

Labor Senators' Dissenting Report

Background and Overview

1.1 This 'reform' package was intended to fix problems that were created entirely by the Government itself. However, the Government has failed to develop a package that will properly support the economy.

1.2 This committee inquiry has shown that the Government has taken an approach that is the complete opposite of good policy process. 'Shambles' would understate the chaotic nature of the Government's style, and this policy has been a fiasco from the beginning, nearly one and a half years ago. Little to no consultation has been completed, no thought was given to impacts on the economy and uncertainty has been allowed to fester.

1.3 Labor Senators stand for a strong policy development process and responsible economic management. Labor Senators have achieved more in four weeks of review than what the Government completed in the last 18 months.

1.4 Labor originally gave the first version of the Backpacker Tax our qualified support after it was announced – the Shadow Treasurer said this at the Press Club after the 2015 Budget.

1.5 The Shadow Treasurer said at the time that while the measure was not exactly what we would have done in Government, 'we trust the government has thought through all the implications and has conducted adequate consultations'.

1.6 Turns out they hadn't. The referral of the bills to the Senate Economics Legislation Committee for an inquiry was therefore a fair and reasonable position to take.

1.7 The Senate Economics Legislation Committee has reported into this package of legislation. Through the inquiry process, it was found that:

- the Passenger Movement Charge increase was introduced with no consultation from the tourism or agriculture industries;
- there has been little to no economic modelling or analysis of the likely economic impact of the tax measures;
- the National Farmers' Federation and other key stakeholders groups report there has been a decline of up to 40 to 90 percent in backpacker numbers; and
- any labour shortages caused by a drop off in backpackers will hit rural and regional Australia harder than our capital cities.

Timeline of events

1.8 Labor Senators believe that a recount of key events in this saga should be stated for the record.

1.9 This debacle started on 12 May 2015 when The Hon Joe Hockey MP, as Treasurer, announced with no industry consultation¹ that 'anyone on a working holiday in Australia will have to pay tax from their first dollar earned, rather than enjoying a tax-free threshold of nearly \$20 000. This will save the Budget \$540 million'. Mr Hockey said the measure was one of several ways the government was promoting 'fairness and a level playing field'.² It was confirmed that the new taxation rate from the first dollar earned would be 32.5%.³

1.10 On 13 May 2015, The Hon Barnaby Joyce MP defended the 32.5% rate and the removal of the tax-free threshold, stating that 'Well I think the vast majority come here because we still have a great wage rate. Australians, Leigh, have to work the full year to get the tax-free threshold. It does seem a little bit incongruous that someone can work four months, five months, six months and get a tax-free threshold because that actually puts them at a strategic advantage on two levels to their other Australian workers'.⁴

1.11 Despite the calls that the measures were 'fair', 'created a level playing field' and would be competitive because of Australia's 'great wage rate', on 2 February 2016 the National Farmers' Federation launches its petition.⁵ The petition states that:

Backpackers are very important to our local economy. They fill critical labour needs at peak times, and bring new life into rural communities. If they have to pay 32.5 cents tax in every dollar, they won't come anymore... It's not a fair tax, and it's not a sound economic decision... Consult with the community instead as part of the broader Tax Reform agenda.

1.12 Less than two weeks later, on 11 February 2016, George Christensen MP states that 'I will support the Bowen Gumlu Growers in their push for a 15% flat rate of tax for backpackers'.⁶

1.13 On 23 and 24 February 2016, Melissa Price MP and Andrew Broad MP add to concerns over the package. Ms Price is quoted as saying that '[t]he proposal of 32.5 per cent as a flat rate has I think gone too far ... farmers are concerned and

1 <http://www.abc.net.au/news/2015-05-14/backpacker-tax-grab-hurts-rural-towns-and-farmers/6469910>

2 <http://www.budget.gov.au/2015-16/content/speech/html/speech.htm>

3 http://www.budget.gov.au/2015-16/content/bp2/html/bp2_revenue-07.htm

4 <http://www.abc.net.au/7.30/content/2015/s4235294.htm>

5 <http://www.nff.org.au/read/5182/petition-launched-against-proposed-backpackers-tax.html>

6 <http://www.georgechristensen.com.au/other-worker-options-in-horticulture/>

obviously it's their livelihood so we have to take that seriously'.⁷ Mr Broad stated that '[t]here is no advantage of having a tax rate so high that people pull up stumps and go offshore, and then we don't collect the money anyway'.⁸

1.14 On 3 March 2016, Treasurer the Hon Scott Morrison MP states that there will be a review of measures.⁹ Confusion continued about the nature of the review:

There was confusion this week after Agriculture Minister Barnaby Joyce said a review was underway headed by committee chairman and Queensland MP Bert van Manen'. 'He will report back to us and we can act on that report', he said. However, Mr van Manen said an inquiry had yet to be referred to the committee.

1.15 On 16 March 2016, the Government announces its review and admits its policy position is not fair and not competitive. Tourism Minister Senator Richard Colbeck told the ABC he would head a cross-departmental review of the tax:

Legitimate concerns have been raised about the impact the so called backpacker tax would have on our global competitiveness as a backpacker destination... We have therefore decided that the proposed tax arrangements require further discussions to ensure Australia does not lose market share in backpacker visitation.¹⁰

1.16 On 9 May 2016, Ken O'Dowd MP says about the review 'that gives us eight months to review it... hopefully we will come to some common ground (with Treasurer Scott Morrison) where the tax is not so savage'.¹¹ 'Not so savage' is what passes for good government now.

1.17 On 17 May 2016, another review is announced and a six month delay to announced measures is issued:

The Turnbull Government today announced it will undertake a review of the broad range of issues affecting the supply and taxation of working holiday maker 417 and 462 visas, the Minister for Small Business and Assistant Treasurer, Kelly O'Dwyer MP said.¹²

1.18 On 15 June 2016, it is reported that:

7 <http://www.abc.net.au/news/2016-02-23/govt-considering-inquiry-into-backpacker-tax-liberal-mp-says/7192818>

8 <http://www.abc.net.au/news/2016-02-23/broad-backs-rethink-on-backpacker-tax/7193912>

9 <http://www.weeklytimesnow.com.au/news/politics/scott-morrison-to-work-through-backpacker-tax-concerns/news-story/348ecf7b2b60c978166d44dede33ea91>

10 <http://www.abc.net.au/news/2016-03-16/federal-government-to-review-controversial-backpacker-tax/7250674>

11 <http://www.centraltelegraph.com.au/news/backpacker-tax-delayed-odowd/3017691/>

12 <https://www.liberal.org.au/latest-news/2016/05/17/working-holiday-maker-visa-review>

In WA, Rick Wilson the O'Connor Liberal MP has accused his Nationals' electoral rival John Hassell of putting election sloganeering ahead of details and responsible public policy. Mr Wilson said Mr Hassell's had repeatedly pledged 'No Backpacker Tax' but the election sloganeering showed how little his rival understood economic management, the people of O'Connor and his own political party.¹³

1.19 In addition, the same article claims that Ken O'Dowd MP is seeking to fight the Federal Government:

While in Canberra, Flynn (Queensland) MP Ken O'Dowd has vowed to fight the Federal Government's proposed changes to working holidaymakers' tax arrangements – the so-called 'backpacker tax' – after Treasurer Scott Morrison gave the National Party six months to come up with the \$540 million that would be raised by the changes using other means.

1.20 On 12 July 2016, not content with the review, Michelle Landry MP calls for the backpacker tax to be dropped 'Ms Landry, who sits in the party room as a member of the Queensland LNP, said she wanted the backpacker tax removed and expected the issue would be raised today.'¹⁴

1.21 On 18 September, George Christensen MP threatens to walk out of the LNP over the backpacker tax

The Queensland MP has revealed he could not support a policy that endangered the livelihoods of farmers, regional areas and the tourist industry... 'I believe the Government is going to axe the backpacker tax and put in place arrangements that farmers can accept,' he said.¹⁵

1.22 On 27 September 2016, the 'compromise' package that this committee has considered is announced.¹⁶ The Hon Barnaby Joyce MP issued a Media Release stating a 'Win for farmers with proposed backpacker tax rate cut'. He claimed that:

The Nationals, including Assistant Minister Luke Hartsuyker and our Senators and Members of Parliament have been fearless champions on behalf of their regions, their agricultural stakeholders and common sense.¹⁷

13 <http://www.thebyte.com.au/liberals-nationals-fighting-over-the-backpacker-tax-election-issue/>

14 <http://www.abc.net.au/news/2016-07-12/nationals-push-to-kill-backpacker-tax-after-election-result/7589458>

15 <http://www.couriermail.com.au/news/queensland/george-christensen-threatens-to-walk-out-on-turnbull-government-over-backpacker-tax/news-story/47b86b68b6a926d834d5caa8bf24e938>

16 <http://theconversation.com/backpacker-tax-to-be-19-but-departure-tax-will-rise-5-in-compromise-package-66129>

17 <http://minister.agriculture.gov.au/joyce/Pages/Media-Releases/backpacker-tax-rate-cut.aspx>

1.23 The Minister's arrogance is bewildering but not surprising. The Minister was in the Cabinet room when the 32.5% was first approved, and defended the measure after its announcement in the 2015-16 Budget.

1.24 We also now know why the Minister was a fearless advocate for no further scrutiny of the legislation.

1.25 Rather than welcoming a Senate inquiry the Minister ran his usual retail style politics, ignoring evidence provided that the first slated tax rate at 32.5 per cent and then revised to 19 per cent will result in fewer working holiday makers to pick fruit this summer. The Minister has refused to address the evidence provided and the best he has come up with is 'for farmers worried about the uncertainty over the controversial backpacker tax, ring Bill Shorten'.

1.26 George Christensen MP also announces on this day that the revised package is 'a win for our regional economy'.

1.27 Senator Ian MacDonald releases a statement, and shows that he was angry about the previous policy position and still does not support the current position:

Northern Australian Liberal National Senator Ian Macdonald said he was pleased that the Executive had listened to representations from Warren Entsch, George Christensen and himself.

'But I am still very annoyed that we had to go through an election with the last proposal which cost us support on polling day'.

'I am angry that relevant Ministers did not understand the impact of the Backpackers' Tax on rural industries and the tourism/hospitality industry, particularly in Queensland.'

'I am also disappointed about the need to increase the passenger movement charge to pay for these new arrangements.'¹⁸

1.28 These statements show that:

- The original policy position was poorly designed, with no thought given to economic impacts on regional communities or the competitiveness of the taxation package for working holiday makers;
- The Hon Barnaby Joyce MP defended the original position, describing it as fair, creating a level playing field and retaining competitiveness when this package was none of these things;
- George Christensen MP is running policy process, with his comments on 11 February 2016 starting the outspoken commentary against the measures;

18 <http://www.senatormacdonald.org/media/media-releases/unfortunate-backpacker-tax-now-modified/>

- Coalition MPs used the backpacker tax as a political tool during the election, 'taking the fight' to their own Government while the tourism and agricultural industries wallowed in uncertainty;
- Two reviews were conducted, and yet Government MPs didn't trust their own review processes and instead called for the tax to be removed before the reviews were completed;
- George Christensen MP is claiming the current package as a win, when no economic analysis has been conducted and witnesses have spoken to the potential negative impacts of the current package; and
- Other Government MPs still don't approve of these bills.

1.29 The need for a Senate Committee review is glaringly obvious when such a shambolic policy process was taken.

Outcomes of the Committee Inquiry

1.30 Labor Senators used the committee process to listen to stakeholders and form a calm, considered and decisive policy position. Labor Senators reviewed all the measures as a whole and scrutinised the quality and validity of information presented to the committee.

1.31 Labor Senators understand that these measures disproportionately affect regional communities, and that these communities will bear the brunt of the negative consequences in this package. That is why hearings were conducted in regional centres such as Cairns and Launceston, and to hear directly from farmers and tourism operators on the ground.

1.32 It is also important to note that the authors of the Deloitte report commissioned by the Government prior to the announcement of the legislative package acknowledged that:

Deloitte has not undertaken any additional research or analysis, and the information contained in this report is reflected as it has been provided by the stakeholders engaged through this process. Deloitte has also not reviewed the quality or validity of the information presented to us.

1.33 Labor Senators were disappointed to find out that the current package was agreed on by Cabinet with no modelling or economic advice to advise the Government of potential negative impacts of these measures. It is particularly concerning that no detailed understanding of the link between taxation rates and backpacker arrival numbers was developed.

1.34 One clear case of the failure to engage in good policy process was the comments made by Ms Mackenzie, Chief Advocate, Growcom at the Cairns hearing:

Ms Mackenzie: ... I am deeply disappointed that there have been revelations that there has been no economic modelling on the impact of this. It almost feels insulting that we are sitting here still debating this, and

we still have not come to a resolution. All I can ask, as the number 1 point, is please have the 32½ per cent off the table and an internationally competitive tax rate on the table by 1 January.

Senator KETTER: Ms Mackenzie, following up on that last point you made—that you were deeply disappointed to hear there was no economic modelling—I note that your CEO's letter to the committee dated 21 October stated: 'This bill will deliver a 19 per cent tax rate for working holiday-makers immediately upon royal assent. Growcom supports this bill on the assumption that the modelling clearly shows that there will not be a significant drop off in backpacker numbers.' You have just acknowledged that we have heard that there has not been any economic modelling. How does this impact on your assessment to support this measure?

Ms Mackenzie: It highlights our ongoing frustration that we are expected to put forward our support or disapproval for certain policy positions with absolutely no evidence or capacity to support that. We are constantly being asked, 'What is the correct rate?' We are an agricultural policy organisation. I can tell you what the implications of a 32½ per cent are, but determining the correct rate is very difficult for us to do. The revelation that there has been no economic modelling is very concerning. We did have a look at the Department of Agriculture's submission, and, based on the assumptions that they have made, it does appear that 19 per cent is internationally competitive. I have had conversations with growers around Queensland, and I would say that there is a disparity in terms of whether the 19 per cent is the number that they support. When you consider that we have a 15 per cent rate for the Seasonal Workers Program and a 13 per cent rate for the Horticulture Award, it starts getting very confusing with all these rates. Fifteen per cent is broadly supported by a number of growers, but most of them say, 'Look, if you can get 19 across the line by 1 January we'll take it, because we need those pickers.'

Senator KETTER: On this issue of modelling, in our hearings last week we had the opportunity to discuss this matter with Treasury officials. They admitted to us that although they were not modelling the impact of the 19 per cent, they had made certain assumptions. One of the assumptions was about the reduction in the number of working holiday-makers that you would expect from a higher tax rate. One of the very assumptions that underpins the costings here does indicate that they do predict a reduction in the number of working holiday-makers. More surprisingly, they were not able to put a figure on that reduction. But, nevertheless, it is part of a number of assumptions that they made. Does that surprise you—that we are operating on that basis?

Ms Mackenzie: Once again, I will use the word disappointment. We would have hoped that there would have been a bit more transparency around

some of the assumptions, and it concerns us that the ongoing success of our industry has been overlooked, it seems, in these debates.¹⁹

1.35 In addition, no consultation was conducted with relations to the Passenger Movement Charge.

Senator KETTER: Mrs Osmond, you have said that, as far as your organisation is concerned, the emergence of the PMC change was a shock. I just want to double-check with all members of the panel here today that there has been no consultation with you.

Mr Hart: No, none.

Mr Westbury: Also, within the package review process that was undertaken, I think—correct me if I am wrong—there were some 1,700 submissions made and not one mentioned the PMC. During the consultations, which we all took part in, with the consultant, not once at any of those dialogues was the PMC mentioned to any of us as a potential way of the government topping up the package.

...

Senator KETTER: Mr Lorigan, in this modelling that you talk about my understanding is that you have said that holiday visitors, as distinct from those travelling to visit friends or relatives, are most sensitive to departure taxes such as the PMC, with every price increase of 10 per cent estimated to generate a decline of five to seven per cent in the number of leisure passengers travelling globally. You can confirm that that is your finding?

Mr Lorigan : This is our modelling. We base this on Oxford Economics, which is our econometrics consultant.

Senator KETTER: And have you made the government aware of your modelling?

Mr Lorigan: Back in 2012, when we had the former increase, we made a submission along similar lines, and of course through the committee we hope to make the government aware today as well.

Mr Westbury: I might just add that I think this just demonstrates the fact that the consultation process has really failed on this occasion. You can see from those colleagues present here today that there is a lot of information that would have been able to be provided to the government in informing them on this decision if we had been given the proper opportunity. When the review took place for the Working Holiday Maker Reform package, the PMC was not on the agenda. Therefore, there was no purpose to submit this

sort of modelling at that time, if you are talking specifically around the PMC modelling that was done.²⁰

1.36 The introduction of the PMC was only one example where the Government chose not to undertake any further consultation with stakeholders post their announcement on 27 September 2016 regardless of the fact that the Government had introduced new measures previously not put forward to stakeholders.

1.37 Adding insult to injury, this inquiry process has also revealed that the Government is already spruiking the 19 per cent tax rate in the UK, again regardless of the fact that this legislation has not passed the Parliament.

1.38 Labor Senators listened to a number of farmers and tourism bodies who described the negative impacts of the current uncertainty over the 'backpacker tax'. While the Government is quick to take ownership of the \$10m campaign to promote Australia as a destination for backpackers, Labor Senators would like the Government to likewise take responsibility for the millions of dollars of economic damage already inflicted on the agriculture and tourism sectors by their lack of action over the last 18 months.

1.39 One story of the impacts of the Government's actions was given during the Canberra hearing:

Mr Finlay: I was on a mango farm at Humpty Doo, in the Northern Territory, in February this year, and that mango farm left 15 per cent of their crop on their trees last year; they did not have enough labour. They also were planning to plant another 40,000 trees—they have the water, they have the infrastructure to plant the trees—to double the size of their farm, and they would not go ahead with that work because they know they cannot get a labour force at the current rate.²¹

1.40 Labor Senators also heard from tourism bodies in Cairns about the risks that a decline in backpacker numbers would have on local businesses and local permanent employees:

Senator KETTER: Ms Bennett, I was quite alarmed to hear that some of the businesses were forced to close their doors in July. Can you elaborate on that?

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<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Fcommsen%2Fe47044c8-6238-494c-8fd6-a8c42ef76eeb%2F0001;query=Id%3A%22committees%2Fcommsen%2Fe47044c8-6238-494c-8fd6-a8c42ef76eeb%2F0000%22>

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<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Fcommsen%2Fe47044c8-6238-494c-8fd6-a8c42ef76eeb%2F0002;query=Id%3A%22committees%2Fcommsen%2Fe47044c8-6238-494c-8fd6-a8c42ef76eeb%2F0000%22>

Ms Bennett: As was I. This was, again, through my discussions with a backpacker operator last week. The reality was they did not have the staff to fill those roles. Each business has a year-round, permanent population of staff and so during our peak period, which is from June through to October, it does rely on backpackers or working-holiday visa workers to come into the region and fill that peak capacity. As a result of not having the staff—and I believe it was mostly hairdressers, but chefs in particular and wait staff as well have been a real challenge—some businesses have been forced to close for two days and then have their permanent staff on a five-day rotation.

Senator KETTER: One thing I was not fully appreciative of—and it is a point you have made—is the importance of backpackers in ensuring the long-term security of domestic jobs. Could you elaborate on that, because I think it is a rather different take.

Ms Bennett: If we looked at occupancy in our region, we would sit in the quieter months at between, say, 40 and 60 per cent. In our peak period we are up around 90 per cent. To be able to cater for that growth, businesses will increase their workforce using working-holiday visa workers to supplement that. We simply do not have the population base in the Douglas shire to be able to fill those roles. In actual fact, the working-holiday visa system ensures the long-term stability for our permanent residents.²²

1.41 It appears that due to the Government's complete shambolic handling of their ill-conceived backpacker tax many representative bodies initially supported the Government's position, desperately seeking certainty for the sector.

1.42 Unfortunately, the NFF took the approach to quickly support the Government's rate of 19 per cent rather than applying pressure on the Government to provide better policy regarding the backpacker tax.

1.43 However, during the Senate Economics Legislation Committee hearings the NFF stated that 'if the parliament supports 10.5 per cent we will support it.'

1.44 The NFF also provided evidence that based on feedback from their members that there has been between a 40 to 90 per cent reduction in backpacker numbers.

1.45 This inquiry has exposed the Minister for Agriculture's complete lack of understanding or genuine concern as to what the impact of the higher tax rate will have on rural and regional communities.

Specific Measures

1.46 Labor Senators have considered the feedback provided in detail and have determined the following amendments to the Government's package would be appropriate in light of the evidence of the negative impact of the tax as currently designed:

- Amend the backpacker tax from 19 per cent to 10.5 per cent; and
- Oppose the Passenger Movement Charge increase.

1.47 The reduction of the backpacker tax to 10.5 per cent mirrors New Zealand's tax rate, allowing Australia to have a greater competitive advantage in attracting future backpackers.

1.48 The 10.5 per cent rate also ensures that Australia can position itself to be more competitive than Canada which has the geographical advantage of being closer to Europe, the UK and the USA.

1.49 Labor Senators recommend these amendments to ensure that our agriculture and tourism sectors can confidently compete for travelling backpackers who are also considering travelling to New Zealand, Canada or Australia.

1.50 It is critical that Australia is able to compete against New Zealand, Canada and other countries for travelling backpackers.

1.51 The NFF provided evidence in their submission to the Government's own review which clearly indicated the importance of Australia maintaining its competitiveness in attracting backpackers stating that:

In a survey of 535 horticultural growers in February 2016, 65 per cent of respondents indicated difficulty finding workers in their local areas. 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 and regional economies.²³

1.52 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.

1.53 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. Working holiday makers are often employed as peak labour and help businesses profit in high demand peak seasons. Working Holiday Makers in this context help to keep the doors of businesses open and help to secure long-term job security for the permanent domestic employees.

1.54 For those who argue that the 10.5 per cent rate will put Australian workers at a disadvantage, it is important to note that Australians will not pay any tax until they earn over \$18,000 dollars.

1.55 Current figures provided by Taxback.com states that working holiday makers (backpackers) earn an estimated average of \$15,088 each year while in Australia and spend approximately the same amount in Australia on travel, accommodation and tourist experiences.

Conclusion

1.56 The Labor party has listened to our farmers and understands the need to fight for Australia's competitiveness. The recommended amendments will ensure Australia's agriculture and tourism sectors are able to attract backpackers and maintain the viability of their businesses.

1.57 The recommendations in this report will give the certainty that the tourism and agricultural industries are calling for while maintaining Australia's competitiveness as a destination for working holiday makers.

1.58 This inquiry has conclusively shown the shambles of a policy process that the Government has taken. The lack of consultation on the full suite of measures was astounding, and the lack of understanding of negative economic impacts in our regional and rural communities was deeply disappointing.

Recommendation 1

1.59 To amend the Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016 and lower the proposed tax rate for working holiday makers from 19 per cent to 10.5 per cent.

Recommendation 2

1.60 To oppose the Passenger Movement Charge Amendment Bill 2016.

Senator Chris Ketter
Deputy Chair

Senator Jenny McAllister
Senator for New South Wales

Senator Catryna Bilyk
Senator for Tasmania

Senator Helen Polley
Senator for Tasmania

