

Migration Amendment (Protecting Migrant Workers) Bill 2021

**Submission to Senate Legal and
Constitutional Affairs Committee**

January 2022

About the Australian Fresh Produce Alliance

The Australian Fresh Produce Alliance (AFPA) is made up of Australia's key fresh produce growers and suppliers. The members include:

- Costa Group
- Perfection Fresh
- Montague
- One Harvest
- Pinata Farms
- Fresh Select
- Mackay's Banana Marketing
- Driscoll's
- 2PH Farms
- LaManna Premier Group
- Rugby Farming
- Freshmax
- Fresh Produce Group

These businesses represent:

- half the industry turnover of the Australian fresh produce (fruit and vegetables) sector - \$4.5 billion of the \$9.1 billion total
- a quarter of the volume of fresh produce grown in Australia - 1 million of the 3.9 million tonne total
- more than a third of fresh produce exports - \$410 million of the \$1.2 billion export total
- more than 1,000 growers through commercial arrangements, and
- more than 15,000 direct employees through peak harvest, and up to 25,000 employees in the grower network.

The key issues the AFPA is focusing on include:

- packaging and the role it plays in product shelf life and reducing food waste landfill,
- labour and the need for both a permanent and temporary supply of workers,
- market access to key export markets for Australian produce,
- product integrity both within and outside of the supply chain,
- pollination and research into alternative sources, and
- water security, including clear direction as to the allocation and trading of water rights.

The AFPA's aim therefore is to become the first-choice fresh produce group that retailers and government go to for discussion and outcomes on issues involving the growing and supply of fresh produce.

Products grown by AFPA Member companies include:

Apples	Blueberries	Cherries	Nectarines	Raspberries
Apricots	Broccoli	Fioretto	Onions	Salad leaf
Asparagus	Broccolini	Green Beans	Oranges	Spinach
Avocado	Brussel Sprouts	Herbs	Peaches	Strawberries
Baby Broccoli	Butternut	Lemons	Pears	Sweet Corn
Baby Corn	Pumpkin	Lettuce	Pineapples	Table grapes
Bananas	Cabbage	Mandarins	Plums	Tomatoes
Beetroot	Cauliflower	Mango	Potatoes	Water Cress
Blackberries	Celery	Mushrooms	Cucumber	Wombok



Summary

The fresh produce industry is a large employer of temporary migrants. Historically, the industry has been a significant employer of visa holders, who are not sponsored by an employer, specifically working holiday makers (WHM) or “backpackers” and international students. With the introduction of the Seasonal Worker Programme, Pacific Labour Scheme (now consolidated under the Pacific Australia Labour Mobility (PALM) scheme) and Horticulture Industry Labour Agreement, the number of migrant workers linked to a sponsoring employer is increasing significantly and rapidly.

Prior to the onset of the COVID pandemic, the horticulture sector was a large employer of WHMs. The closure of Australia’s international borders, prolonged lockdowns and challenges moving domestically has significantly reduced the number of WHMs both in Australia and in the horticulture sector. In 2019, there was approximately 200,000 WHM in Australia, and based on industry employment figures, approximately 52,000 of these WHMs worked in horticulture annually. There are currently only 35,000 WHM in Australia.

Following the restart of Australia’s Pacific Labour Mobility Programs in August 2020, the number of Pacific workers in horticulture has increased significantly, with approximately 15,000 Pacific workers currently employed in the sector. The significant increase in the number of PALM scheme workers in the horticulture sector is part of a broader restructuring of the industry’s workforce to reduce reliance on unregulated migration schemes, such as the working holiday maker program.

As employers of a large number of migrant workers, the horticulture sector has been a strong advocate for ethical sourcing programs, greater access to sponsored and regulated visa schemes as well as a National Labour Hire Licensing Scheme. Given the importance of temporary migrants to the horticulture workforce, the Australian Fresh Produce Alliance (AFPA) strongly support improvements that assist in deterring unscrupulous employers and protect migrant workers who are vital to the horticulture sector.

The AFPA supports strengthening the regulatory framework under the Migration Act for employers of migrant workers who are not required to enter into sponsorship arrangements, particularly those that employ WHMs and international students. As industry is moving towards more structured migration programs which require sponsorship, the AFPA is also supportive of the increase in civil penalties available under the Employer Sponsorship Framework.

The AFPA have consistently advocated for high standards and enforcement of those standards within the horticulture supply chain. The Bill supports the integrity of visa programs and contributes to whole of government initiatives to combat migrant worker exploitation.



Industry Background

The Australian Bureau of Statistics reports that Australian horticulture employs 72,800 people¹ across 11,490 individual businesses². The fresh produce workforce is defined by a significant requirement for production/harvest labour roles, relative to output. The harvest workforce in fresh produce is dominated by temporary migrants/visa holders, specifically Working Holiday Makers (WHMs) (417 and 462 visas) and Seasonal Worker Programme and Pacific Labour Scheme (now known as PALM scheme) visa holders (403 visa).

Restructure of the horticulture sector's workforce

Prior to the onset of the COVID pandemic, the horticulture sector was a large employer of WHMs. The closure of Australia's international borders, prolonged lockdowns and challenges moving domestically have significantly reduced the number of WHMs both in Australia and in the horticulture sector. In 2019, there was approximately 200,000 WHM in Australia, and based on industry employment figures, approximately 52,000 of these WHMs worked in horticulture annually. Typically, WHMs work for 3 months in the horticulture sector to obtain the 88 days required to extend either their 417 or 462 visa for an additional 12 months. Figure 1 below demonstrates the composition of the horticulture sectors workforce prior to the onset of the pandemic.

TOTAL WORKFORCE	80,000						
HARVEST	65,000						
MANAGEMENT							15,000
COMPOSITION	52,000 Working Holiday Makers			8,000 Seasonal Worker Program	5,000 Australians & Permanent Residents	5,000 Australians & Permanent Residents	10,000 Owner Operators

Figure 1- Composition of the fresh produce workforce

As a result of the COVID pandemic, the horticulture sector has significantly increased the number of Pacific workers employed in the sector, following the restart of Australia's Pacific Labour Mobility Programs in August 2020. In terms of temporary migration programs typically used in the sector, the PALM scheme requires that visa holders are sponsored, all employers are approved and there is a program overlay providing mandatory guidelines for employing PALM scheme visa holders.

There are now approximately 15,000 Pacific workers currently employed in Australian horticulture, a significant increase from the 8,000 employed in 2019. The increase in Pacific workers in the sector is important to note for several reasons;

- Pacific workers are typically working over 9-12 months in the horticulture sector; this work pattern means that one Pacific worker is replacing up to four WHM in terms of typical employment length. This

¹ ABARES (2018), Agricultural commodity statistics 2018

² ABS (2019), Agricultural Commodities 2017-18 Cat no 7121.0



means that the additional 7,000 Pacific workers employed in the sector since August 2020, have effectively replaced approximately 28,000 WHMs. It is likely that this substitution number is higher when productivity gains are also accounted for.

- The increase in employment of Pacific workers in the sector has assisted industry in developing a more productive workforce, that returns to similar roles year on year. Enabling a more productive workforce will considerably reduce the number of harvest workforce roles available in the sector.
- As identified in a number of relevant inquiries, reports and independent research on both the horticulture sector and temporary migration, it is noted by industry, academics and unions that the Seasonal Worker Programme (now part of the PALM scheme) offers significantly more protections to migrant workers than other sponsored and unsponsored visa types.

The increased reliance on the PALM scheme demonstrates the horticulture industry's shift away from temporary migration programs with little regulation such as WHM and international students, and a greater adoption of programs with an increased management and worker welfare protections.

Addressing new provisions in the Bill

New Offences

The horticulture sector employs a number of temporary migrant workers across a number of sponsored and unsponsored schemes. The inclusion of new sanctions to address the coercion of temporary migrants to work outside their visa conditions, or by using migration rules is strongly supported as a vehicle to not only protect migrant workers but to deter poor employers from utilising this tactic.

The establishment of new criminal offences and associated civil penalty provisions for individuals and/or business responsible for the offence is supported to ensure that a temporary migrant's visa status cannot be used to exploit them in the workplace. There have been media reports of this type of behaviour occurring in the horticulture sector, typically related to the requirement of working holiday makers to complete 88 days of farm work to obtain a visa extension. Ensuring that unscrupulous employers are unable to leverage this requirement to exploit workers through criminal and civil penalties is welcomed by the AFPA.

Prohibition on certain employers employing additional non-citizens

The AFPA are supportive of the establishment of a framework that enables the Minister or delegate to declare certain employers to be "prohibited employers". As outlined in the Migrant Workers Task force Report, extending this provision beyond employers that operate as sponsors is important in ensuring that all employers of migrant workers are covered by this provision.

The publication of information about prohibited employers as well as additional reporting requirements imposed on these employers is also supported as forming part of a framework to prevent poor employers from continuing to employ temporary migrant workers.

Use of computer system to verify immigration status

As regular employers of temporary migrants, most horticulture employers are familiar with undertaking VEVO checks. While generally supportive of the intent of these conditions, that is to specify that a VEVO check must be undertaken by an employer or a third party before a visa worker commences employment, care must be taken



to ensure that host employers in a labour hire arrangement are able and encouraged to also determine, verify or spot check the working rights of temporary visa holders on their property.

Aligning and increasing penalties for work-related breaches

Aligning and increasing the penalties for work-related breaches across individuals and approved work sponsors is appropriate. The penalties outlined for work-related breaches are set at a level that is a strong deterrent for offending. These measures coupled with the potential to become a prohibited employer, regardless of the type of visa holders employed, should provide a strong disincentive for employers to breach employment and/or visa conditions.

Enforceable undertakings and Compliance Notices

Enforceable undertakings where there has demonstrably been a breach of work-related provisions are supported. Obligations such as an agreement to remedy the breach and a commitment to future compliance measures are critical to ensuring that similar breaches do not occur again, and that these issues are well understood by other employers of temporary migrants. Further, the AFPA support the establishment of a framework in the Migration Act to enable the use of compliance notices. The use of compliance notices as an educational and behavioural change tool is well documented and will result in a greater level of voluntary compliance.

The Bill provides the ABF with these tools to address non-compliance, in order to be able to address any non-compliance as effectively as possible the AFPA would support additional funding to the ABF to ensure that they are able to best engage with employers and use the arrangements in the Bill to respond to non-compliant behaviour.

