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SUBMISSION TO THE DEPARTMENT OF AGRICULTURE AND WATER RESOURCES

Working holiday maker visa review

1. About this submission

AUSVEG is the leading national horticultural body representing the interests of Australian vegetable and potato growers. We represent growers around Australia and make representations on their behalf to ensure their interests and concerns are effectively communicated to all levels of government, in the public sphere, and throughout relevant areas of the private sector.

AUSVEG has coordinated this joint submission on behalf of the undersigned horticulture groups, who represent the horticulture industry in their respective states and territories.

2. Queries

For more information regarding this submission please contact AUSVEG National Manager – Public Affairs Jordan Brooke-Barnett on [REDACTED] or at [REDACTED]

3. Signatories



4. Summary

With many vegetable crops requiring significant amounts of manual labour throughout the production process, working holiday maker visa holders are a critical source of labour for the Australian vegetable industry, particularly during peak seasonal periods. These workers, commonly known as “backpackers”, help to alleviate the pressures caused by domestic labour shortages which would otherwise have significant impacts on growers.

The horticulture industry appreciates the importance of ensuring that Australian jobs are available for Australian workers, but there is currently no viable alternative to foreign labour (and particularly the backpacker program) available for Australian growers. While the horticulture industry would provide in-principle support for any policy which could provide consistent, reliable labour, we do not believe that any such mechanism currently exists, and we urge the Australian Government not to hamstring the working holiday maker visa program as a way of forcing growers to look for workers in an insufficient domestic labour force.

It is the opinion of the industry groups making this submission that the “backpacker tax” of 32.5 per cent is a policy decision that would have exactly this effect – implementing such a tax rate on these workers would hugely affect Australia’s reputation and desirability as a travel destination, and ultimately have a damaging impact on Australian industry, hugely reducing its productivity and potentially crippling some growing operations.

We therefore strongly recommend that the Australian Government remove the proposed tax to avoid these unwanted consequences.

That being said, AUSVEG is open to further consultation with the Australian Government on determining workable arrangements for working holiday visa holders to pay an appropriate level of tax. Any consequent introduction of a tax rate on backpackers’ earnings, however, should follow consultation with industry, be internationally competitive, and be accompanied by modelling of the economic impacts of the imposition of the tax rate to ensure that the Australian horticulture industry can remain competitive internationally. AUSVEG notes that negotiations were held with industry prior to the election and remains open to this approach from government.

It is also critical that temporary workers – including backpackers – are protected from mistreatment. There have been several high-profile cases of labour hire firms taking advantage of temporary workers’ vulnerability to exploitation, including through underpayment for contracted work, requiring excessively long working hours and housing workers in squalid accommodation.

AUSVEG has repeatedly called on the Australian Government to crack down on the unconscionable behaviour of these rogue operators, including through a proposed licensing scheme for labour hire firms. This proposal has since gained support from several quarters, including from two separate parliamentary committees. With protections for vulnerable workers falling under the terms of reference for this review, the aforementioned industry groups strongly encourage the Government to take this opportunity to begin implementing this scheme.

5. Themes of the review

Visa labour needs of the agricultural and tourism sectors

The agricultural industry in Australia employs over 290,000 workers¹, of which the horticulture industry employs over 75,000². Horticulture industry members strongly believe in the importance of providing as many of these jobs to local workers as possible, especially in regional and rural economies.

The agriculture industry has a proven preference for employing local workers and strengthening the regional economies in which the industry's members live and work – in 2001, agriculture accounted for almost 14 percent of non-metropolitan employment in Australia³, and a 2006 survey of growers in the Murray Valley found that, if possible, 31% of them would prefer to never employ overseas workers⁴.

However, the fundamental fact is that if the industry were to rely solely on domestic labour, it could not survive. The industry's use of visa labour is not a result of passing over domestic workers in favour of foreign labour – as the Productivity Commission has recently noted (emphasis added):

*Some participants to the Commission's Migrant Intake into Australia inquiry argued that temporary migrants, particularly working holiday makers, crowd out domestic workers from the labour market. However, the available evidence at the aggregate level suggests **agricultural businesses and those in regional areas rely on temporary migrants to fill labour gaps.***⁵

This foreign labour overwhelmingly takes the form of backpackers – particularly those working for the second-year extension to the subclass 417 visa attainable by undertaking specified work in regional Australia. A 2014 survey found that 46% of respondent farmers indicated backpackers were their main source of labour, and that of over 75,000 workers employed by the horticulture industry annually, some 40,000 of them are backpackers⁶. Essentially, backpackers are “a structural feature of the industry”⁷.

This has also been noted by previous parliamentary inquiries into other aspects of Australia's temporary labour system. For example, following their inquiry into the Seasonal Worker Program, the Joint Standing Committee on Migration reported that:

*It is clear that the horticulture industry relies significantly on the second working holiday initiative, with over 40,000 visa holders, to fill its seasonal labour requirements.*⁸

¹ Cat. no. 6291.0.55.0033 *Labour Force, Australia, Detailed, Quarterly*, Australian Bureau of Statistics (2016)

² *Seasonal Worker Program: demand-side constraints and suggested reforms*, J Doyle and S Howes (2015)

³ *Trends in Australian Agriculture*, Productivity Commission (2005)

⁴ *Labour Shortages in Murray Valley Horticulture: A survey of growers' needs and attitudes*, P Mares (2006)

⁵ *Regulation of Australian Agriculture*, Productivity Commission Draft Report (2016)

⁶ *Seasonal Worker Program: demand-side constraints and suggested reforms*, J Doyle and S Howes (2015)

⁷ *Ibid.*

⁸ *Seasonal change: Inquiry into the Seasonal Worker Program*, Joint Standing Committee on Migration (2016)

Other visa programs also provide temporary labour for the Australian vegetable industry, with the most pertinent to this review being the Seasonal Worker Program, which also provides Australian growers with unskilled labour.

The industry supports the Seasonal Worker Program and believes it plays a much-needed role in ensuring that Australian growers have access to workers which they can employ over several seasons.

We also understand that there is a belief in some quarters that the working holiday maker program's prevalence as a labour source for the Australian horticulture industry should be lessened in favour of increasing the Seasonal Worker Program's effectiveness as a labour source and as an aid program.

We urge caution regarding any policy decision designed to have this effect – while seasonal workers are extremely valuable, policies designed to lessen the availability of backpackers as a labour source which are made before the Seasonal Worker Program is able to pick up the slack from any reduced labour pool could be disastrous for Australian industry.

Given that the Seasonal Worker Program has seen low, although consistent, levels of growth in the years it has been operational, this may be some time away. Specifically, the Seasonal Worker Program granted 2,801 visas in the financial year to 31 May 2015⁹ – this is less than 7 per cent of the amount of second working holiday (subclass 417) visas granted in 2014-15¹⁰.

For this reason, the industry strongly recommends avoiding any policy changes designed to increase uptake to the Seasonal Worker Program at the expense of backpacker labour until the Seasonal Worker Program is more well-established.

We would also like to note for the Department's reference that a research project has been commissioned by Horticulture Innovation Australia, funded using the National Vegetable Levy and funds from the Australian Government, to evaluate the labour needs of the Australian vegetable industry.

This project, which is expected to be completed by December 2016, will review the existing framework regarding the role of temporary migrants in the vegetable industry and identify potential solutions for addressing vegetable industry worker shortages.

We understand the research team on this project are contributing to this consultation; however, the timeframes of the Department's review mean that it will be completed before the project delivers its final report. While we hope that the Government announces its response to the outcomes of this review before this point, and that this response includes removing the backpacker tax, we recommend that no decisions beyond this be made before the full final report from this study becomes available.

⁹ *Submission 2 – Department of Employment*, Joint Standing Committee on Migration Inquiry into the Seasonal Worker Program (2016)

¹⁰ *Working Holiday Maker visa Program report: 31 December 2015*, Department of Immigration and Border Protection (2016)

Relevant unemployment policies

Horticulture industry members understand the importance of ensuring that Australians are attracted to work in the sector. Over the long term, attracting a new generation of workers to the industry – including through youth outreach and increasing engagement with horticulture as an option for tertiary education – will help to manage a transition to the new phase of our industry.

We note that in its supporting material for this review, the Department has included a reference to the Youth Jobs PaTH (Prepare-Trial-Hire) Program. We have interpreted this to suggest that the Government is considering using PaTH as a mechanism for increasing the domestic labour force in place of (or possibly complementing) the working holiday maker Program.

While we appreciate the intent behind this plan, we note that PaTH is thus far untested, and its effectiveness in supplying consistent, reliable labour in any capacity – let alone to rural and regional Australia – has not been proven.

When the industry relies so heavily on backpacker labour during peak seasonal periods because domestic labour is unavailable, it would be extremely ill-advised to take any action which could risk further reducing the amount of working holiday maker visa holders in Australia.

It is important to maintain access to a reliable and consistent source of labour during any efforts to increase the proportion of Australian workers in the industry, and the reality of the situation is that backpackers represent the most effective and most suitable labour force currently available.

We strongly recommend caution in any attempt to adjust the structural mechanisms which have resulted in the current reliance on backpackers in the vegetable industry before an alternate source of labour is properly established.

Tax treatments for visa holders

The horticulture industry is completely opposed to the current proposed “backpacker tax”, which would introduce a tax rate of 32.5 per cent from the first dollar earned on working holiday maker visa holders.

Taxing backpackers at this high rate could have an incredibly damaging impact on the Australian vegetable industry, as well as the broader horticulture and agriculture industries, by acting as a deterrent to backpackers who would otherwise visit Australia for their working holidays.

Research undertaken by Monash University has found that 60% of backpackers currently in the country say they would not have come to Australia if the backpacker tax had already been in effect¹¹. This would mean a huge reduction in the amount of labour available to the Australian industry, forcing growers to rely on an insufficient domestic labour market and crippling grower productivity.

¹¹ *‘Backpacker tax’ research shows travellers would avoid visiting Australia*, YHA Ltd (2016)

This also shows that imposing this tax measure on backpackers as a revenue-raising method would ultimately be counter-productive – due to its impact as a deterrent, the tax would collect less revenue than forecast (due to the taxation base not being present to collect revenue from).

By acting as a deterrent to backpackers visiting Australia, the tax would also damage rural and regional economies. In the Productivity Commission's draft report into Australia's migrant intake, it was noted that "in aggregate, working holiday makers can be expected to deliver a net positive contribution to the economic wellbeing of Australians"¹², and the National Farmers Federation has previously identified that backpackers make an annual contribution of more than \$3.5 billion to Australia's economy¹³.

On a broader scale, imposing the backpacker tax in its current proposed form could be disastrous for Australia's horticulture industry. As covered extensively by previous research and other reviews, the industry relies on backpackers for its labour needs. Damaging this labour source before suitable alternatives have been established would result in labour shortages.

As such, the organisations party to this submission call on the Government to remove the proposed backpacker tax in the short term to prevent it from having a serious impact on the productivity of the Australian vegetable industry and to allow our growers to see out their harvest periods with confidence. This is necessary in the short term to allow for confidence to return to international markets where backpackers travel from.

The parties to this submission understand this is likely only a short term, so confirm we are willing to re-engage with the Government to hold discussions about the potential introduction, over the longer term, of a tax rate for backpackers.

Any commencement of discussions in this area would require assurances for industry that the Government's new proposals would allow backpackers to earn a wage that is competitive with other comparable visa programs around the world. Industry also recommends modelling and analysis of the impact of any new proposed tax rate on the economic performance of the Australian horticulture industry and the broader economy and development of a cooperative plan for government and industry to work together to ensure that any new arrangements are communicated effectively in a way which minimises fear in the backpacker community.

Protections for vulnerable workers

When considering protections for vulnerable workers, it is vital that appropriate consideration is given to the significant impact of the behaviour of rogue labour hire firms.

These labour hire firms are known throughout industry (and, to a certain extent, to the general public) for their mistreatment and exploitation of vulnerable foreign workers. This mistreatment has historically included underpayment, unconscionably long working hours, and inhumane housing and accommodation.

¹² *Migrant Intake into Australia*, Productivity Commission Draft Report (2015)

¹³ *Submission 31 – National Farmers Federation*, Productivity Commission Inquiry into the Migrant Intake into Australia (2015)

Horticulture groups have called for the implementation of an accreditation scheme for labour hire firms to help crack down on this abhorrent behaviour. An example is AUSVEG who proposed such a scheme in October 2015, in a letter sent to the Ministerial Working Group Protecting Vulnerable Visa Holders, with the position later made public¹⁴.

This scheme would require labour hire firms to prove compliance with relevant Australian law to become accredited firms. Under AUSVEG's proposal, labour hire firms would have to receive approval from four key organisations to become accredited:

- the Australian Tax Office;
- the Department of Employment;
- the Department of Immigration and Border Protection; and
- the statutory body in charge of occupational health and safety in the state in which the firm is registered as a company (such as WorkSafe Victoria).

Since this proposal was made, the concept of a labour hire licensing scheme has gained significant momentum.

This includes being included as Recommendation 32 from the final report from the Senate Standing Committees on Education and Employment's inquiry into the impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders. The text of that recommendation reads:

The committee recommends that a licensing regime for labour hire contractors be established with a requirement that a business can only use a licensed labour hire contractor to procure labour. There should be a public register of all labour hire contractors. Labour hire contractors must meet and be able to demonstrate compliance with all workplace, employment, tax, and superannuation laws in order to gain a license. In addition, labour hire contractors that use other labour hire contractors, including those located overseas, should be obliged to ensure that those subcontractors also hold a license.

This recommendation was echoed by the Joint Standing Committee on Migration in the report from their inquiry into the Seasonal Worker Program, with the Committee noting it "supports the recommendation of our Senate colleagues and urges the Australian Government to establish a licensing regime for labour hire contractors" by implementing the recommendation as worded¹⁵.

The organisations signed to this submission believe that this proposal would help protect vulnerable workers, including backpackers. This review of the working holiday maker program presents an excellent opportunity for the Government to introduce a licensing scheme for backpackers and protect not only backpackers, but all vulnerable workers hired by labour hire firms.

¹⁴ "Register for labour hire firms proposed by AUSVEG", Natalie Kotsios/*The Weekly Times*, 10 December 2015

¹⁵ *Seasonal change: Inquiry into the Seasonal Worker Program*, Joint Standing Committee on Migration (2016)

5. Recommendations

- 1.** That the Australian Government remove the proposed “backpacker tax” at the rate of 32.5 per cent to allow harvest seasons for major commodities to progress without further obstacles, and to avoid further damage to the confidence of Australian growers , the Australian horticulture industry and export markets.
- 2.** That the Australian Government engage extensively with industry regarding any potential future introduction of a tax rate on backpackers to ensure that backpackers will continue to be paid an internationally competitive wage and to avoid a damaging impact on Australian industry and the economy.
- 3.** That the Australian Government investigate options for regulating labour hire firms in Australia to protect vulnerable workers, including working holiday makers.