

Chapter 3

Employer register and compliance measures

3.1 As explained in the first chapter, the reform package establishes a framework for requiring employers of WHMs to register with the Commissioner of Taxation (the Commissioner). Registered employers will be able to apply reduced rates of PAYG Withholding to withholding payments made to WHMs. In addition, the reform package creates a requirement for the Commissioner to report to the Minister regarding the taxation of WHMs, including statistics derived from the employer register.

3.2 This chapter summarises evidence received in relation to the new registration requirement for employers of WHMs. In turn, this chapter briefly considers the proposed requirement for the Commissioner to report to the Minister.

Registration of employers of WHMs

3.3 Some witnesses voiced concerns about the potential regulatory burden and compliance costs of the new registration requirement, even while acknowledging the value of the proposed register. For example, Mr Byrne from Advance Cairns told the committee:

We need to understand that a lot of the people that are employed in both sides of the industry—agriculture and tourism—are employed essentially by small businesses, and the last thing we need to do is to impose—unfairly and unreasonably—more red tape and burdensome legislation and restrictions on them. That is the first point. The second point is that we do, however, recognise that this is an industry, particularly on the agricultural side, where there have in the past been some unscrupulous operators that provided contract labour to these growers at peak seasonal times. Evidence abounds—there have been some unscrupulous operators there. So as long as the legislation or the requirements are tailored to make sure that these people that we bring here as—euphemistically—backpacker labour are treated appropriately, treated fairly, paid well, and live in conditions that ordinary Australians would expect them to live in—I think that is a minimum requirement.¹

3.4 Growcom advised that it had concerns about the registration requirement, as it was not yet clear what form the registration would take. Growcom submitted:

We accept that ensuring WHMs are treated fairly is an important issue but request that the Australian Taxation Office (ATO) consults with industry in

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

the development of the registration process to ensure that it is straightforward and easy to comply with.²

3.5 Cotton Australia also expressed concerns about the regulatory impost of the registration requirement:

Cotton Australia does not see the justification behind the requirement that businesses seeking to employ working holiday makers with the 19% tax rate must register with the ATO, with the list of employers being available on the ABN lookup. The justification for this policy measure and its overall intention is unclear and seems to be unnecessary red tape which has already been identified in draft findings by the Productivity Commission as a serious problem for the agriculture industry. This registration process should be as simple as possible to minimise the already substantial cumulative regulatory burden for growers.³

3.6 While not opposing the proposed registration process, the NFF also emphasised the need to minimise the regulatory burden on employers. It urged the ATO to 'consult with industry in the development of the registration form to ensure that it is as simple and easy as possible'.⁴

3.7 SAWIA opposed the requirement to register with the ATO, arguing it would 'simply add to the regulatory burden on business without any positive effect on compliance with and enforcement of workplace laws'.⁵ SAWIA submitted:

Businesses that are already complying with their legislative obligations will of course register. On the other hand, businesses that are deliberately seeking to avoid their obligations will continue to do so by paying employees cash in hand or through complex structures and arrangements, for example phoenixing. Therefore the new registration requirement is likely to simply add to the regulatory burden of complying businesses while not providing any tangible benefits.⁶

3.8 Instead of the registration requirement, SAWIA suggested that greater cooperation between the relevant authorities would be more useful in helping prevent breaches of workplace laws by employers of WHMs. In this respect, it welcomed the provision in the reform package for greater information sharing between the ATO and the Fair Work Ombudsman.⁷

2 Growcom, *Submission 32*, pp. 1–2.

3 Cotton Australia, *Submission 29*, p. 2.

4 National Farmers' Federation, *Submission 18*, p. 9.

5 South Australian Wine Industry Association, *Submission 26*, p. 7.

6 South Australian Wine Industry Association, *Submission 26*, p. 5.

7 South Australian Wine Industry Association, *Submission 26*, p. 6.

3.9 In contrast, CAANZ submitted that it supported:

...the requirement that relevant employers be registered with the Australian Taxation Office (ATO) to enable PAYG withholding to be undertaken at the relevant working holiday maker income tax rates. The registration details, along with the information required to be provided to the ATO, should provide vital information to assist Australian policy makers and help ensure that legitimately employed working holiday makers are protected.⁸

3.10 While supportive of the registration requirement, including as a means to encourage appropriate behaviour by employers, CAANZ added that this needed to be supported by an improved detection system for non-compliant behaviour by both WHMs incorrectly claiming residency for tax purposes and employers of WHMs operating in the cash economy.⁹

3.11 Mr Martin Ferguson, Chair of Tourism Accommodation Australia, spoke in support of the proposed registration of WHM employers:

I must say that I give full credit to the government for taking the initiative on employer registration. That is a very important initiative from our point of view, representing all the major hotels and the hotel industry. That is a very strong statement to potential young backpackers coming to Australia, that the government is going to go out of its way to guarantee that they get their full entitlements.¹⁰

3.12 The Explanatory Memorandum notes that the Commissioner has the flexibility to specify the manner in which an employer can apply for registration. This 'allows the Commissioner to minimise compliance costs for employers by providing a variety of options for registration, such as an online process or by telephone'.¹¹

3.13 The ATO also provided the committee with assurances that it would 'absolutely' be consulting with stakeholders on the development of an employer register:

When we introduce new forms or new processes our standard process is to consult with the people who will have to use them. It is definitely part of our approach to test that and get some feedback from them to make sure it is as streamlined and simple as it can be.¹²

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

9 Chartered Accountants Australia and New Zealand, *Submission 31*, pp. 2–3.

10 Mr Martin Ferguson, Chair, Tourism Accommodation Australia, *Proof Committee Hansard*, 2 November 2016, p. 35.

11 Explanatory Memorandum, p. 21.

12 Ms Alison Lendon, Deputy Commissioner, Individuals, Australian Taxation Office, *Proof Committee Hansard*, 26 October 2016, p. 36.

Reporting requirement

3.14 As noted in the first chapter, the reform package creates a requirement for the Commissioner to report annually to the Minister about the employment of WHMs, including statistics and information that the Commissioner derives from the employer register. The Minister will then be required to table this report in the Parliament.

3.15 The Explanatory Memorandum states:

The working holiday maker report will provide valuable information to stakeholders and Government, to ensure that they are better informed. The report will increase transparency about the industries that employ working holiday makers, including the regions and sectors they are employed in.¹³

3.16 The creation of the reporting requirement was not a major focus of the evidence received in the inquiry. However, Growcom did request that:

...that the Commissioner consults with industry in relation to the nature of the information provided publically in the report on working holiday makers each year, particularly in relation to privacy concerns.¹⁴

3.17 While not necessarily referring to the reporting requirement in the reform package, several witnesses did draw the committee's attention to the current lack of robust data on the WHM market. For example, the Northern Territory Government, referred to the lack of data regarding the contribution of WHMs to the Australian labour market and overall economy.¹⁵ It is worth noting, in this regard, that the reporting requirement is intended in part to ensure better data is available on the WHM market.

Committee view

3.18 The committee considers there is significant value in establishing a register for employers of WHMs, including with regard to protecting the interests of WHMs. At the same time, the committee is alert to the need to avoid imposing an additional regulatory impost on businesses. As such, the committee considers the ATO should consult with the stakeholders, including employers of WHMs, in developing and implementing the register, to ensure it is as straightforward and transparent as possible, and any regulatory burden is minimised. The committee welcomes assurances from the ATO that this consultation will occur.

3.19 The committee also notes the value of the Commissioner being able to seek information through the registration process in relation to an entity's employment, or proposed employment, of WHMs.¹⁶ This requirement will enhance the information

13 Explanatory Memorandum, p. 28.

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

15 Northern Territory Government, *Submission 50*, pp. 7–8.

16 Explanatory Memorandum, p. 21.

available regarding WHMs in Australia, including information about the locations and sectors employing WHMs. This information, which will also inform an annual report from the Commissioner to the Minister, will help ensure the government and stakeholders have a stronger understanding of the WHM market.

Recommendation 2

3.20 The committee recommends that the Australian Taxation Office consult widely with industry stakeholders, including employers of working holiday makers, in developing the proposed employer register and designing the registration process.

