, the national minimum wage is only one part of a complex web of support mechanisms for families with working parents. In addition to tax relief and child care subsidies, the safety net for employees is comprehensive and wide-reaching. Most employees are covered by modern awards, supplementing the National Employment Standards (NES). The NES covers weekly hours of work, parental leave, annual leave, personal/carer's leave, compassionate leave, community service leave, public holidays, notice of termination and redundancy as well as the Fair Work Information Statement.

The wages of entry level employees are set at the national minimum wage in many modern awards, with other employees paid higher wages according to their level of responsibility, skill and experience. The *Fair Work Act 2009* operates to ensure that enterprise agreements can never provide wage levels that are lower than those set by modern awards.<sup>10</sup>

New Zealand also provides for minimum employment rights<sup>11</sup>, although at a less generous level than in Australia. They include annual leave, public holidays, sick leave, bereavement leave, parental leave, meal breaks, and jury service. Unlike Australia, there is no industrial award system. Enterprise agreements can be negotiated but are not compulsory.

Minimum standards also operate in the various Canadian jurisdictions<sup>12</sup>, again at a lesser standard than applies in Australia. These standards cover issues such as hours of work and overtime pay, minimum wages, vacation time and vacation pay, public holidays, coffee and meal breaks, pregnancy leave and parental leave, personal emergency leave, family medical leave, termination notice and termination pay. In most provinces, farm workers have no entitlement to overtime or public holiday pay.

### *Comparative superannuation or equivalent entitlements*

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<sup>10</sup> Fair Work Act 2009, s.206.

<sup>11</sup> Employment New Zealand *Minimum rights of employees*  
<https://www.employment.govt.nz/starting-employment/rights-and-responsibilities/minimum-rights-of-employees/>.

<sup>12</sup> See for example, the Ontario Ministry of Labour's guide to employment rights at [https://www.labour.gov.on.ca/english/es/pubs/is\\_fn\\_esa.php](https://www.labour.gov.on.ca/english/es/pubs/is_fn_esa.php).



As the table below illustrates, Australia is the only comparable country where employers are required to make compulsory superannuation contributions on behalf of all temporary overseas workers.<sup>13</sup>

Country	Australia	Canada	New Zealand
Scheme	Superannuation Guarantee	Registered Pension Plan	Kiwisaver
Features	9.5% of ordinary time earnings	Optional	3% of gross wages
	Compulsory	Optional	Optional
	Employer funded, employees can make voluntary contributions	Employer and employee contributions can be made	If opt-in, contributions required by both employer and employee

*Promotional programmes and schemes to assist workers while in the country*

Resources to operate promotional and support schemes are limited at all levels of government and accordingly, the priority given to such schemes vary across jurisdictions. The Queensland Agricultural Workers Network is one such example, as are the Harvest Labour Service and the National Harvest Labour Information Service. These latter services operate through the Harvest Trail website<sup>14</sup>, connecting growers with work in the horticulture industry.

Industry bodies self-fund and promote programs to industry and provide access to information and support for workers while in Australia. Industry best management practice programs are increasingly looking at how to promote sustainable workplace practices. The “People in Dairy” website<sup>15</sup> is an example of a program that is likely to be adopted on a cross-sectoral basis to promote greater awareness and compliance with workplace laws.

There are strong systems in place to enforce workplace terms and conditions under the *Fair Work Act 2009*. The Fair Work Commission oversees the making of modern awards and enterprise agreements. The Fair Work Ombudsman (FWO) educates employers and employees on their obligations under the *Fair Work Act 2009* and has statutory powers to enforce minimum wages and conditions of employment as well as other protections. In addition, migration inspectors

<sup>13</sup> Guest R, *Comparison of the NZ and Australian Retirement Income Systems - Background paper prepared for the 2013 review of retirement income policy by the Commission for Financial Literacy and Retirement Income* Griffith University, February 2013.

<sup>14</sup> <https://jobsearch.gov.au/job/search/harvest> .

<sup>15</sup> <http://www.thepeopleindairy.org.au/> .

appointed under the *Migration Act 1958* have enforcement powers in relation to migrant visas and work rights.

Where concerns arise about mistreatment of workers, they can be referred to the relevant authority or to a union representing the worker. Australian unions are strong and independent organisations with statutory rights under the *Fair Work Act 2009* to enter workplaces, hold discussions with employees, bargain on behalf of employees they represent and investigate suspected breaches of workplace laws. Unions are entitled to represent the industrial interests of workers who fall into the categories of work described in the relevant union rules.

#### *Costs and barriers to entry*

There are relatively few costs and barriers to entry to temporary and seasonal work for working holiday makers. Demand for employees is generally always high and those who want work can usually find it without too much difficulty.

By contrast, the Seasonal Worker Program has a range of costs and barriers that operate as a major disincentive to use. Fundamentally, the program is under-resourced – other than the cost of overseeing the program at the Departmental level, there is no funding provided in Australia to support uptake of the program. Employers bear all the cost of bringing workers to Australia, supporting them while they are here, providing pastoral care, and so on.

Just the upfront cost to businesses to participate in the program are significant - approximately \$2000 per worker. While much of this cost may be eventually recovered, the outlay has a large cashflow impact on farm businesses. As an example, employing 100 workers under the Program would require an outlay of approximately \$200,000 before any work is done – or suitability for the work assessed. This requires a leap of faith from a price taking sector which is traditionally risk adverse and cost conscious. For Pacific Island employees, the cost of travel to Australia is significant in relative terms to their income at home, and the later decisions are made about approving visas and placements in Australia, the more expensive airfares become.

Administration of the Program is currently managed by the Department of Employment. The Department is the decision-maker and the range of decisions it must make are broad – from who can access the Program, to when work is

approved and how many workers are approved. In doing so, it is required to balance a broader range of public interest considerations in managing the Program than would apply to a private sector provider (for example, managing risks relating to Australian Government involvement in the employment of overseas workers).

In a program that seeks to address acute labour shortages during periods of intense labour demand, this can lead to withholding of critical farm labour when it is needed most. The Department is placed in the position of deciding on the farm labour needs of individual businesses, despite its lack of familiarity with those unique farming operations. Inadequate resources, bureaucracy and lack of familiarity generally with industry operating practices and pressures can cause delays while information is gathered, analysed and decisions made.

Other inflexible aspects of the program include the requirement to guarantee a certain level of work each week, which is sometimes interpreted as a requirement to provide a minimum level of income each week, whether or not the employee is a pieceworker paid on a 'per bin' basis. There is limited ability to vary start and finish dates in the event of natural disasters, such as floods and cyclones. Equally, repatriating workers found to be unsuitable on arrival in Australia requires negotiation with relevant Departmental officials and can take some time - if and once approved.

These issues need to be addressed if the Seasonal Worker Program is to become a viable mainstream workforce solution for the agriculture sector.

### 3. Regulatory imposts on employers

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Australian businesses face a distinct disadvantage in competing with international competitors when it comes to labour input costs. Australia has the highest minimum wage in the OECD, and some of the highest labour costs in the world. Flexible regulation and streamlined and efficient processes in place to manage workplace relations are critical in the Australian context to create an environment where Australian agriculture can be globally competitive.

Small businesses, including on-farm and throughout the supply chain, face a minefield when it comes to employing staff, through a complex web of Federal employment, safety, migration and taxation laws, supplemented by State laws on a range of issues from training to workers' compensation. Increasingly, the focus of government and regulators is on passing employer liability across the supply chain, so that it is no longer enough for employers to mind their own business – they must peer into the practices of others. Resources are critical to the capacity of an organisation to manage in this environment – and in the small or family business context, many 'best practice' ideals are unable to be achieved for want of time or money.

#### *Workplace Relations*

As the Productivity Commission recently noted in its draft report on agricultural regulation, labour costs, flexible workplace arrangements and the ability to access workers are important for the competitiveness of farm businesses.<sup>16</sup> The NFF has previously outlined the extent of the regulatory impost of workplace laws on the agriculture sector – see our 2015 submission to the Productivity Commission's review of Australia's workplace relations framework.<sup>17</sup>

#### *Superannuation*

Overseas workers temporarily in Australia are entitled to have superannuation contributions made on their behalf into a relevant fund, as long as they earn the minimum amount each month. Superannuation can be withdrawn early by

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<sup>16</sup> Productivity Commission *Regulation of Australian Agriculture Draft Report* at page 380.

<sup>17</sup> NFF *A fair and reasonable framework - Submission to the Productivity Commission Inquiry into the Workplace Relations Framework* 13 March 2015  
<http://www.nff.org.au/get/submissions/4891.pdf> .

temporary residents leaving Australia as a Departing Australia Superannuation Payment, taxed at a rate of between 38% and 47%.

The income threshold above which superannuation is payable (\$450 per month) has remained static for almost 25 years and the current level bears no resemblance at all to the tax-free threshold. As a result, almost all temporary residents are entitled to superannuation, even though they would have been ineligible when the scheme was first introduced.

In our view, this policy measure is worth reconsidering given the underlying purposes of superannuation to provide an adequate level of retirement income, relieve pressure of the Age Pension, increase national savings and create a pool of patient capital to be invested as decided by fiduciary trustees.<sup>18</sup> Each of these objectives can be achieved without the need to extend the benefit to temporary, overseas workers.

#### *Work health and safety laws*

Regulatory burden is a significant issue in the *Work Health and Safety Act 2011* (WHS Act) and associated material, which together comprise an Act, Regulations, 23 Codes of Practice and 46 Guidance Materials. These documents, and at least an additional 29 ‘fact’ or ‘information’ sheets provided to explain how to comply with the regulatory regime, are useful for safety management professionals, but for the small business person are simply another thing to ‘stay on top of’. And yet the regulatory regime requires, as part of the work health and safety duties, that all officers in a business or undertaking must maintain an ‘up to date knowledge’. The current settings in the WHS Act hinder the capacity of businesses to comply with their obligations, impeding employment.

#### *Migration laws and programs*

Migration programs provide an essential source of labour for many Australian farmers. The seasonal nature of agriculture, and its location in rural and remote areas of Australia, often makes it difficult to attract and retain Australian workers. For

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<sup>18</sup> The Treasury *Charter of Superannuation Adequacy and Sustainability and Council of Superannuation Custodians* <http://www.treasury.gov.au/Policy-Topics/SuperannuationAndRetirement/supercharter/Report/Chapter-4>.

many farm businesses, low margins limit the capacity to offer higher wages as a means of incentivising agricultural work.

Work in agriculture ranges from highly skilled to unskilled. People working in agriculture are typically farm owners and family members, share farmers, itinerant workers, students and other local casual workers, grey nomads, skilled migrants, backpackers and foreign workers temporarily in Australia to support a better life in their home country.

Labour shortages in the agriculture sector are nothing new. Reasons for chronic shortages are many and varied, but include:

- Permanent departure from the industry following severe droughts;
- Inadequate infrastructure, connectivity and resources in rural and regional areas;
- Misconceptions about the nature of employment in agriculture;
- Insufficient marketing of work within the industry and specific vacancies and opportunities;
- Remoteness associated with work in the industry;
- Limited attraction and retention strategies for existing staff;
- Lack of support for formal training in agricultural industries;
- Lack of commercial or other incentive for government and private sector recruiters to place agricultural work including short-term, casual and seasonal work;
- Poor program design and restrictions on access to migration under the Seasonal Worker Program and the 457 visa program; and
- Remuneration – the mining industry is a major competitor for the available labour pool and pays well above the average to address its own workforce supply issues. The capacity of the farm sector to compete at this level is severely limited by the price-taking nature of the industry.

The labour market testing regime makes no acknowledgment of this circumstance. Instead, it applies across the board, to all sectors and industries seeking access to migrant workers, both in relation to the 457 visa program and the Seasonal Worker Program. Recent changes negotiated in the context of the China Australia Free Trade Agreement are likely to have increased the red tape surrounding labour market testing, by extending its reach even further.

Labour market testing requirements, particularly for short-term migration programs, represent a large commitment for little return. Approved Employers under the Seasonal Worker Program prepare a recruitment plan for each group of workers they seek to employ, place job advertisements for a minimum 2 week period, and report back to the Department of Employment, which administers the Program, before proceeding to recruit from overseas.

The requirement to advertise and offer work to Australian jobseekers before seeking to recruit foreign workers is problematic. Farmers are required to advertise jobs broadly, eliciting numerous responses from foreign workers and only very few from Australian workers. Each job application must be reviewed and responded to, requiring allocation of significant time and resources, when the reality is that most Australians are not looking for jobs that involve hard, physical work in rural, regional and remote areas. In some cases, our members tell us that Australian workers who have applied and been offered a job have refused the offer, advising that the application was only made to meet their job application quota for the month.

## 4. Exploitation of and protections for vulnerable workers

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### *Evaluation of illegal labour hire practices*

When it comes to understanding the type of issues that arise in the use of contractors and labour hire companies, a few common features tend to stand out. These are: being asked to pay to get a job; handing over passports or bonds; and unreasonable deductions for travel and accommodation. In Ontario, Canada, this type of conduct is regulated by the *Employment Protection for Foreign Nationals Act, 2009*<sup>19</sup>, which prohibits:

- recruiters charging fees to foreign workers
- passing on of most employer hiring costs to employees
- taking a worker's property (including passports and permits)
- waiving of legal rights
- repercussions against persons who ask about, or exercise, their rights.

Some of these are also unlawful under Australian law, including by virtue of the *Fair Work Act 2009*'s general protections and Division 12 of the *Migration Act 1958* and the Criminal Code.

Illegal conduct also involves workers acting in breach of their visa conditions, either through overstaying, unapproved work or exceeding maximum hours. This makes them more vulnerable to exploitation, as the threat of deportation looms large both from government and unscrupulous individuals.

Employees of labour hire companies are entitled to the same benefits and protections as other employees under the *Fair Work Act 2009*. To the extent that these entitlements are not provided, there is a robust regulatory scheme in place to enforce them, including through the Fair Work Ombudsman and relevant unions.

### *Non-compliance with laws and regulations*

The NFF is proud of our produce and our people. We believe in a fair days' pay for a fair days' work. We work hard to ensure that farmers in Australia understand their award obligations, including through the establishment of dedicated industrial relations advisory services for members. We have no sympathy for those

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<sup>19</sup> [https://www.labour.gov.on.ca/english/es/pubs/is\\_fn\\_epfn.php](https://www.labour.gov.on.ca/english/es/pubs/is_fn_epfn.php).



who have a wilful disregard for the law, including Australian workplace and migration laws. These individuals drag the rest of the industry down, and make it harder for everyone else to compete.

The agriculture sector has operated under regulated working arrangements for longer than any other industry in Australia, since 1907 when the Pastoral Award was first made. Overwhelmingly, Australian farmers do their best to comply with the heavy and ever-increasing regulatory burden in the sector, including in relation to modern award wages and conditions.

Sometimes, of course, mistakes occur and are only addressed when discovered. Clearly, there are also some more serious cases, where individuals choose not to do the right thing. However, in our view, sometimes the extent of poor treatment in the sector can be overstated:

- A review of data released by the Fair Work Ombudsman (FWO) outlining its exercise of powers under the *Migration Act 1958* from 18 September 2013 to 30 September 2014 identifies only 5 concerns about compliance with visa conditions that can be directly attributable to the agriculture sector, out of a total of 2311 cases.<sup>20</sup>
- According to the FWO's annual report for 2013-14, visits in August and September 2013 to strawberry growers in the regional Queensland identified underpayment of approximately 150 backpackers, in the order of \$133,000 (an average of \$886 per person). Three businesses were issued with infringement notices (on-the-spot fines) and 11 employers received letters of caution.
- A recent underpayment identified by the FWO's Harvest Trail audit in connection with the Seasonal Worker Program found workers had been underpaid approximately \$770 each, because of a failure to pay penalty rates for piecework on public holidays. While unlawful, such underpayments are at the less serious end of the scale and were able to be resolved by sensible negotiation.

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<sup>20</sup> 457 Visa Monitoring - Details Report (18.9.13 to 30.6.14); 457 Visa Monitoring - Details Report (1.7.14 to 30..14) <http://www.fairwork.gov.au/about-us/accessing-information>.

These figures are not perfect, but nor are they unusually high. The agriculture sector is committed to constantly lifting employment standards and has developed best practice employment guidelines.<sup>21</sup> We work collaboratively with regulatory agencies and share information where we can.

Certainly there are concerns in the community, including in the farm sector, about less reputable contractors who charge farmers for workers at the award rate of pay and then choose not to pass this on to their workers, or operate in the cash economy. Farmers, as beneficiaries of this labour, are ultimately responsible for breaches of migration law under the *Migration Amendment (Reform of Employer Sanctions) Act 2013* and are increasingly vulnerable to prosecution for accessorial liability under section 550 of the *Fair Work Act 2009* as the FWO steps up its efforts to ensure migrants receive their lawful entitlements.

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<sup>21</sup> Australian Farmers *Sustainable Contracting Guidelines*  
<http://www.farmers.org.au/content/nff/en/media-center/publications.html>.

## 5. Capacity to match employers with available workers

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### *How do farmers find workers?*

Farmers find workers in a variety of ways. A common method is through advertisements on seek.com.au, Gumtree or other online job platforms. Others employ workers directly, using local backpacker hostels as a hub for attracting and engaging potential workers. Many use contractors and labour hire companies to source workers, because outsourcing is the most efficient means of securing and managing a short term workforce.

Employment can be a complex and time-consuming process, from recruitment and selection to processing of payroll. This is a necessary service to the sector and when done well, can create strong working relationships that last over many years.

A good example is the Seasonal Worker Program, where labour hire operators can register to become Approved Employers. Those who are determined to participate in the Program work hard to develop relationships with the workers they recruit as well as the employers receiving workers from overseas. They provide the requisite pastoral care support service for their workers during their stay in Australia. This is particularly important to the agriculture sector, where recruitment of seasonal workers often coincides with the busiest times of the year, when there is limited capacity to devote to administration and extra-curricular activity.

For farmers, this makes choosing good contractors essential – although in many regions, the reality is there isn't much choice, and the only way to head off a harvest workforce crisis is to try and plan well in advance during quieter times of the year. Even with the best laid plans, things can go wrong and this can ultimately result in economic loss either to the farmer, or the worker, or both.

### *How do workers find farms?*

Working holiday makers tend to use a variety of means to find farm work. Advertising on Gumtree is common, as is registration with other online job forums. Local churches, temples and backpacker hostels can help connect working holiday makers with farm work. Registering with labour hire companies is also common. Some workers just turn up at the farm gate and ask if there is work

available, which creates hazards of its own in terms of biosecurity risks and the like.

*Regulatory arrangements in relation to the role of labour hire companies*

In our view, there are enough laws in Australia to articulate community expectation around how labour contractors behave when employing workers. However, compliance is not always strong and the NFF supports improved resources directed at improving compliance with Australian workplace and migration laws.

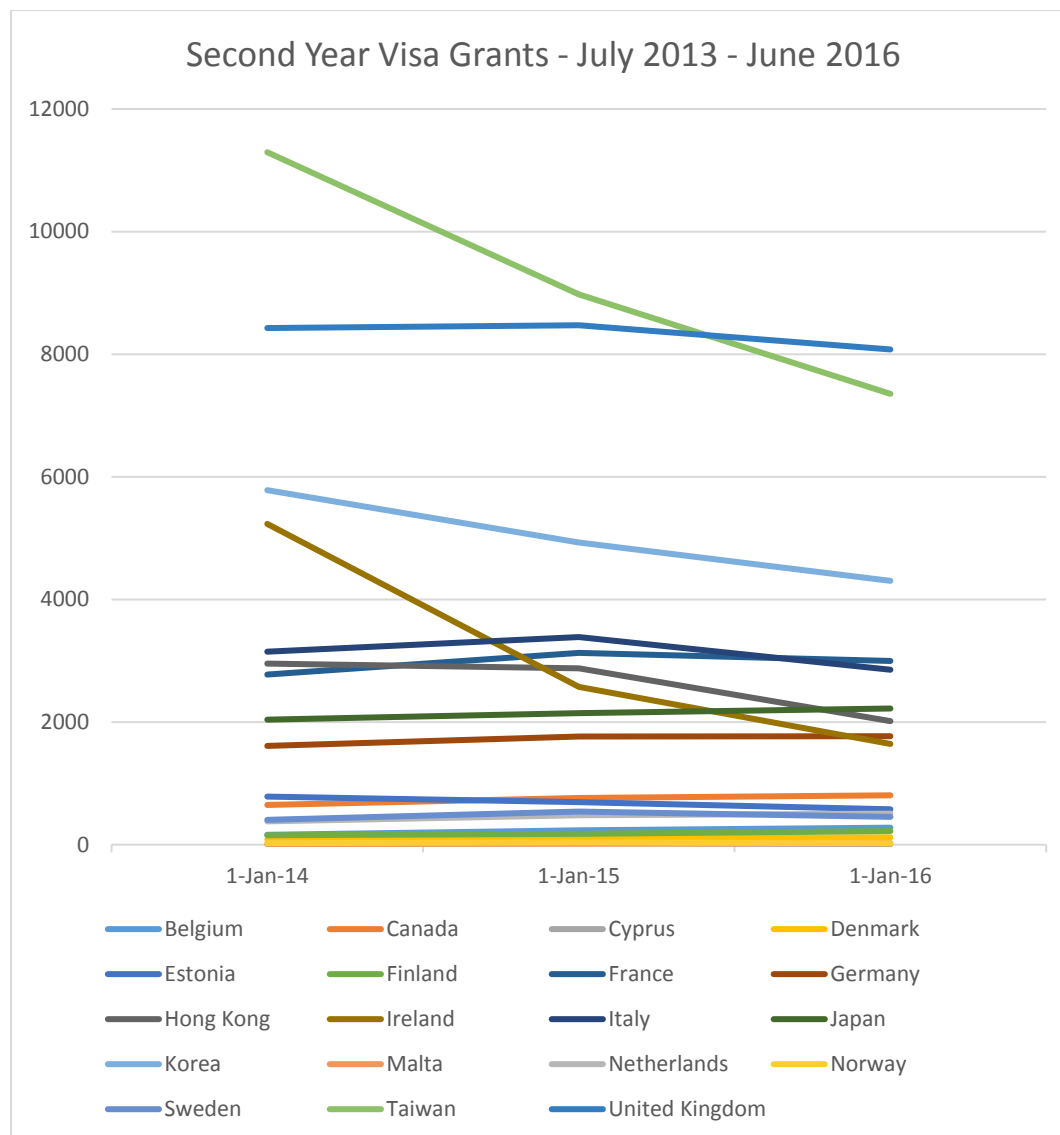
Options to achieve better outcomes in connection with agricultural contractors include:

- an Approved Contractor's scheme for labour hire providers in Australia, where contractors can seek 'Approved Contractor' status from the Department of Employment by demonstrating sound business practices and a history of regulatory compliance. Such a scheme would allow farmers to make choices about using contractors who are committed to ethical workplace and visa practices;
- a voluntary code for providers of contract labour, which focuses on protections for overseas workers; or
- legislation similar to the model adopted in Ontario, Canada (discussed above).

The NFF does not support a mandatory licensing scheme for labour contractors. In our view, this is unlikely to achieve the desired effect and may have unintended consequences, including an increase in the regulatory burden.

## 6. Recent changes to the working holiday maker program

In 2015-16, approximately 33,363 working holiday makers undertook regional agricultural work to qualify for their second year visa. This represents a 21% reduction over the last three years, from a high of approximately 42,274 in June 2014.<sup>22</sup> The sharpest drops were from Ireland (69% reduction), Taiwan (35%) and Hong Kong (32%).



Access to a second year visa requires a minimum 88 days' work in agriculture or other specified industry. This reflects government policy aiming to support regional Australia by helping to address ongoing agricultural workforce shortages.

<sup>22</sup> Australian Government <http://data.gov.au/dataset/visa-working-holiday-maker>.

Following regulatory changes introduced on 31 August 2015, regional agricultural work now only counts toward the '88 day requirement' if it is paid, full time work. Pay slips must be provided to the Department of Immigration and Border Protection to support any application for a visa extension. The motivation behind these changes appears to be aimed at reducing opportunities for mistreatment of workers (for example, by taking advantage of unpaid labour and/or making other unreasonable demands). However, the changes have a number of adverse consequences for the agriculture sector, discussed in further detail below.

#### *The '88 day' requirement*

The Department of Immigration and Border Protection's internal Procedures Advice Manual provides guidance for officials on how to assess the 88 day requirement, including the following statements:

“...in calculating 88 days of specified work, only full days of work are counted”; and

“...the shortest period that may be counted towards the specified work requirement is one day of full time work (for that industry). It is not acceptable to add two half days to make one full day of work, or to count one double shift as two full days of work.”

The term “day” is not defined in migration legislation and the current approach excludes any part-time or casual work of less than 7-8 hours per day. Full time employees are entitled to count unpaid days attributable to weekends in the 88 day period, while part time and casual employees cannot. In our view, these changes unreasonably narrow the scope of the second year visa initiative.

A better approach, if the payslip requirement remains, is to calculate work on an hourly basis, so that all hours worked by working holiday makers count toward the 88 day requirement. This approach works for all industries, and ensures that working holiday makers are not unfairly disadvantaged by working on a part-time or casual basis, or on days when it rains, or is too hot, or when machinery breaks down (all common occurrences in the agriculture sector).

*The 'payslip requirement'*

The requirement that work undertaken by working holiday makers will only count toward the 88 day requirement if it is paid work has adversely affected on-farm training programs specifically developed over the years to help those seeking a second year visa to become 'job ready' for paid regional agricultural work.

Many working holiday makers do not have an agricultural background and the capacity to participate in a short training program that helps them develop skills while being immersed in a rural setting prepares them for work on farms across Australia. In many cases training is provided free of cost, with board and lodging. Training participants are not paid for their time, and they are not required to work (that is, they can choose not to continue with their training at any time) – but they are given the opportunity to learn basic farm skills through 'hands on' experience. Until recently, time in programs of this kind counted toward the 88 day requirement. This encouraged take up of training programs, for the broader benefit of the agriculture sector.

On-the-job training programs that educate participants in farm safety, communication, livestock care and safe handling and safe operation of machinery help build capability and confidence in an environment targeted to learning. Those who participate in training develop the skills needed to be both productive and safe on farms where they subsequently find work. Training programs of this kind also create the opportunity for participants to live in country Australia, develop support networks that often endure throughout their stay and share in unique experiences such as sporting and recreational activities. Current training programs now report much lower participation rates as participants are unable to claim credits toward the 88 day requirement. Voluntary arrangements where farmers agreed to host working holiday makers for a period and provide on farm experience, board and lodging - but no employment - have all but disappeared as the focus of working holiday makers has turned to full time, paid work opportunities. This is a loss in terms of cultural exchange, as while no work was ever required, working holiday makers had a lot to gain from immersion in rural families and their communities.

The working holiday maker visa program needs to change so that:

1. all hours of regional agricultural work undertaken by working holiday makers; and
2. work experience and unpaid training of up to four weeks for the purpose of ensuring working holiday makers are 'job ready' for regional agricultural work;

each count toward the 88 day requirement.

Without change, work in sectors where regular full time employment is the norm will gain a new competitive advantage over agricultural work which is highly variable and dependent on weather patterns. Fewer working holiday makers will be eligible for the second year visa, and the contribution they make to the Australian economy will decline even further.

#### *Harvest Labour Service*

The Harvest Labour Service (HLS) was initially established to assist growers to source staff for their harvest requirements. In recent years, the meaning of "harvest work" has narrowed, to the point where the HLS can no longer provide workers to work in planting or silviculture (the establishment and cultivation of forests) or where the crops to be harvested are not 'horticultural crops'. These changes makes no sense at all. Harvest labour needs exist across the agriculture sector and not only in the horticulture industry. "Planting" is an essential aspect of the harvest process. Sandalwood growers, who operate in some of the remotest parts of Australia including Kununurra and the Northern Territory are particularly affected by the exemption of silviculture from the HLS and now find it much harder to source workers.

The HLS was further restricted from 1 July 2015, when it became no longer accessible to labour hire companies. Reputable labour hire providers to the agriculture sector lost their access overnight, despite their strong record and level of engagement with the Department of Employment. These are the kind of businesses which should be supported in the provision of farm labour, not prevented from doing so. The HLS should be reviewed to ensure that it can again be used to provide labour for planting, silviculture and other harvest activities and so that reputable labour hire companies can access to the program.



## **7. Exchange rates, economic growth and employment rates in source nations**

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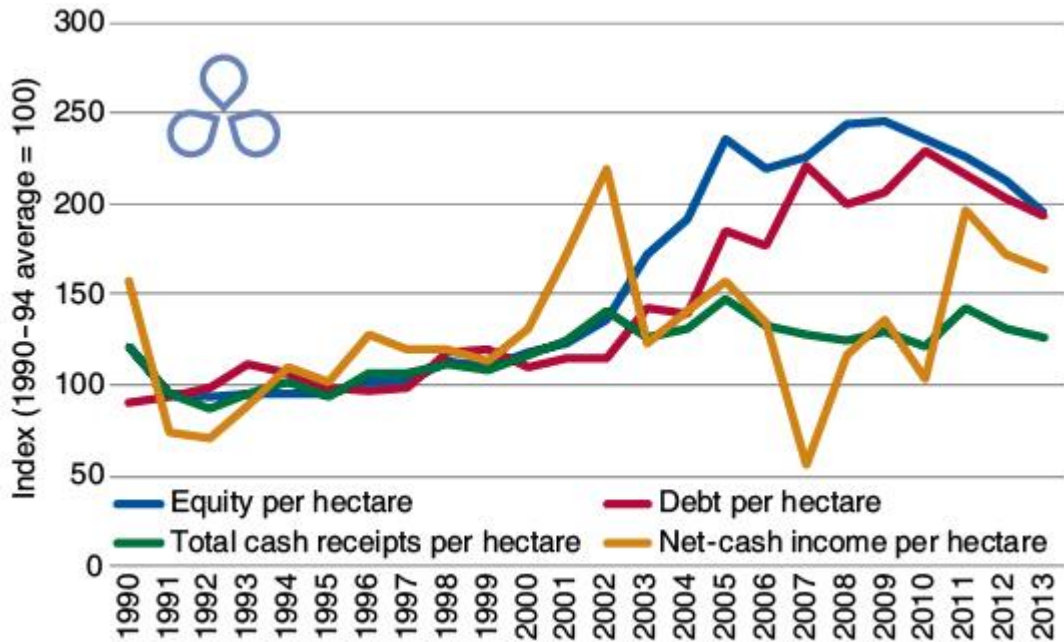
### *Australian agriculture's exposure to changes in exchange rates*

Interest rates and the Australian dollar are two issues that have a significant impact on Australian farm incomes. Overnight, they can turn a profitable farm business into one that is leaking cash and wondering whether it will be able to make it through the next season. In high turnover, low margin enterprises like farming, the difference between profit and loss can be finely tuned and can hinge on very small changes to factors such as these.

Australian agriculture's exposure to international markets is renowned, exporting around two thirds of all domestic production. Appreciating exchange rates make exports more expensive on world markets, while at the same time making imported food and fibre cheaper. At the same time, a higher dollar reduces the cost of imported farm inputs like fuel, fertilizer, tractors and machinery. The converse is also true – when exchange rates are low, the value of Australian products falls which makes our exports more competitive in world markets, but increases our costs of production at home.

Farmers' debt financing liabilities are also affected when banks pass on changes to the official cash rate through commercial loans. An ABARES report in 2011 showed rapid increases in farm debt due to low interest rates, larger farm sizes, changing farm practices (from livestock production to cropping) and the impacts of drought. Since then, real farm debt per hectare has fallen to its lowest level in seven years, thanks to improvements in net-cash income per hectare for broadacre farm businesses – although the same cannot be said for all agricultural businesses, many of whom have seen sharp reductions in income (the recent dairy crisis is a good example).

Index of Australian broadacre farms debt, equity, gross receipts and net-cash income, 1990–2013.



Source: ABARES, AFI analysis.<sup>23</sup>

*Economic growth and employment rates in source nations which may affect Australia attracting seasonal and temporary labour*

Australia has a relatively strong economic position in comparison to many source nations participating in the working holiday maker program, as the following table and graph shows. Economic conditions in source nations can influence participation in the program, as the reduction in Ireland’s participation confirms. Improved economic conditions in Ireland are likely to be a substantial contributing factor to this result. It is not yet known what effect, if any, the recent ‘Brexit’ decision will have on working holiday decisions emanating from Europe and the United Kingdom.

<sup>23</sup> Tomlinson A *Australian farm businesses could do better with different funding models*  
Australian Farm Institute  
[http://www.farminstitute.org.au/newsletter/2014/August\\_2014/August\\_2014\\_featurearticle.html](http://www.farminstitute.org.au/newsletter/2014/August_2014/August_2014_featurearticle.html).

**Countries participating in the WHM visa program**

Country	GDP Annual Growth Rate <sup>24</sup>	Unemployment rate <sup>25</sup>	Population <sup>26</sup>	WHM growth rate (last 12 mths) <sup>27</sup>
Argentina	0.49%	9.3%	43.8m	40%, limit reached
<b>Australia</b>	<b>3.1%</b>	<b>5.7%</b>	<b>24.3m</b>	<b>n/a</b>
Bangladesh	7.05%	4.3%	162.9m	-66%
Belgium	1.4%	8.5%	11.3m	3%
Canada	1.1%	6.9%	36.2m	-1%
Chile	1.5%	6.9%	18.1m	8%, limit reached
China	6.7%	4.05%	1.382b	1 <sup>st</sup> yr in program, limit reached
Cyprus	2.7%	11.7%	1.1m	-31%
Denmark	0.3%	4.2%	5.6m	6%
Estonia	0.6%	6.5%	1.3m	-10%
Finland	1.3%	7.8%	5.5m	-5%
France	1.4%	9.9%	64.6m	-8%
Germany	3.1%	4.2%	80.6m	-1%
Greece	-0.1%	23.52%	10.9m	n/a
Hong Kong	1.7%	3.4%	7.3m	-35%
Indonesia	5.18%	5.5%	260.5m	169%
Iran	0.6%	11.8%	80.0m	n/a
Ireland	2.3%	8.3%	4.7m	-13%
Israel	2.9%	4.7%	8.1m	n/a
Italy	0.7%	11.6%	59.8m	-18%
Japan	0.1%	3.1%	126.3m	7%
Malaysia	4%	3.4%	30.7m	0%, limit reached
Malta	5.2%	4.9%	419,615	-17%
Netherlands	2.3%	6%	16.9m	9%
Norway	0.7%	4.8%	5.2m	4%
PNG	9%	2.5%	7.7m	n/a
Poland	3.1%	8.6%	38.5m	0%, limit reached
Portugal	0.8%	10.8%	10.3m	144%, limit reached
Slovakia	3.7%	9.4%	5.4m	1 <sup>st</sup> yr in program
Slovenia	2.5%	10.8%	2.0m	1 <sup>st</sup> yr in program
South Korea	3.2%	3.6%	50.5m	-14%
Spain	3.2%	20%	46.0m	20%, limit reached
Sweden	3.1%	6.3%	9.8m	-7%
Taiwan	0.7%	3.96%	23.3m	-17%
Thailand	3.5%	1.01%	68.1m	7%, limit reached

<sup>24</sup> Trading Economics *GDP Annual Growth Rate* <http://www.tradingeconomics.com/country-list/gdp-annual-growth-rate>.

<sup>25</sup> Trading Economics *Unemployment Rate* <http://www.tradingeconomics.com/country-list/unemployment-rate>.

<sup>26</sup> Worldometers *Countries in the world by population* (2016) <http://www.worldometers.info/world-population/population-by-country/>.

<sup>27</sup> Department of Immigration and Border Protection *Working Holiday Maker visas granted pivot table 2015-16 to 30 June 2016 comparison with previous years*.

Turkey	4.8%	9.4%	79.6m	0%, limit reached
UK	2.2%	4.9%	65.1m	-6%
Uruguay	-0.5%	7.5%	3.4m	121%
USA	1.2%	4.90%	324.1m	4%

Prevailing economic conditions in source nations are not, however, the sole influence on participation in the working holiday maker visa program. As the tables below show, results vary. In some countries with low growth (less than 3%) and high unemployment (more than 6%), the rate of participation has increased strongly (Argentina, Chile, Uruguay), but this is not the case for all. In 7 out of 12 countries where these conditions were present, the rate of participation fell.

**Low growth, high unemployment**

(low growth = less than 3, high unemployment = 6 or more)

Country	GDP Annual Growth Rate	Unemployment Rate	WHM Growth Rate (last 12 mths)
Slovenia	2.50%	10.80%	1 <sup>st</sup> yr in program
Cyprus	2.70%	11.70%	-31%
Italy	0.70%	11.60%	-18%
Ireland	2.30%	8.30%	-13%
Estonia	0.60%	6.50%	-10%
France	1.40%	9.90%	-8%
Finland	1.30%	7.80%	-5%
Canada	1.10%	6.90%	-1%
Belgium	1.40%	8.50%	3%
Chile	1.50%	6.90%	8%, limit reached
Netherlands	2.30%	6%	9%
Argentina	0.49%	9.30%	40%, limit reached
Uruguay	-0.50%	7.50%	121%

Source: Trading Economics and DIBP, NFF analysis

Among countries with high rates of growth (3% or more) and relatively low unemployment (less than 6%), growth has been strong in about 50% of cases (Indonesia's rate of participation grew by 169%). China, Malaysia, Thailand each reached their agreed capacity, despite China only being in its first year of participation. The other 50% of countries in this category were using the program less (Bangladesh participation declined sharply, by 66%, although their overall participation in the program is relatively low).

**High growth, low unemployment**

(high growth = 3 or more, low unemployment = less than 6)

Country	GDP Annual Growth Rate	Unemployment Rate	WHM Growth Rate (last 12 mths)
Bangladesh	7.05%	4.30%	-66%
Malta	5.20%	4.90%	-17%
Germany	3.10%	4.20%	-1%
Malaysia	4%	3.40%	0%, limit reached
Thailand	3.50%	1.01%	7%, limit reached
Indonesia	5.18%	5.50%	169%
China	6.70%	4.05%	Limit reached in 1 <sup>st</sup> yr

Source: Trading Economics and DIBP, NFF analysis

Among countries with low growth and low unemployment, seven countries reduced their participation in the program while the participation rate increased strongly for three countries (Argentina, Chile and Uruguay) with two of these reaching capacity.

**Low growth, low unemployment**

(low growth = less than 3, low unemployment = less than 6)

Country	GDP Annual Growth Rate	Unemployment Rate	WHM Growth Rate (last 12 mths)
Slovenia	2.50%	10.80%	1 <sup>st</sup> yr in program
Portugal	0.80%	10.80%	144%, limit reached
Uruguay	-0.50%	7.50%	121%
Argentina	0.49%	9.30%	40%, limit reached
Netherlands	2.30%	6%	9%
Chile	1.50%	6.90%	8%, limit reached
Belgium	1.40%	8.50%	3%
Canada	1.10%	6.90%	-1%
Finland	1.30%	7.80%	-5%
France	1.40%	9.90%	-8%
Estonia	0.60%	6.50%	-10%
Ireland	2.30%	8.30%	-13%
Italy	0.70%	11.60%	-18%
Cyprus	2.70%	11.70%	-31%

Source: Trading Economics and DIBP, NFF analysis

Of only four countries with high growth and high unemployment, two reached their capacity (Poland and Spain), one was in its first year of participation (Slovakia) and one (Sweden) reduced participation.

**High growth, high unemployment**

(high growth = 3 or more, high unemployment = more than 6)

Country	GDP Annual Growth Rate	Unemployment Rate	WHM Growth Rate (last 12 mths)
Poland	3.10%	8.60%	0%, limit reached
Spain	3.20%	20%	20%, limit reached
Slovakia	3.70%	9.40%	1 <sup>st</sup> yr in program
Sweden	3.10%	6.30%	-7%

Source: Trading Economics and DIBP, NFF analysis

Highest rates of growth in participation were in Argentina, China, Indonesia, Portugal, Spain and Uruguay. Four of these are now at capacity while strong growth is likely to mean that the remaining two (Indonesia and Uruguay) also reach their cap in the next 12 months.

**Highest rates of growth**

Country	GDP Annual Growth Rate	Unemployment Rate	WHM Growth Rate (last 12 mths)
Spain	3.20%	20%	20%, limit reached
Argentina	0.49%	9.30%	40%, limit reached
Uruguay	-0.50%	7.50%	121%
Portugal	0.80%	10.80%	144%, limit reached
Indonesia	5.18%	5.50%	169%
China	6.70%	4.05%	Limit reached in 1st yr

Source: Trading Economics and DIBP, NFF analysis

As the table below shows, more than half of all 35 countries actively participating in the program are either experiencing growth in participation or have now reached their capacity. This will continue to constrain overall growth in the program in Australia unless current caps are lifted.

**Countries where participation is increasing or at capacity**

Country	GDP Annual Growth Rate	Unemployment Rate	WHM Growth Rate (last 12 mths)
Malaysia	4%	3.40%	0%, limit reached
Poland	3.10%	8.60%	0%, limit reached
Turkey	4.80%	9.40%	0%, limit reached
Belgium	1.40%	8.50%	3%
Norway	0.70%	4.80%	4%
USA	1.20%	4.90%	4%
Denmark	0.30%	4.20%	6%
Japan	0.10%	3.10%	7%
Thailand	3.50%	1.01%	7%, limit reached
Chile	1.50%	6.90%	8%, limit reached
Netherlands	2.30%	6%	9%
Spain	3.20%	20%	20%, limit reached
Argentina	0.49%	9.30%	40%, limit reached

China	6.70%	4.05%	1 <sup>st</sup> yr in program, limit reached
Slovakia	3.70%	9.40%	1 <sup>st</sup> yr in program
Slovenia	2.50%	10.80%	1 <sup>st</sup> yr in program
Uruguay	-0.50%	7.50%	121%
Portugal	0.80%	10.80%	144%, limit reached
Indonesia	5.18%	5.50%	169%

Source: Trading Economics and DIBP, NFF analysis

More work also needs to be done to arrest rates of declining participation among the 15 participating countries shown in the table below.

**Countries where participation is decreasing**

Country	GDP Annual Growth Rate	Unemployment Rate	WHM Growth Rate (last 12 mths)
Canada	1.10%	6.90%	-1%
Germany	3.10%	4.20%	-1%
Finland	1.30%	7.80%	-5%
UK	2.20%	4.90%	-6%
Sweden	3.10%	6.30%	-7%
France	1.40%	9.90%	-8%
Estonia	0.60%	6.50%	-10%
Ireland	2.30%	8.30%	-13%
South Korea	3.20%	3.60%	-14%
Malta	5.20%	4.90%	-17%
Taiwan	0.70%	3.96%	-17%
Italy	0.70%	11.60%	-18%
Cyprus	2.70%	11.70%	-31%
Hong Kong	1.70%	3.40%	-35%
Bangladesh	7.05%	4.30%	-66%

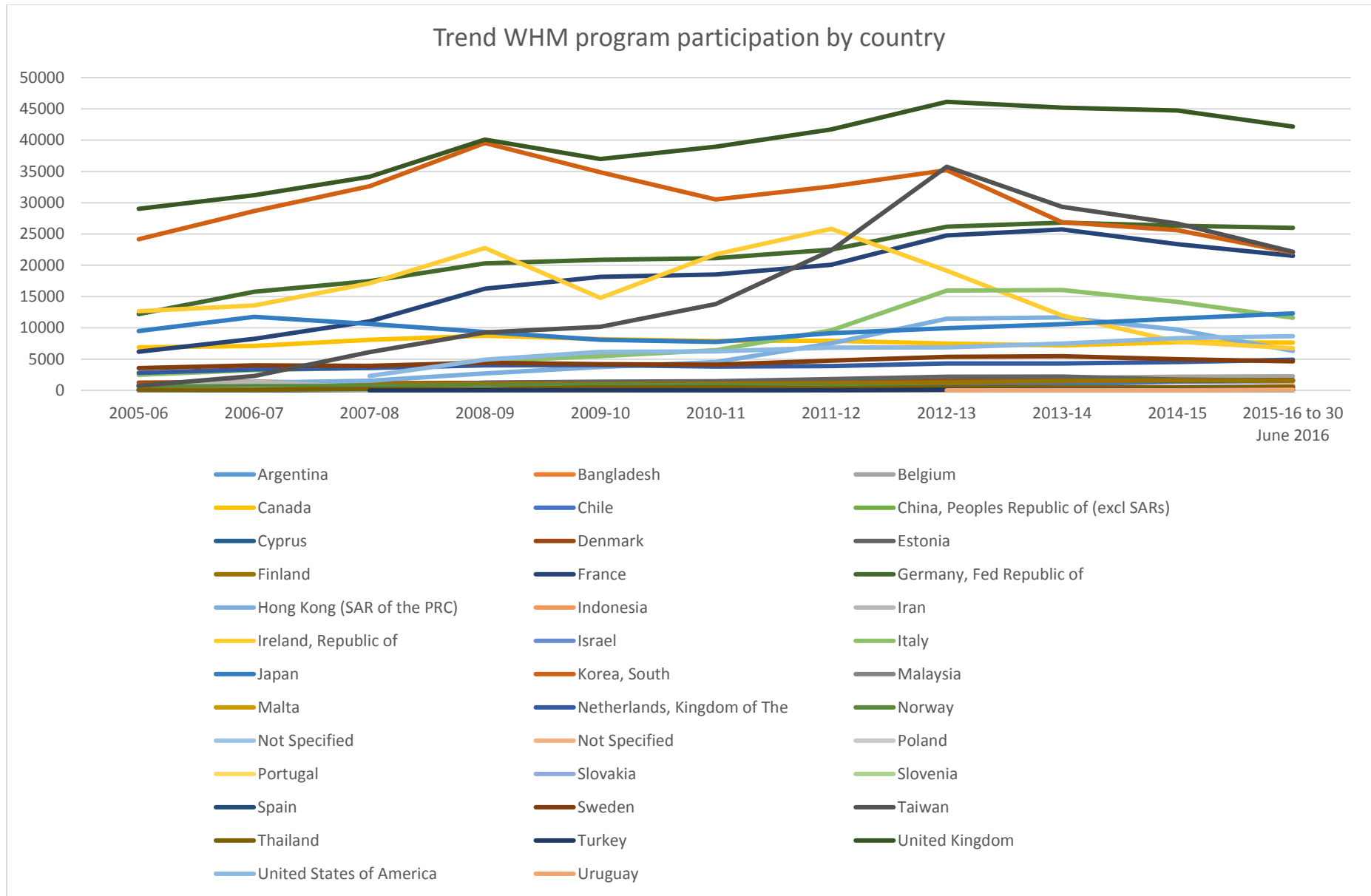
Source: Trading Economics and DIBP, NFF analysis

The United Kingdom remains the primary source of working holiday makers coming to Australia. Despite its uncapped participation in the program, there has been a steady decline in the visa grant rate for travellers from the United Kingdom since 2012, coinciding with an increase in the non-resident tax rate from 29% to 32.5%.<sup>28</sup> A significant decline in the rate of participation is also evident after 2012 in South Korea, Ireland and Taiwan. One possibility is that higher tax rates affect

<sup>28</sup> ATO Tax rates – non-resident [https://www.ato.gov.au/rates/individual-income-tax-for-prior-years/?page=2#Tax\\_rates\\_\\_\\_foreign\\_resident](https://www.ato.gov.au/rates/individual-income-tax-for-prior-years/?page=2#Tax_rates___foreign_resident).

those who rely on the program as a work opportunity more than a holiday experience most.

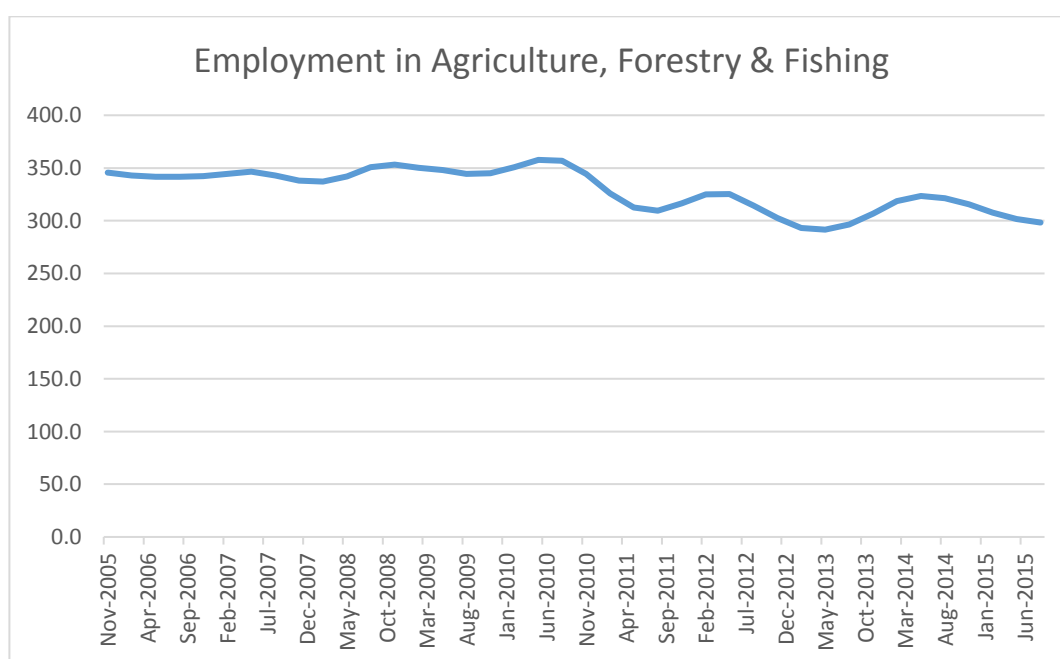




## 8. Short-term and long-term agricultural and tourism labour needs

There were 345,000 people employed in agriculture at the end of 2005. While in the two decades leading up to 2002, the sector was experiencing an overall upward trend in employment levels, severe droughts in 2002 and 2005 resulted in a significant reduction in employment from which the sector has never recovered. Drought is a regular feature of the agriculture sector, and as recently as this year we have seen a sustained four year drought start to break across large parts of the country.

As the graph below demonstrates, employment levels are now below 300,000. As at August 2015, the total number of employees in agriculture, forestry and fishing was 298,400 (this figure appears slightly less than figures provided by the Department of Employment in connection with this review).



Despite the downward trend in employment growth, the outlook for a number of agricultural commodities is strong. With the right regulatory environment, the agriculture sector can generate significant growth over the next decade, taking the stage as a \$100 billion industry within the next 15 years. The Department of Employment’s Labour Market Information Portal forecasts projected growth of 8.4% and 5.8% respectively in vegetable and fruit picking jobs to 2020. In our

estimation, this rate of growth is likely to continue for the foreseeable future as world demand for quality food and fibre rises among key trading partners and growth occurs in parts of the sector that are heavily labour intensive (horticulture being the primary example).

Obtaining reliable agricultural workforce data to make more certain predictions is difficult. The Australian Bureau of Statistics only collects limited information on employment in agriculture, and even then, much of that is combined data which also includes the forestry and fishery industries. Unlike data gathered for analysis in other industries and sectors, agricultural statistics are sufficiently variable as to be unreliable from a statistical perspective. This reflects the nature of the industry, which is characterised by daily market and weather fluctuations, high turnover, brief periods of employment and a significant itinerant workforce. The agricultural census is due out next year and may shed further light on emerging trends in the sector. Additional workforce research by the Australian Bureau of Agricultural and Resource Economics and Sciences is also likely to assist in coming months.

#### *Labour shortages by occupation*

Managers, overseers and administrators make up over half of the agricultural workforce, and represent a major area in which there are labour shortages nationally. This area is particularly problematic because there is not only a lack of labour but a vast lack of skills to undertake the functions of these roles.

Another key area facing significant shortages at a national level in the sector is labourers, transport and clerical workers. A notable proportion of this work is unskilled or involves a significant amount of unskilled work.

Trades, professionals and paraprofessionals are the occupations facing the most severe labour and skills shortages. The shortage of shearers which has existed now for over 50 years is an ongoing challenge. Mobile plant operators and mechanics are always in high demand.

Notable ongoing shortages for labour, by State and Territory, include the following:

Queensland - fruit pickers, station hands and mechanics.

New South Wales and the ACT – shearers, dairy operators, farm managers.

Victoria – fruit pickers, dairy, shearers, production horticulturalists.

Tasmania – dairy, station hands, shearers and shed staff.

South Australia – shearers, shed staff and station hands.

Northern Territory – mechanics, stockmen, station hands.

Western Australia – station hands, plant operators.

## **9. Opportunities to expand supply of seasonal and temporary foreign workers for the agricultural sector**

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There are a range of options available to government to expand the supply of seasonal and temporary workers for the agriculture sector.

### *Scrapping the backpacker tax*

The simplest solution to the looming workforce shortage created by the ‘backpacker tax’ is to abandon the measure and revert to the arrangements in place prior to Budget 2014-15.

### *Reducing the tax rate for backpackers*

In the first iteration of this review, the agriculture and tourism sectors proposed a flat tax rate for working holiday makers in the range of 15 to 19 per cent, with no tax free threshold (providing for net revenue of up to approximately \$315 million in lieu of the forecast \$540 million over three years). Taxation at this level would ensure that net earnings in Australia are more favourable than in New Zealand or Canada.

The agriculture sector agrees that working holiday makers should pay some tax. However, the level of taxation should recognise that many working holiday makers make their home in rural communities for significant periods, and make an essential contribution to the agriculture sector which warrants more favourable treatment than the default rate for non-residents for all.

### *A dedicated agricultural visa*

Current visa programs relied on to provide a large proportion of the agricultural workforce have competing policy objectives that dilute their value for the sector.

The working holiday maker program is as much about the holiday experience as it is about the work. This has implications for the availability and reliability of agricultural workers, many of whom do not tend to stay in one place for an entire season. High turnover of staff at harvest time is a common experience. The density of available labour pools is also greater on urban fringes and in regional tourist areas (for example, the Whitsunday region and around Byron Bay).

The Seasonal Worker Program operates in conjunction with Australia's Labour Mobility Assistance Program, a developmental program aiming to boost economic growth in Pacific Islands and East Timor. As a result, it is heavily geared toward supporting and protecting workers and sending remittances home. This has implications for its suitability as a workforce program.

Recognising that Australian agriculture will always rely to some degree on a migrant workforce means delivering a dedicated working visa for the agriculture sector (including the meat industry). This approach would:

- a. increase the pool of countries from which the agriculture sector can draw, targeting economic migrants who derive substantial benefit from income in \$AUD; and
- b. be open to all workers with experience in agricultural machinery and technology, feed management, animal husbandry and sufficient English language skills to ensure a safe workplace.

#### *Increasing the caps*

Reversing the annual decline in backpacker numbers coming to Australia would generate over \$300 million each year. For each \$100 million in additional revenue needed, an additional 6666 working holiday makers is needed – as discussed earlier in this submission, opening up the working holiday maker visa program to China resulted in all 5000 available visa places being sought immediately.

#### *Other changes to the working holiday maker program*

Other options to grow the number of working holiday makers coming to Australia include:

- increasing the eligible age for 417/462 visas from 30 to 35/40;
- lifting country specific caps under existing 417/462 visa arrangements;
- extending the period that a working holiday maker can work with one employer/employer group from 6 to 12 or 24 months;
- clarifying the 88 day work requirement as discussed earlier in this submission;
- expanding the capacity of the Harvest Trail Service to supply harvest labour;

- reviewing current visa fees and multiple visa application issues to ensure that they do not act as a deterrent to working holiday makers coming to, or staying in, Australia (particularly in developing countries where the value of the Australian dollar is comparatively high); and
- developing new tools to attract more overseas visitors in a joint initiative of the Government and industry.

### *Streamlining the Seasonal Worker Program*

As it currently stands, the Seasonal Worker Program is not an adequate substitute for the working holiday maker visa program. While an evaluation of the Program in 2011 found that it can fill unmet demand for seasonal workers and provide a consistent, reliable, returning workforce that improves workforce planning and increases productivity, reform is needed if the Program is to deliver the level of affordability and flexibility the agriculture sector requires.<sup>29</sup>

Reliable and productive labour is a key enabler of industry confidence and sustainability. Changes to promote greater use of the Program include:

- adequate resourcing on the ground in Australia to support participating employers and workers;
- a centrally managed fund for participant contributions from which workers can draw from to cover travel and accommodation costs;
- shifting to an industry-owned model, with greater flexibility to manage periods of work.

### *Improving local participation rates*

While the industry invests heavily in programs to recruit, train and retain skilled workers within Australia, closing the gap from the local workforce will take time and may never be fully realised. High rates of youth unemployment in areas where tourism and agriculture are key industries, such as Cairns, suggest that availability of entry-level work is not enough

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<sup>29</sup> TNS Social Research *Final evaluation of the Pacific Seasonal Worker Pilot Scheme* September 2011

on its own to address labour shortages.

Importantly, farmers are not responsible for solving Australia's youth unemployment problems. Just like every other employer, farmers are entitled to expect that their employees will be ready, willing and able to do the work required. Where even one of these features is absent, the employment relationship is likely to fail. Ultimately, unemployment is a social policy issue and not one that private industry alone can address.

Government programs including services provided through JobActive and the Youth PaTH program are important in seeking to address some of these issues, but they are no substitute for working holiday makers and other overseas workers who see value in regional agricultural work in a way that many unemployed Australians do not. They should be seen as supplementary programs, rather than any kind of viable alternative.

*Joint communication strategy*

Whatever solution is adopted, a joint industry and government communication strategy to help reverse the trend in declining numbers of working holiday makers is imperative. Communication should focus on key outcomes from this review which satisfactorily address widespread concern about the backpacker tax.



## **10. Consistent tax treatment between different classes of temporary work visa holders**

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There is no logical reason to conclude that all temporary work visa holders should be taxed in the same way. The nature and purpose of the various visa programs will indicate the appropriate approach to be taken in each case.

As discussed above, the Seasonal Worker Program (416 visa), for example, is a foreign aid program designed to support economic development in the Pacific and in East Timor. While it helps address workforce shortages in Australia, it is primarily a developmental program. This explains its lower tax rate of 15%, which allows workers to send home remittances while covering their costs in Australia as well as government operating costs in Australia and diplomatic missions overseas.

By contrast, Independent Skilled visas and the 457 visa program are long stay visas allowing skilled migrants to work for up to 4 years with one employer. Visa holders under this program stay in one place for long periods, being tied as they are to their nominated employer sponsor until an alternative sponsor is approved. They are likely to act much as Australian residents act, with a stable residence and community involvement for the duration of their stay. Frequently they seek to transition to permanent residency, an option facilitated through pathways to permanency embedded in the scheme. These characteristics suggest that the appropriate approach to taxation in the case of 457 visa holders is ordinary tax rules applicable to Australian residents (with rules for non-residents applicable where the sponsorship arrangement ends earlier than expected and the visa holder no longer has the intention of residing in Australia).

The Safe Haven Enterprise Visa is another temporary visa program although different again, in that it has direct links to work in rural and regional Australia and allows visa holders to stay in Australia for 5 years, with the option to transition to permanent residency after that. As with the skilled visa programs, the nature of the program is likely to encourage behaviour on the part of visa holders more akin to the behaviour of Australian residents, and should be taxed accordingly.

The working holiday maker program has dual purposes of facilitating cultural exchange and addressing labour shortages in specified industries, primarily

agriculture. Working holiday makers are more likely to travel around Australia than their 457 visa counterparts, but they are under no compulsion to do so. Many choose to stay in one place for long periods – encouraged to do so by the 88 day incentive and recent initiatives announced through the Northern Australia White Paper, which would allow them to work for one employer for up to 12 months. Some working holiday makers choose to make their permanent home in Australia, either drawing from their existing skills or completing new qualifications so that they can access pathways to permanency under the 457 visa program.

The appropriate tax treatment of working holiday makers is thus not easy to ascertain, from the point of view that there are a range of different ways the program is used by visa holders while in Australia. In our view, the level of taxation should recognise that many working holiday makers make their home in rural communities for significant periods, and make an essential contribution to the agriculture sector which warrants more favourable treatment than the default rate for non-residents for all.

## 11. Conclusion

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Solving Australia's agricultural workforce supply and demand constraints overnight is not realistic. Labour shortages in the sector are as old as the sector itself. As this submission demonstrates, the issues are many and varied, and involve complex policy considerations and political risk in the age old campaign pitting 'Aussie jobs' against employment of overseas workers.

Focusing on the broader issues distracts from the task at hand, which is finding a workable solution to reasonable but deeply-held concerns about the effect of 'backpacker tax' on rural and regional Australia.

A solution to the 'backpacker tax' needs to be found. As soon as that happens, the sector can return our focus to the development of a strategic agricultural workforce plan for the future.

## 12. Summary of recommendations

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### First and foremost

The NFF recommends that the Government scrap the ‘backpacker tax’ and replace it with a 19% tax rate with no tax free threshold, as was proposed to the initial review of the tax in March 2016.

Revenue lost as a result of this measure can be offset by:

- Increasing the cap on working holiday maker visa grants for countries who have reached their capacity (Argentina, Chile, China, Indonesia, Malaysia, Poland, Portugal, Spain and Thailand); and
- Increasing the eligible age for 417/462 visas from 30 to 35.

### In the longer term

We cannot solve the agriculture sector’s workforce supply constraints overnight.

The agriculture sector needs resources to design and implement a sound agricultural workforce strategy for the future. The strategy should consider the following reform options:

1. A dedicated agricultural work visa.
2. Improving agricultural workforce data collection and distribution.
3. Reforming working holiday maker programs so that:
  - a. all farm work counts toward the 88 day requirement, including work experience and unpaid training of up to four weeks;
  - b. employees can work with one employer or group of employers for 12 or 24 months;
  - c. sponsored employees have a pathway to permanency; and
  - d. current visa fees and multiple visa application issues do not act as a deterrent to working holiday makers coming to, or staying in, Australia.

4. Resourcing and recalibrating the Seasonal Worker Program to:
  - a. improve support for participating employers and workers;
  - b. establish a centrally managed fund for participant contributions;
  - c. shift to an industry-owned model.
5. Allowing the Harvest Labour Service to provide labour for planting, silviculture and other harvest activities, either directly employed or through reputable labour hire companies.
6. Addressing poor outcomes involving labour contractors, either through:
  - a. a voluntary approved contractors scheme;
  - b. a voluntary code of practice for labour contractors; or
  - c. employment protection legislation that prohibits charging of fees to overseas workers, passing on of unreasonable hiring costs and withholding of passports; and
  - d. smarter use of technology, so that overseas workers have all the information they need before they set foot in Australia (pay rates, help lines, migrant worker fact sheets, secure visa details).
7. Reviewing superannuation rules, including the income threshold above which superannuation is payable and whether it should apply to temporary residents.
8. A new promotional strategy to attract more overseas visitors to Australia, beginning with a joint industry / government communication strategy to help reverse the trend in declining numbers of working holiday makers.