Chapter 2

Taxation of working holiday makers

2.1 An underlying theme in the evidence received by the committee was the contribution that WHMs make to the Australian economy, both as an important market segment for Australia's tourism sector, and as a source of seasonal and temporary labour. This chapter very briefly highlights the economic contribution of WHMs, drawing on evidence presented to the committee in this regard.

2.2 In turn, this chapter assesses measures in the reform package relating to the taxation of WHMs, including the application of a 19 per cent tax on WHM income up to $37,000 and the increase in the DASP tax for WHMs to 95 per cent. This chapter also summarises evidence received that assessed the likely impact of the reform package as a whole (including measures not in the bills) on the WHM market in Australia.

2.3 Finally, this chapter considers the proposals made by some witnesses for a review of the impact of the reform package at a suitable time after its implementation.

Contribution of WHMs to the Australian economy

2.4 WHMs make a significant contribution to the Australian economy, both as tourists and as a source of labour. With respect to Australia's visitor economy, WHMs constitute an important market segment. As set out in Tourism Australia's submission, in the last financial year approximately 321,000 WHMs visited Australia and contributed almost $3.3 billion in tourist spending in Australia. Tourism Australia also noted that WHMs 'tend to stay longer, spend more and disperse more widely throughout the country than most other target segments'. Many WHMs will also return to Australia later in life, including with their families or for business. Tourism Australia also observed that there is strong competition for this part of the tourist market from countries such as New Zealand, Canada and the United Kingdom.[1]

2.5 In its submission, the Australian Chamber – Tourism summarised the various ways in which WHMs contribute to the Australian economy:

> WHMs make several important contributions to our economy and particularly to regional economies. They are tourists who earn Australia export income, they stimulate regional economies with consumption spending and they provide labour in areas of workforce shortage.[2]

1 Tourism Australia, *Submission 51*, pp. 1–2.

2 Australian Chamber – Tourism, *Submission 19*, p. 7.

2.6 As a source of labour, WHMs are particularly important in certain sectors, such in the agricultural, horticultural, fishing, tourism and hospitality industries.[3]

2.7 As Professor Stephen Howes and Mr Henry Sherrell note in their joint submission, WHMs are in fact the single largest source of horticultural labour in Australia.[4] Ms Rachel Mackenzie, Chief Advocate at Growcom, the peak industry body for Queensland's $2.5 billion horticulture industry, explained that as much as 60 per cent of the horticultural workforce can, at certain times, be made up of WHMs. Ms Mackenzie explained:

> The role that they play would be hard to replicate from another labour supply because the nature of the work is seasonal and highly sporadic, with very intense bursts and then very quiet periods.[5]

2.8 In public hearings in Cairns and Launceston the committee received a large amount of evidence from employers of WHMs emphasising the critical importance of WHMs as a source of labour. In addition to horticultural and agricultural businesses and representative bodies, the committee also received evidence from employers of WHMs in the hospitality, accommodation and broader tourism sectors. The consistent message to the committee was that these businesses very much rely on WHMs, particularly in rural and regional areas.

2.9 The extent to which witnesses supported or opposed the reform package depended in large measure on whether they considered it would promote or damage Australia's competitiveness as a destination for WHMs. The next part of this report summarises the views of witnesses with regard to the changes to the tax treatment of WHMs in the reform package. Views on other aspects of the reform package, such as the creation of an employer register and the changes to the PMC, are discussed in subsequent chapters.

Proposed 19 per cent income tax for WHMs

2.10 As explained in the previous chapter, the reform package will legislate a 19 per cent tax rate for WHMs, which will apply from the first dollar of income earned up to $37,000. Income above $37,000 will be subject to ordinary marginal income tax rates. The new tax rate will apply from 1 January 2017.

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3 WA Farmers, *Submission 44*, p. 3.

4 Professor Stephen Howes and Mr Henry Sherrell, *Submission 27*, p. 2. Professor Howes and Mr Sherrell contend that this reliance on WHMs for low-skilled labour is problematic and argue that broader policy change is required with regard to Australia's approach to low-skilled labour migration programs.

5 Ms Rachel Mackenzie, Chief Advocate, Growcom, *Proof Committee Hansard*, 31 October 2016, p. 24.

The 19 per cent tax rate and Australia's competitiveness as a WHM destination

2.11 The committee received evidence from the Department of Agriculture and Water Resources (DAWR) and the Treasury indicating that Australia will remain internationally competitive in attracting WHMs with a 19 per cent tax rate. DAWR explained that the Deloitte stakeholder review had shown that 19 per cent was the highest tax rate that could be imposed before Australia's WHM program became uncompetitive with New Zealand and Canada. It added that a rate of 15 to 19 per cent would:

> …have a smaller impact upon backpacker decisions and therefore any decline in number would be minimal—particularly as this would still place Australia's after tax minimum wage ahead of competitors.[6]

2.12 DAWR also provided the committee with evidence showing that a 19 per cent WHM tax rate 'makes Australia competitive with Canada, New Zealand and the United Kingdom in terms of after-tax pay, and accounts for cost of living'.[7]

2.13 Similarly, Treasury informed the committee that it had undertaken some analysis showing that at a 19 per cent tax rate, Australia was competitive with other WHM destinations:

> At the 19 per cent rate, we have undertaken some work that shows that, with that rate, Australia is competitive with our competitors. There is more than just the tax rate that goes into whether Australia is competitive for working holiday-makers. It also goes to our minimum wage, which is higher than other countries'. We have also taken into account the exchange rates and cost of living. After all of those have been taken into account in comparison with Canada, New Zealand and the United Kingdom, we are competitive in relation to the net income a working holiday-maker would earn in order to make around $13,000, which is the average income earned by a working holiday-maker.[8]

2.14 Evidence received from Growcom supported the contention that even with a tax rate of 19 per cent, WHMs would generally be better off in Australia than in other countries competing for WHMs, such as Canada and New Zealand. At the 19 per cent tax rate, a WHM on minimum wage would receive an after-tax hourly wage of $14.34, compared to $9.41 in Canada and $13.65 in New Zealand.[9]

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6 Department of Agriculture and Water Resources, *Submission 23*, p. 5.

7 Department of Agriculture and Water Resources, *Submission 23*, p. 3.

8 Mrs Marisa Purvis-Smith, Division Head, Individuals and Indirect Tax Division, Treasury, *Proof Committee Hansard*, 26 October 2016, p. 35.

9 Growcom, *Submission 32 (Attachment 1)*, p. 3. Growcom acknowledged that a direct comparison was difficult to make, given a range of factors such as casual loadings, offsets for wages such as accommodation, varying cost of living expenses, and so on. Ms Rachel Mackenzie, Chief Advocate, Growcom, *Proof Committee Hansard*, 31 October 2016, p. 30.

Support for the 19 per cent tax rate and the need for certainty

2.15 The majority of participants in this inquiry welcomed the government's decision to move away from the 32.5 per cent tax rate proposed in the 2015–16 Budget, and indicated that the 19 per cent rate represented a good compromise position.

2.16 For example, KPMG suggested that, on the one hand, 'classifying all working holiday makers as residents and thus entitled to a tax-free threshold would be overly generous and wrong based on general tax principles'. On the other hand, it suggested the original proposal of a 32.5 per cent tax rate from the first dollar of income was 'somewhat draconian and not internationally competitive'. On this basis, KPMG submitted that the 19 per cent rate on income up to $37,000 was a 'reasonable compromise', and that 'linking the tax treatment to certain types of visa seems administratively attractive and simple'.[10]

2.17 The Australian Hotels Association advised that:

> Coupled with the measures aimed at increasing working holidaymaker flexibility and supply, we can support the 19 per cent tax rate. We also note that in comparison to other destinations, such as New Zealand and Canada, Australia has an award wages system rather than just a minimum wage. This means that the higher Australian award wage rates structure makes us competitive based on take-home pay after working holidaymakers have paid that tax rate of 19 per cent.[11]

2.18 A number of submitters suggested that while the removal of access to the tax-free threshold would still have a negative impact on the numbers of WHMs, the current proposal of a 19 per cent tax nonetheless represented a significant improvement from the 2015–16 Budget proposal. For example, Australian Chamber – Tourism submitted that it:

> …remains of the view that removing the tax-free-threshold for the vast majority of working holiday makers will constrict labour supply for tourism businesses. It will also have a net negative impact on the economy, particularly regional economies, as taxation is substituted for direct spending in local businesses. This negative impact remains even with the compromise 19 per cent rate. However, as the Government has made revenue targets the clear bottom-line objective, Australian Chamber – Tourism supports the 19 per cent rate combined with measures to increase demand (wider eligibility and promotion).[12]

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10 KPMG, *Submission 7*, pp. 1–2.

11 Mr Stephen Ferguson, National CEO, Australian Hotels Association, *Proof Committee Hansard*, 2 November 2016, p. 33.

12 Australian Chamber – Tourism, *Submission 19*, p. 4.

2.19 Australian Chamber – Tourism also advised that while it would prefer no change to the pre-2015 Budget treatment of WHMs, it recognised the 'that the Government has a challenging budget position and supports the need for action on the deficit'.[13]

2.20 Noting the current confusion regarding the tax treatment of WHMs, Chartered Accountants Australia and New Zealand (CAANZ) indicated that it supported the clarification of the income tax rate that applies to WHMs.[14]

2.21 WA Farmers also expressed support for the compromise approach of a 19 per cent income tax, suggesting the approach would be 'acceptable to the backpacker and the employer'.[15]

2.22 Employers of WHMs and peak industry bodies emphasised that, at this stage, it was critical to provide certainty to employers and potential WHMs, and the passage of the 19 per cent tax rate would achieve this. For example, Apple and Pear Australia Ltd (APAL) submitted that it:

> …welcomed the revision of the proposed tax rate for backpackers to 19 per cent as an improvement on [the] 32.5 per cent initially proposed by the Australian Government. We have concerns that this rate will impact on backpacker numbers, and would welcome any further consideration by the committee and Parliament of a lower rate; however, the most important outcome for our industry continues to be that the reform is concluded by the end of this sitting year to give certainty to growers before the January 1 commencement date of the tax.[16]

2.23 The Australian Banana Growers' Council Inc. (ABGC) emphasised the importance of WHMs to banana farm labour, noting that previous research had shown that 59 per cent of workers on banana farms are WHMs. It submitted that 'any policy determination that reduces access to backpacker labour has serious consequences for the banana industry'.[17] The Council added that in this sense the bill represented an improvement from the original proposal:

> Consequently, ABGC submits that the Bill before Parliament to apply a 19% income tax rate to working holiday makers' taxable income is far more conducive to industry growth, productivity and industry development than the previous Government proposal or a tax of 32.5 per cent on every dollar earnt. The proposed Bill would therefore limit the flow-on impacts and socio-economic consequences of the earlier tax proposal.[18]

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13 Australian Chamber – Tourism, *Submission 19*, p. 8.

14 Chartered Accountants Australia and New Zealand, *Submission 31*, p. 1.

15 Cruise Lines International Association Australasia, *Submission 46*, p. 6.

16 Apple and Pear Australia Limited, *Submission 12*, p. 3.

17 Australian Banana Growers' Council, *Submission 1*, p. 1.

18 Australian Banana Growers' Council, *Submission 1*, p. 1.

2.24 A range of other horticultural producers and bodies, such as Summerfruit Australia Limited and Citrus Australia – SA Region, also urged the speedy passage of the bills and implementation of the 19 per cent tax rate in order to remove uncertainty for the horticultural sector.[19]

2.25 Likewise, the South Australian Wine Industry Association (SAWIA) stressed the need for certainty, and expressed concern about any delay in implementing the 'workable, permanent solution' contained in the reform package.[20]

2.26 AUSVEG indicated that it had some concerns about the proposed 19 per cent tax rate. However, it submitted that in addition to being an improvement over the originally proposed 32.5 per cent rate, 'the most important outcome for our industry continues to be that the reform is concluded by the end of this sitting year to give certainty to growers before the January 1 commencement date of the tax'.[21] It further emphasised the need for:

> …a quick resolution to any continuing negotiations over the backpacker tax and other measures which have been linked to the tax. A quick resolution would also end the protracted uncertainty that has been allowed to build around this tax measures. It is vital that this uncertainty be brought to an end before it causes further damage to our industry.[22]

2.27 The Australian Dairy Industry Council also suggested the 19 per cent tax rate represented a 'suitable compromise' and urged that its implementation not be delayed. It submitted:

> A 19% tax rate leaves Australian backpackers at a comparative advantage to other countries such as Canada and New Zealand due to our higher wages and therefore, provides a suitable compromise. Farmers need certainty to enable them to plan for the seasons ahead. Dairy farmers are reporting they have already seen a decrease in backpackers wanting to work in Australia due to the uncertainty surrounding the tax and this cannot continue into the new year.[23]

2.28 Cotton Australia also suggested the 19 per cent tax rate was a 'fair compromise' that would deliver an average of $2000 back to WHMs compared to the original 32.5 per cent proposal, and allow Australia to remain a competitive destination for WHMs. It too stressed the need for a resolution of the issue as soon as possible.[24]

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19 Summerfruit Australia Ltd, *Submission 6*, pp. 1–3; Citrus Australia – SA Region, *Submission 11*, p. 1.

20 South Australian Wine Industry Association, *Submission 26*, p. 2.

21 AUSVEG, *Submission 17*, p. 3.

22 AUSVEG, *Submission 17*, p. 3.

23 Australian Dairy Industry Council, *Submission 28*, p. 1.

24 Cotton Australia, *Submission 29*, pp. 1–2.

2.29 NSW Farmers submitted that while the compromise package announced in September 2016 was not perfect, it was a 'significantly better' outcome than the originally proposed 32.5 per cent tax rate. The 19 per cent tax rate would leave the average WHM $2000 better off than under the originally proposed rate, and Australia's minimum wage would still be higher after tax than WHMs would receive in New Zealand and Canada.[25]

2.30 The National Farmers' Federation (NFF) reported that its member organisations had overwhelmingly endorsed the 19 per cent rate.[26] Mr Tony Mahar, Chief Executive Officer of the NFF, told the committee that the NFF's main concern had been the uncertainty created in the agricultural sector:

> We have supported 19 per cent from the beginning. We are aware and conscious that people would like to pay a lower tax rate. What we need is for this bill to get through and certainty to be given to the agriculture sector. The uncertainty is killing the industry and causing huge concern as we come into the summer fruit season...[27]

2.31 Mr Byrne from Advance Cairns, an economic development agency in Tropical North Queensland, told the committee that agricultural and tourism businesses that rely on WHM labour were looking for a 'speedy resolution' of the issue in order to provide 'some certainty moving forward'.[28] Mr Byrne further explained:

> I think the 19 per cent, which was called a compromise figure, is acceptable. Would it be better if it was lower? Of course it would be better if it was lower, because the lower it is, the more demand there will be, or the more people available in that pool to satisfy the demand. On balance, we probably think between 15 and 19 is a fair figure.[29]

2.32 The Australian Tourism Export Council (ATEC) told the committee that while a lower tax rate would have been well received, 'we accept the 19 per cent and are willing to move on because we desperately need to resolve this and create some certainty'.[30]

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25 NSW Farmers Association, *Submission 36*, p. 1. The National Farmers' Federation made the same point. National Farmers' Federation, *Submission 18*, p. 6.

26 Ms Sarah McKinnon, General Manager, Workplace Relations and Legal Affairs, National Farmers' Federation, *Proof Committee Hansard*, 26 October 2016, p. 19.

27 Mr Tony Mahar, Chief Executive Officer, National Farmers' Federation, *Proof Committee Hansard*, 26 October 2016, p. 20.

28 Mr Kevin Michael Byrne, Chief Executive Officer, Advance Cairns, *Proof Committee Hansard*, 31 October 2016, p. 1.

29 Mr Kevin Michael Byrne, Chief Executive Officer, Advance Cairns, *Proof Committee Hansard*, 31 October 2016, p. 4.

30 Mr Peter Shelley, Managing Director, Australian Tourism Export Council, *Proof Committee Hansard*, 2 November 2016, p. 21.

2.33 The Tasmanian Government also expressed support for the 19 per cent tax rate, observing that stakeholders such as the NFF and the TTF had expressed support for taxation at this level. It added that above all else, Tasmania's agricultural and tourism industries now required certainty, and this could only be provided by timely passage of the bills.[31]

2.34 Growcom noted the urgent resolution of the question of WHM taxation. However, it also expressed concern that:

> …once again industry is expected to determine the appropriate tax rate without having access to the Treasury modelling or the assumptions upon which it was developed. We contend that the impact on industry, regional Australia and the broader community has been well documented and it is up to the government to act in good faith to deliver a package that will not have serious long term negative consequences.[32]

Opposition to the 19 per cent tax rate

2.35 Some submitters argued against a 19 per cent tax rate and advocated allowing WHMs to access the tax-free threshold. Reid Fruits, a Tasmanian grower and exporter of cherries, argued that the proposed changes had the potential to 'create extreme economic hardship for labour intensive horticultural enterprises across rural and regional Australia'. It argued that the changes should be set aside until 'a full economic impact study' had been conducted.[33]

2.36 Hansen Orchards, another major fruit producer in Tasmania, also told the committee that the proposed tax rate was too high, particularly when the increase to the DASP tax (discussed later in this chapter) was taken into account.[34]

2.37 Fruit Growers Tasmania reported that the Tasmanian growing industry remained dissatisfied with the review undertaken by Deloitte and the resulting bill. It suggested that the government delay any changes for 6 to 12 months to allow time for a 'full review' of the proposed changes.[35]

2.38 The Tasmanian Farmers and Graziers Association (TFGA) suggested that agricultural producers would not get the workers they needed with the 19 per cent rate, because WHMs would perceive that they are worse off than under the status quo.

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31 Tasmanian Government, *Submission 34*, p. 2.

32 Growcom, *Submission 32*, p. 1.

33 Reid Fruits, *Submission 13*, p. 1. Also see Mr Timothy James Reid, Managing Director, Reid Fruits, *Proof Committee Hansard*, 2 November 2016, p. 13.

34 Mr Howard Carl Soelberg Hansen, Managing Director, Hansen Orchards Pty Ltd, *Proof Committee Hansard*, 2 November 2016, pp. 14–15.

35 Fruit Growers Tasmania, *Submission 2*, p. 1.

On this basis, the TFGA suggested that the government 'somehow revert back to the status quo for the time being', and delay any change.[36]

2.39 Primary Employers Tasmania (PET) told the committee that while it had initially supported the 19 per cent rate, it now considered it too high once the changes to the DASP tax (discussed later in this chapter) were taken into account. PET advocated the introduction of a 13 per cent tax, which is also the withholding amount for individuals employed in the horticultural or shearing industry.[37]

2.40 Noting the importance of WHMs to the Northern Territory economy, both as tourists and as a labour source, the Northern Territory Government indicated that it did not think the reduction in the first income tax bracket for WHMs from 32.5 per cent to 19 per cent would be sufficient to reverse the downward trend in WHM numbers. Instead, it argued that that 'a total reversal of the proposed taxation change will be required to send a clear message to WHMs that Australia welcomes and values them'.[38]

2.41 The Queensland Government, highlighting the importance of backpackers for Queensland's tourism market and as a source of labour in the agricultural and tourism industries, also submitted that the proposed 19 per cent tax rate remained 'of significant concern in view of the likely flow on effects on the tourism and agricultural sectors, as well as broader rural and regional Queensland'.[39]

2.42 YHA Australia maintained that the proposed tax rate of 19 per cent was too high. It referred to research conducted by Dr Jeff Jarvis, which indicated that a tax rate around this level would negatively impact demand for WHM visas.[40] YHA Australia submitted:

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36 Mr Michael Badcock, Board Director and Council Member, Tasmanian Farmers and Graziers Association, *Proof Committee Hansard*, 2 November 2016, p. 4.

37 Mr Keith James Rice, Chief Executive, Primary Employers Tasmania, *Proof Committee Hansard*, 2 November 2016, p. 8. It should be noted that 13 per cent is not the rate of taxation that WHMs or other workers in the horticultural industry are currently subject to. Rather, this is the withholding rate that employers in the industry can use when paying employees in the horticultural or shearing industry in circumstances set out by the ATO (for example, the worker must not work for the same grower for a continuous period exceeding six months). It only applies to workers who are residents (and must advise their employer of this in their Tax File Number declaration). The 13 per cent rate is intended to reflect the uneven nature of income in these industries and to attempt to withhold an amount that would more accurately reflect the likely end of year tax liability. https://www.ato.gov.au/uploadedFiles/Content/MEI/downloads/Schedule-2-horticultural-shearing-industry-tax-table-2015-16.pdf.

38 Northern Territory Government, *Submission 50*, p. 1.

39 Queensland Government, *Submission 40*, p. 1.

40 YHA Australia, *Submission 30*, p. 2. The research in question considered the impact of an 18 per cent tax rate.

> Generally, Working Holiday Makers are mobile and willing to do seasonal agricultural work in regional areas, doing jobs that Australians will not themselves do. Working Holiday Makers are also generally happy to pay a fair level of tax, but not at a rate much higher than Australians as that acts a barrier and a deterrent - and is against the Australian concept of ‘fair go’. There is also a precedent in the flat rate of 15% which is already in place for the Pacific Islanders ‘Seasonal Worker Program’, and which equates to the effective marginal tax rate paid by an Australian working full time on a minimum wage and enjoying a tax-free threshold on initial earnings.[41]

2.43 Tourism Central Australia (TCA) emphasised the importance of WHMs for tourism businesses in central Australia. It argued for scrapping the PMC (a matter discussed in a later chapter) and aligning the taxation of WHMs with the taxation of the rest of the Australian workforce.[42]

2.44 Tourism Tropical North Queensland told the committee that the change from a 32.5 per cent to a 19 per cent tax rate, along with the other elements of the reform package, represented an improvement from the original proposal. However, the tax changes still 'raise barriers to the growth of the tourism industry and the visitor economy'.[43]

2.45 Ms Tara Bennett, Executive Officer of Tourism Port Douglas Daintree, told the committee that the removal of WHMs access to the tax-free threshold would hurt Australia's ability to compete in an important segment of the tourism market. Ms Bennett also referred to the importance of WHMs as a labour source for businesses in the Douglas Shire, and suggested the tax changes created challenging conditions for those businesses.[44]

2.46 Ms Bennett subsequently added that tourism businesses would also suffer from WHMs having less disposable income to spend as a result of the 19 per cent tax.[45] Mr Dominic Davies, the Managing Director of Woolshed Holdings, which is primarily a backpacker bar and restaurant in Cairns, also indicated that businesses such as the Woolshed would lose earnings because WHMs would have less money to spend.[46]

41 YHA Australia, *Submission 30*, p. 2.

42 Tourism Central Australia, *Submission 4*, pp. 1–2.

43 Mr Alex de Waal, Chief Executive Officer, Tourism Tropical North Queensland, *Proof Committee Hansard*, 31 October 2016, p. 11.

44 Ms Tara Bennett, Executive Officer, Tourism Port Douglas Daintree, *Proof Committee Hansard*, 31 October 2016, p. 12.

45 Ms Tara Bennett, Executive Officer, Tourism Port Douglas Daintree, *Proof Committee Hansard*, 31 October 2016, p. 17.

46 Mr Dominic Davies, Managing Director, Woolshed Holdings, *Proof Committee Hansard*, 31 October 2016, p. 21.

Clarification from the Australian Taxation Office

2.47 There was some confusion during the inquiry in relation to what would occur if the bill introducing the 19 per cent tax rate was not passed, with some witnesses suggesting that if the bill was not passed, most WHMs would have access to the tax-free threshold.

2.48 As explained in the first chapter, the ATO has advised the committee that it would apply the current law if the bill was not passed. Because the ATO considers that most WHMs are non-residents due to their pattern of working and holidaying while in Australia, the ATO explained that it would endeavour to help WHMs understand Australia's self-assessment tax system, so they are able to correctly advise their employers of their residency status and have the correct tax withheld from their wages. The ATO further advised that it would work with tax agents to ensure that the advice they provided was consistent with the ATO view regarding residency status for WHMs, as confirmed by recent AAT decisions. The process of applying the current law, the ATO advised, would also include some checking of returns.[47]

2.49 In light of this advice from the ATO, it would appear unlikely that most WHMs would be able to claim residency status—and therefore access the tax-free threshold—in the event the bill does not pass. On the contrary, as the ATO seeks to apply the current law, it would be likely that most WHMs would, in fact, be subject to the non-resident tax rate of 32.5 per cent from their first dollar of income.

Departing Australian superannuation payments (DASP) tax

2.50 As noted in the first chapter, the reform package will increase the departing Australian superannuation payments (DASP) tax to 95 per cent for WHMs. This compares to the current DASP tax rate of 38 per cent for the taxed elements of superannuation, and 47 per cent for untaxed elements.

2.51 The Explanatory Memorandum stated that the changes were 'consistent with the objective of superannuation which is to support Australians in their retirement'.[48]

2.52 The committee did not receive any concrete data on the number of WHMs who claim their superannuation upon or after leaving Australia. A representative of Treasury explained it was not easy to determine what proportion of WHMs were claiming their superannuation when leaving Australia because of the difficulty of separating WHMs out from other temporary residents claiming their superannuation. However, Treasury suggested the number of WHMs claiming their superannuation was likely high, and somewhere in the order of 95 per cent.[49] The NFF, meanwhile,

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47 Australian Taxation Office, *Submission 54*, p. 1.

48 Explanatory Memorandum, p. 20.

49 Mr Robert Ewing, Acting Division Head, Tax Analysis Division, Revenue Group, Treasury, *Proof Committee Hansard*, 26 October 2016, p. 26.

reported its understanding that approximately 80 per cent of WHMs are likely to claim their superannuation on departure.[50]

Are the proposed changes fair and equitable?

2.53 Some submitters suggested the DASP tax changes were unfair. For example, the Australian Institute of Superannuation Trustees (AIST) noted in its submission that the changes only apply to visitors on 417 and 462 visa subclasses or related bridging visas. All other categories of foreign nationals who work temporarily in Australia will continue to be subject to the existing DASP tax rate if and when they take their superannuation. The AIST argued that singling out WHMs, who are only one of many classes of foreign nationals able to work in Australia, was inequitable.[51]

2.54 Claiming that WHMs already suffer high levels of exploitation by unscrupulous employers, the AIST added that the changes to the DASP tax would 'incentivise efforts to avoid paying superannuation, as well as cash-in-hand arrangements'.[52]

2.55 The National Union of Workers (NUW) also suggested that the government's proposed treatment of the superannuation of WHMs was discriminatory, given other non-resident visa holders would be unaffected by the change. The NUW further argued that the change could lead to higher levels of worker exploitation:

> Backpackers are already treated as a subclass of workers in terms of the inferior treatment and exploitation they likely face. Introducing a 95% tax rate on superannuation effectively results in the abrogation of a condition enjoyed by other workers. Having different sets of taxation arrangements and working conditions will only implicitly condone further differential treatment of temporary visa holders by employers, and we are concerned this will lead to further exploitation.[53]

2.56 Mr Luke Smith, a CPA, took issue with the idea that WHMs should not be paid superannuation because they have no intention of using it to fund retirement savings. Mr Smith submitted:

> The SG [superannuation guarantee] is not paid by the Government, but is an employee entitlement paid by employers. Indeed, when the SG was introduced it was in place of wage increases. Simply exempting WHMs from the SG altogether, likely reducing their total remuneration, creates issues of entitlements between different classes of employees and may be detrimental to the SG and superannuation system in the long term.[54]

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50 Ms Sarah McKinnon, General Manager, Workplace Relations and Legal Affairs, National Farmers' Federation, *Proof Committee Hansard*, 26 October 2016, p. 17.

51 Australian Institute of Superannuation Trustees, *Submission 25*, p. 1.

52 Australian Institute of Superannuation Trustees, *Submission 25*, p. 2.

53 National Union of Workers, *Submission 52*, pp. 1–2.

54 Mr Luke Smith, *Submission 37*, p. 2.

Possible effect of DASP tax changes on WHM numbers

2.57 Some witnesses expressed concerns that the DASP tax changes might put downward pressure on WHM numbers. For instance, APAL suggested that the higher DASP might:

> …cause a disincentive for future arrivals. The combination of 19 per cent tax plus 9.03 per cent (superannuation rate of 9.5% multiplied by 95%) means a backpacker tax rate is effectively 28.03 per cent. Australia competes in an international market to attract backpackers, and it is our understanding that many access these superannuation funds as they leave the country.[55]

2.58 Fruit Growers Tasmania was also critical of the 95 per cent tax on superannuation earnings, and suggested that this brought the effective tax rate for the average WHM up to 28 per cent.[56] It argued that superannuation should either be 'paid as normal or alternatively collected in part by Government with elements returned to the respective State for regional projects, grants and industry work'.[57]

2.59 Growcom expressed some concerns that the changes to the DASP might:

> …reduce the attractiveness of Australia as a working holiday destination. The huge publicity around the backpacker tax resulting from the multiple reviews and drawn out decision making process has made backpackers much more aware of what their current benefits are and much more sensitive to any perceived reduction in those benefits.[58]

2.60 The Northern Territory Government indicated that it opposed the proposed change on the basis of the 'negative signal' it would send to WHMs.[59]

2.61 Ms Rachel Mackenzie, Chief Advocate of Growcom, told the committee that, on the one hand, Growcom had long held the position that 'paying superannuation to backpackers which they cannot access until they leave the country seems rather perverse for a whole range of reasons'.[60] Ms Mackenzie also advised that Growcom's position was that the superannuation changes should be passed.[61] However, Ms Mackenzie noted nonetheless that 'if there is a perception by the backpackers that

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55 Apple and Pear Australia Limited, *Submission 12*, p. 3. The same point was made by AUSVEG. AUSVEG, *Submission 17*, p. 3.

56 Fruit Growers Tasmania, *Submission 2*, p. 1.

57 Fruit Growers Tasmania, *Submission 2*, p. 3.

58 Growcom, *Submission 32*, pp. 2–3.

59 Northern Territory Government, *Submission 50*, p. 2.

60 Ms Rachel Mackenzie, Chief Advocate, Growcom, *Proof Committee Hansard*, 31 October 2016, p. 28.

61 Ms Rachel Mackenzie, Chief Advocate, Growcom, *Proof Committee Hansard*, 31 October 2016, p. 29.

the removal of their superannuation makes Australia less attractive, then that is of concern to us'. At the same time, Ms Mackenzie noted that there was a lack of data on the importance of superannuation to WHMs, including solid data on how many access it when leaving the country, so the likely impact of the changes was unclear.[62] She added:

> Our position, as we put forward in our submission, was that, as this would not come into force until mid next year, perhaps we could ask for some modelling, some numbers, some research, some analysis, some data so that we could make an informed decision about this.[63]

The regulatory impost of paying superannuation to WHMs

2.62 Some witnesses criticised the DASP tax changes from a different perspective altogether, arguing that it made little sense to require employers of WHMs to go through the process of setting up superannuation payments to WHMs when the government was only going to take this money through a 95 per cent DASP tax. These witnesses objected to the notion that WHMs would lose most of their superannuation, and some noted that WHMs were highly unlikely to retire in Australia and therefore meet the 'sole purpose test' of the Superannuation Industry (Supervision) Act 1993 (a test that requires that a superannuation fund is maintained for the purpose of providing benefits to its members on retirement, or to dependents if a member dies before retirement).[64] Instead, these witnesses took issue with the regulatory burden imposed on employers in setting up superannuation payments to WHMs. In this sense, these criticisms went to both the current system and the proposed changes.

2.63 For example, the Pastoralists & Graziers Association of WA (PGAWA) suggested it was pointless for employers to have to pay superannuation to WHMs that would be taxed at 95 per cent. The PGAWA reported anecdotal evidence from its members that backpackers were generally unaware of Australian superannuation law, and it had no impact on their decision to accept seasonal employment. The PGAWA also submitted that:

> …requiring employers to complete the necessary paperwork as well as paying into superannuation funds that will never be accessed for its intended purpose, the Commonwealth Government is imposing an unnecessary administrative burden on small family owned businesses.[65]

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62 Ms Rachel Mackenzie, Chief Advocate, Growcom, *Proof Committee Hansard*, 31 October 2016, p. 28.

63 Ms Rachel Mackenzie, Chief Advocate, Growcom, *Proof Committee Hansard*, 31 October 2016, p. 28.

64 See, for example, Growcom, *Submission 32*, p. 2.

65 Pastoralists & Graziers Association of WA, *Submission 24*, p. 2.

2.64 The PGAWA argued that if the 19 per cent income tax on WHMs went ahead, then superannuation contributions should be paid directly to WHMs as part of pre-tax income:

> In this way, the administrative burden of superannuation is removed from the employers of seasonal ‘backpacker’ labour in rural areas, tax collection from 'backpackers' is immediate and streamlined into one operation, and there is no discrimination between temporary and Australian Residents on the basis of earnings.[66]

2.65 The NFF also expressed reservations about the DASP changes, given farmers will continue to have a 'red-tape cost' of ensuring superannuation payments are made to WHMs, despite the fact WHMs were highly unlikely to ever retire to Australia.[67] Ms McKinnon told the committee:

> There is a feeling—not universally, but certainly in some parts of the farm sector—that that is a strange outcome, because farmers already feel frustrated about paying superannuation for temporary residents if they do not have any intention of retiring in Australia. Now the 95 per cent tax rate really means that that frustration grows.[68]

2.66 At the same time, the NFF indicated that these reservations about the DASP changes were by no means a 'deal breaker', and it remained supportive of the package as a whole.[69]

2.67 Growcom argued that the minimum threshold at which superannuation was required to be paid (currently $450 per month):

> …needs to be lifted as the red-tape burden on growers for providing very short term workers with superannuation is significant. This threshold has not changed for many years and requires growers to provide superannuation and do the associated paperwork for employees who stay less than three days. The sheer volume of workers processed by an individual horticulture enterprise means that any measure to cut paperwork in this area would have a huge cost saving across industry and be in line with a red-tape reduction agenda. Another innovative option would be to have a single visa number, tax file number and superannuation number which would significantly cut down on administration costs.[70]

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66 Pastoralists & Graziers Association of WA, *Submission 24*, p. 3.

67 Ms Sarah McKinnon, General Manager, Workplace Relations and Legal Affairs, National Farmers' Federation, *Proof Committee Hansard*, 26 October 2016, pp. 17–18.

68 Ms Sarah McKinnon, General Manager, Workplace Relations and Legal Affairs, National Farmers' Federation, *Proof Committee Hansard*, 26 October 2016, p. 17.

69 Ms Sarah McKinnon, General Manager, Workplace Relations and Legal Affairs, National Farmers' Federation, *Proof Committee Hansard*, 26 October 2016, p. 22,

70 Growcom, *Submission 32*, p. 3.

2.68 The NSW Business Chamber submitted that it had concerns regarding the proposed increase in the DASP for WHMs to 95 per cent:

> Allowing these workers to be paid their superannuation contribution (9.5% of ordinary time earnings) as part of their taxable income would significantly reduce red tape for both employers and workers. With WHMs often working for multiple employers in Australia, it would stop the need for employers to register these workers for superannuation as well as reduce the proliferation of super accounts with different super funds.
>
> We believe that with superannuation contributions for these workers now to be taxed at a rate of 95% business is being put through unnecessary levels of red tape and regulation to simply act as a de facto tax collector for the Government.[71]

2.69 Mr Timothy Reid, Managing Director of Reid Fruits, voiced concern about the DASP tax increase, and added:

> I think we need to pay superannuation to backpackers so that local employees are competitive, otherwise there would be a preference to employ backpackers rather than locals, but it would be better to have that money go into some other proposal, such as back into programs that support industries or whatever that are paying the tax. You could even give it to the backpackers to spend while they are in Australia, rather than them spend it in Bali or somewhere on the way home … and so then all of this money goes into the local economy.[72]

2.70 Mr Dominic Davies, Managing Director of Woolshed Holdings, also noted the need to pay backpackers superannuation in order not to 'distort the labour market and make [WHMs] cheaper to hire than Australian residents'. However, Mr Davies also recommended that any superannuation savings held by WHMs should be subject to a 100 per cent tax upon their departure from Australia.[73]

Views on the package as a whole

2.71 Some participants in the inquiry, particularly tourism bodies and operators, suggested that the reform package as a whole (including elements not contained in the bills under inquiry) would help promote Australia's competitiveness as a destination for WHMs. For example, noting that it had taken part in the WHM visa review undertaken by the government, Tourism Australia submitted that the reform package includes a range of measures that will improve the competitiveness of Australia's WHM program. These measures include reductions in visa costs and taxation rates, and measures that are not part of the bills under consideration in this inquiry, such as

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71 NSW Business Chamber, *Submission 35*, p. 1.

72 Mr Timothy James Reid, Managing Director, Reid Fruits, *Proof Committee Hansard*, 2 November 2016, p. 15.

73 Mr Dominic Davies, Managing Director, Woolshed Holdings, *Proof Committee Hansard*, 31 October 2016, p. 21.

increases to the age limit for WHMs and the uncapping or increases to caps for markets with limited WHM visa allocation.[74]

2.72 The CaPTA Group, a family-owned and operated tourism company in Tropical North Queensland, expressed some ongoing concerns about the 19 per cent tax rate, but acknowledged that:

> …all in all there are positive changes that are included in this package. It is positive to see that the age of eligibility will be increased from 30 to 35, and also the reduction of the cost of the visa by $50 to $390 but, ultimately, it is still more expensive than similar visas in New Zealand and Canada. It is also positive to see $10 million put towards Tourism Australia for dedicated backpacker tourism promotion over the next two years.[75]

2.73 YHA Australia commented that measures such as the reduction of the visa fee for WHMs and the proposed increase in the age limit for WHMs (a measure not in the current package of bills) would 'bring more [WHMs] with greater disposable income, and will be good for tourism'.[76]

2.74 The Australian Hotels Association, in addition to supporting the 19 per cent tax rate, told the committee:

> With regard to visa eligibility and requirements, we were very pleased to note that the government had proposed significant changes, many in line with our ongoing advocacy and submissions in this area. These changes should increase flexibility and supply of working holidaymakers and include: allowing working holidaymakers to work for the same employer for 12 months instead of six months; extending to hotel chains the same provisions that allow labour hire companies to employ working holidaymakers for longer than six months; reducing the cost of a visa by $50, from $440 to $390; increasing the maximum eligibility age of working holidaymaker visas from 30 years to 35 years; introducing a $10 million investment and overseas marketing campaign to stimulate visitation; and introducing the registration and compliance for working holidaymaker employers. These changes will improve Australia's international competitiveness in attracting working holidaymakers, particularly in regional and seasonal areas.[77]

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74 Tourism Australia, *Submission 51*, pp. 2. Measures such as an increase in the age limit of WHMs, changes to visa caps, the ability for WHMs to receive a second year for their stay for work in the tourism sector and a Tourism Australia promotional campaign.

75 Mr Ben Woodward, Director, Sales and Marketing, CaPTA Group, *Proof Committee Hansard*, 31 October 2016, p. 7.

76 Mr Julian Litton Ledger, Chief Executive Officer, YHA Australia, *Proof Committee Hansard*, 2 November 2016, p. 22.

77 Mr Stephen Ferguson, National CEO, Australian Hotels Association, *Proof Committee Hansard*, 2 November 2016, p. 33.

Review of the reform package

2.75 Some witnesses, while broadly supportive of the reform package, suggested that there would be value in reviewing the impact of the changes after an appropriate passage of time.

2.76 For example, Australian Chamber – Tourism supported the changes to income tax rates for WHMs, subject to the government undertaking a review after a full year's figures were available as to whether the measure was 'meeting or exceeding targets, the impacts on labour supply, and demand for working holiday visas'.[78]

2.77 CAANZ noted that there was some disagreement regarding the role of WHMs and their tax treatment. It suggested it would be:

> …worthwhile reviewing the impact of working holiday maker reform package on employment and employment conditions in two-three years after its commencement. This would be in addition to the proposed annual reports by the Commissioner of Taxation which focus on working holiday makers rather than employment more broadly.[79]

2.78 Growcom, referring to the requirement for the Commissioner to provide a report in relation to the WHMs (drawing on data in the proposed register of WHM employers, which is discussed in chapter 3) requested:

> …that figures be provided to industry to keep track of the engagement of WHMs in the horticulture industry and if there is a significant decline, we would ask that the taxation rate be revisited.[80]

2.79 Mr Martin Ferguson, Chair of Tourism Accommodation Australia (a division of the Australian Hotels Association), suggested a review of the changes after 12 months (or a suitable period of time). This review, he explained:

> …would have to have a look at a far wider range of issues than just issues such as the passenger movement charge. It would have to look at the state of the labour market; the transition in our economy from a resources based economy to very much a service based economy; the growth and importance of part-time jobs against full-time jobs, as reflected in the last few ABS figures; and, I might say, the historic state of some of the key source markets, such as Ireland. They are all factors that will have an impact on our potential capacity to attract people.[81]

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78 Australian Chamber – Tourism, *Submission 19*, p. 4.

79 Chartered Accountants Australia and New Zealand, *Submission 31*, p. 2.

80 Growcom, *Submission 32*, p. 2.

81 Mr Martin Ferguson, Chair, Tourism Accommodation Australia, *Proof Committee Hansard*, 2 November 2016, p. 34.

Committee view

2.80 The committee notes that there has been some confusion regarding the introduction of a new tax rate for WHMs. As previously noted in this report, recent AAT decisions have established that, under the law as it currently stands, most WHMs are in fact non-residents for tax purposes and are already required to pay 32.5 per cent income tax from the first dollar earned. While some WHMs currently self-assess as residents, and therefore access the tax free threshold, it is apparent that many do so incorrectly.[82]

2.81 A failure to pass the bill does not, therefore, mean that most WHMs will be able to access the tax-free threshold and pay zero per cent in income tax. On the contrary, in light of the AAT's recent rulings, it is likely that most WHMs would subject to taxation at the 32.5 per cent non-residents rate. As such, as the Explanatory Memorandum sets out, while Australia 'seeks to remain an attractive destination for WHMs', the 'current tax treatment of WHMs threatens this goal'.[83] The timely passage of the reform package will address this threat.

2.82 While the bill would remove the ability of some WHMs to claim the tax-free threshold, a 19 per cent tax rate would provide employers of WHMs and WHMs themselves with the certainty they need, and ensure WHMs will not be taxed at the 32.5 per cent rate that applies for most non-residents. The committee is satisfied that a 19 per cent tax rate represents a good compromise from the original proposal of a 32.5 per cent tax rate for all WHMs, and notes strong support for the measure from a broad range of business and industry organisations in sectors that rely heavily on WHMs as a source of labour. The committee is also satisfied that a 19 per cent tax will ensure Australia remains internationally competitive in attracting WHMs to travel and work in Australia.

2.83 The committee notes that a large number of witnesses, and in particular businesses employing WHMs, emphasised the need for a speedy passage of the bill in order to provide both employers and WHMs with certainty going forward. The committee agrees with this view, and urges the Senate not to delay progress on the bills and thereby deny these businesses the certainty they need.

2.84 The committee is comfortable with the proposed changes to the DASP tax for WHMs. It notes that the superannuation exists to help Australians provide for the retirement, and the changes reflect this purpose. At the same time, the committee is cognisant of the fact that if employers were simply not to pay superannuation to WHMs this would distort the market, and the changes ensure that employers will continue to pay the same rates of pay for both WHMs and Australian employers.

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82 On this point, also see Explanatory Memorandum, p. 45.

83 Explanatory Memorandum, p. 45.

2.85 The committee is confident that, taken as a whole, the reform package will both ensure that WHMs are paying a fair share of tax, while ensuring Australia remains a destination of choice for WHMs.

2.86 While the committee considers the reform package a positive outcome for WHMs, employers of WHMs and the visitor economy, it agrees that there would be value in reviewing the changes after a suitable period of time post-implementation, such as mid-2018. This review could consider various aspects of the reform package and the appropriateness of broader policy matters in relation to WHMs, including the impact of the taxation rate on WHM numbers and activity and whether the superannuation arrangements for WHMs could be improved.

Recommendation 1

2.87 The committee recommends that after a suitable period of time following the implementation of the reform package, the government conduct a review of taxation and other policy settings in relation to working holiday makers, including the impact of the changes in the reform package.