

Lockyer Valley Regional Council Submission
to the
Australian Government's Working Holiday Maker Visa Review

The Lockyer Valley Regional Council (LVRC) welcomes the opportunity to make a submission to the Working Holiday Maker Visa Review. Our submission communicates to the following terms of reference:

- Australia's competitive position in attracting seasonal and temporary foreign labour, including comparative wages, entitlements and conditions
- Exploitation of and protections for vulnerable workers, including evaluation of illegal labour hire practices and non-compliance with laws and regulations
- Capacity to match employers with available workers, including regulatory arrangements in relation to the role of labour hire companies

Background

Agricultural production is a key industry for Queensland and is the lifeblood of many regional local government areas. One of the important inputs to that production is casual labour - particularly in those areas and industries with seasonal production that is labour intensive. A significant proportion of that labour comes from those on working holiday visas for seasonal and casual work. The Lockyer Valley Regional Council area is one of the most fertile regions in Australia producing a total value of agricultural output of \$263m in 2010/11. The largest commodity produced was vegetables, which accounted for 79.5% of Lockyer Valley regions total agricultural output in value terms, requiring a substantial amount of casual seasonal labour to harvest. The Lockyer Valley produces over 70% of the Queensland's cauliflower and broccoli production, some 48% of lettuce production and more than 20% of Queensland's pumpkins, onions and carrots. All of these crops require hand harvesting and hence a seasonal labour force. All of these crops, amongst others, provide a strong economic flow-on benefit to the region as a whole.

Working Holiday Maker (WHM): Refers collectively to both the Working Holiday (Subclass 417) visa and the Work and Holiday (Subclass 462) visa. In June 2015 there were 143,918 Working Holiday Maker visa holders in Australia¹. The changes to the visa, since its inception in 1975, allows more extensive work rights and incentives to work in regional Australia in specific industries for a second year, and makes this visa class, in many cases, a labour market program used to fill labour shortages in specified industries. It is under these conditions that the WHM (commonly referred to as "backpackers") come to the Lockyer Valley providing the casual labour required for production of horticultural crops.

The so called "backpacker tax" is based on changes made to tax rules in the May 2016 budget. In the 2015-16 Federal Budget the government announced that it will change the tax residency rules for most people who are temporarily in Australia for a working holiday. These people will be treated as non-residents for tax purposes, regardless of how long they are here. They will not be able to access the tax-free threshold and will be taxed at the second marginal rate (currently 32.5%) from their first dollar of income up to \$80,000.

Such an approach would have serious consequences for the region's agricultural production through either a loss of labour or additional labour costs rendering our product less competitive to the market. The impacts of these tax changes on sustainable regional agricultural production have not been properly evaluated.

¹ DIBP Working Holiday Maker visa programme report. 30 June 2015

There has been discussion around removing this tax, and its implementation has been deferred to January 2017. However, the taxation of temporary residents needs a thorough review to assess and mitigate the impacts on industry and the economies of regional Australia.

Whilst some farms in the Lockyer Valley manage their own recruitment and supervision of workers, “Labour Hire Contractors” referred to as “contractors” have increasingly become more established as a source of seasonal labour. It is these relatively unregulated contractors and their associated clients who have come under scrutiny by the media². Anecdotal reports of exploitation, harassment and other forms of mistreatment are commonly shared with community volunteers (who are seen as a safe contact), and unscrupulous labour hire practices are common knowledge, so much so that the Local Government Association of Queensland (LGAQ) passed a motion at the 2015 Annual Conference to lobby the federal government for greater compliance measures to provide protection for these workers³.

Since January 2016 the Lockyer Valley Regional Council has hosted a monthly backpacker welcome event. Generally the event attracts between 80 and 140 backpackers each month. Agencies such as Salvation Army, community advocacy and support volunteers, are present at every event and others such as Worksafe QLD, Qld Fire and Emergency Services, Fair Work Ombudsman, Qld Police Service, Census have also been in attendance as budgets and staffing have allowed. These welcome events have given Council Officers the opportunity to hear firsthand accounts of

- likely consequences to an increase in taxation,
- exploitation of vulnerable workers, including illegal labour hire practices,
- non-compliance with laws and regulations by labour hire contractors and accommodation suppliers and
- Occupational Health and Safety requirements and breaches.

Currently backpackers have a choice of several countries in which to take a working holiday. Australia is seen as a destination of choice for several reasons. Climate and the availability of work affording an opportunity to participate in tourism activities are often cited as deciders for destination. Since the announcement of the new taxation measures backpackers have expressed a concern on the loss of income by taxation and the uncertainty of disposable income providing a holiday of any type is making other countries a more attractive option. Council officers have been informed by several backpackers that they either have, or are, advising friends and siblings to select other countries such as Canada and New Zealand as a destination for a working holiday. Operators of backpacker accommodations known to the Lockyer Valley have informed us of a downturn in bookings of up to 20% since the announcement of the proposed tax.

No backpacker has reported being in a position of, or having the intention of, leaving the country with more money than they had on arrival. It has been made clear to Council Officers, in conversations with backpackers, that the money earned in the Lockyer Valley is generally either spent locally as living expenses or in other more tourist orientated activities and destinations. Therefore it is not unreasonable to expect that a reduction in backpacker numbers and a reduced amount of disposable income due to increased taxation rates will not only have a negative impact on the economy of the Lockyer Valley but also in other towns and regions where backpackers spend money earned from harvest labour and farm work.

² Caro Meldrum-Hann and Ali Russell, “Slaving Away” Four Corners 4 May 2015 (available at <http://www.abc.net.au/4corners/stories/2015/05/04/4227055.htm> accessed on 15 February 2016). Katri Uibu ABC News “Farm employers ‘manipulate’ female backpackers into sexual acts in return for Australian visa sign off” (Posted Fri 31 July 2015 Accessed 31 June 2015) Kate McKenna “Sex for Job Visa” Courier Mail May 30 2015 p.14 “Shed raid snares visa violators” Courier Mail May 28 2015 p. 17

³ LGAQ Motion 79 Itinerant Workers – Improved Standards and Compliance for Labour Hire Workers. 119th LGAQ Annual Conference. 130

Unlike many of the other regional destinations the Lockyer Valley has few and insufficient dedicated backpacker accommodations and no local public transport system. Often the provision of accommodation and transport (to and from work) is attached to the work contract and controlled by the contractor. In some cases share houses are overcrowded and do not comply with Council's local laws (Subordinate Local Law 1.11 Operation of a Shared Facility Accommodation) or fire safety regulations. In other cases contractors may attract workers from other parts of the country, or from overseas, with the promise of work, transport and accommodation provided. This provision of accommodation and transport with work can and has been known to lock workers into an arrangement that sees a vast displacement of worker rights leading to an imbalance of power and workers left open to abuse and exploitation. The need to have visa extension forms signed by employers adds to this imbalance of power and can further exacerbate situations of vulnerability, harassment and poor worker treatment.⁴

Many of the factors that contribute to exploitation have been comprehensively captured in forums hosted in the Lockyer Valley by the Anti-Discrimination Commission Queensland (ADCQ) and the Fair Work Ombudsman (FWO)⁵. These forums heard first-hand accounts of working holiday visa holders receiving demands for sex at the threat of visa extensions not being signed off by employers, or passports not being returned. The threat by contractors to hinder the WHM's working future tends to dissuade the victims from reporting the threats to proper authorities. Language and cultural barriers have been identified as one of the key obstacles to workers being informed of their rights and where to seek assistance when they have matters of concern. The timeframes for investigation of illegal activities by contractors, accommodation and transport providers often mean that complainants are no longer in the country to assist these investigations. Council officers have heard accounts from backpackers when questioning employers on underpayment of wages and asserting their rights as workers the temporary nature of the visa and the need for the employer to sign off for the second year placed the backpackers in a position of powerlessness. One backpacker was told "I can do what I want, call whoever you like. You'll be gone home by the time anyone comes to ask questions". If provision was made to allow an extension of time to the visa holder assisting with genuine inquiries this would act as a deterrent on those who commonly breach legislation and participate in criminal activity knowing that by the time investigation is underway the visa holder has left the country.

Although the situation is complex and no single solution will ensure the protection of these workers, more resources dedicated to the compliance and monitoring work of bodies such as the FWO will reduce the noncompliance incidences by employers and hence reduce some areas of exploitation. Australia has some of the strongest workplace laws in the world. Further legislation would be superfluous without better enforcement of the current laws. Labour hire companies have the same obligations as all other Australian employers but are able to flout laws knowing that under resourcing of regulatory bodies mean that often there are no consequences to the action. A simple one-page fact sheet, (in appropriate languages, issued to applicants with their work visa) on their rights with regard to wages and conditions, and where to seek assistance and/or lodge complaints, may enable these workers to better self-protect from and report cases of exploitation and mistreatment.

One way in which the FWO (and other agencies) may be able to strengthen the effects of regulatory interventions and curtail workplace contraventions across the labour market more generally is to introduce a licensing scheme for labour hire agencies. A model that has proven to be successful is the Gangmasters' Licensing Authority (GLA), a specialist regulatory agency in the UK. The GLA was created as a result of

⁴ ADCQ Summary: ADQC forum on Safety in Budget Accommodation for Non-Resident Farmworkers Held Aug 27 2015 Brisbane.

⁵ ADCQ Summary: Summary of Community Forum on Labour Hire Practices for Seasonal Farmworkers. Held Sept 30 2014 Gatton.

exploitation of foreign workers by labour hire agencies. Since 2006 labour hire providers (known as gangmasters) operating in a range of specified industries are required to obtain a licence from the GLA⁶.

To receive and maintain a licence, gangmasters must demonstrate compliance with workplace laws. The GLA keeps a public register of all licensed gangmasters, which provides useful information for growers who are obliged to use only licenced providers⁷ and other agencies who may be seeking to locate a particular gangmaster or determine whether a particular gangmaster is licenced and operating lawfully. Under the legislation of the GLA it is a criminal offence for growers to use an unlicensed labour provider. All workers engaged by gangmasters are covered by the scheme, regardless of being considered employees or independent contractors⁸.

Licensing requirements deem that gangmasters must demonstrate that they provide adequate accommodation to workers and comply with employment, tax and national insurance requirements⁹. Gangmasters are required to maintain a status of a 'fit and proper' provider, which takes into account whether the gangmaster has tried to obstruct the GLA in the exercise of its function, any relevant criminal convictions against the gangmaster and any connection with any person or entity deemed to not be fit and proper in the previous two years.

The 'fit and proper' test is an important licensing standard as the GLA has uncovered gangmasters who have had their licences revoked but have continued to run employment agencies by using other individuals as a front for their agency (pneonixing).¹⁰

Gangmasters must not only pay the relevant minimum wage they must keep adequate records to demonstrate payment of such wages. In particular they must demonstrate proper workplace management documents and processes are in place, including: worker contracts, itemised payslips that list deductions, tenancy agreements, an example of a worker's file, compliance with safety standards and understanding of occupational health and safety laws¹¹. The regulatory regime is supported by a range of substantial sanctions which ensure relevant licensing standards are applied throughout the production chain.

Not only are gangmasters held accountable but so too are the growers who use them. In discussions held with local growers on a GLA-like model responses were clear that without penalties throughout the production chain there is little point in introducing new legislation. Sufficient resourcing of agencies such as FWO and the introduction of a licensing regime that holds substantial consequences for those contravening standards and legislation will move a long way towards protection of both vulnerable workers and the image of Australia as an attractive option for backpackers to find work.

The GLA model is one which would easily translate to Australia's and Queensland's work environment. It would require minimal resource allocation as regulatory bodies are already in this landscape e.g. Worksafe Qld, Border Protection, Australian Taxation Office and FWO. Alternatively, establishment of Regional Harvest Offices that provide a point of contact for workers, growers and contractors, dissemination of information and administration of licensing requirements could also provide security to employers by performing visa checks and

⁶ Trade Union Conference, (TUC) "Enforcing Basic Workplace Rights: A Guide for Unions and their Members to the Statutory Enforcement Agencies" (2011), 51.

⁷ Ibid 51-53.

⁸ Ibid 53-54.

⁹ Ibid 55.

¹⁰ Trades Union Conference (2011) n 6, 55

¹¹ Ibid, 53-68

establishing the rights of a worker to be employed. The function of providing “farm ready” workers could be conducted by provision of training on a cost recovery basis through application fees to the visa holder prior to granting the right to work. This would ensure that all entities involved are protected as far as possible;

- Workers by having initial Occupational Health and Safety Training along with basic farm skills,
- Labour hire companies as the verification of visa category has already been established by the harvest office and initial induction training has been fulfilled,
- Growers as they are assured of engaging licensed contractors and legal workers through the harvest office.

Conclusion

The issues surrounding exploitation and regulation in the labour hire industry are complicated and interwoven with social issues such as lack of appropriate accommodation and transport. A series of changes needs to happen in the landscape to protect vulnerable workers and their rights. Effective enforcement and compliance depends on a combination of factors such as adequate resourcing of the regulators and a sufficiently robust penalty regime to discourage unscrupulous activity from growers, labour contractors and accommodation suppliers. More resources dedicated to the compliance monitoring of bodies such as the Fair Work Ombudsman (FWO) are needed to ensure that workers are protected and incidences of non-compliance at all three levels of government are reduced significantly.

Currently there are no licensing regimes which apply to labour hire firms in Queensland or nationally. The introduction of a licensing regime similar to that of the GLA, with adequate resourcing to enforce compliance and substantial penalties for non-compliance, would ensure that many cases of workplace exploitation and associated abuses of human rights would be reduced. For this process to be effective, as with the GLA, not only are labour hire contractors penalised but also the growers who use unlicensed providers must be penalised. The establishment of Regional Harvest Offices that perform the tasks of administration of licencing requirements, linking workers and employers with the ability to train workers to be farm ready and ensure visa compliance would go a long way to reducing if not eradicating the rogue contractor in regional areas. This supplemented with the ability to have visa holders extend their stay if they are engaged in assisting with genuine investigations by state and federal entities would probably see a marked increase in prosecution of unlawful activities.

Regional Harvest Offices that act as an intermediary to growers, labour contractors and workers are likely to provide the connection point where workers are able to gain access to training, reputable employers and licensed contractors; they will also be able to provide information and referral for workers who find themselves in situations of difficulty for whatever reason. Simple one page fact sheets issued with a visa enables WHM to gain an understanding of their rights and thus self-protect from exploitation.

Lockyer Valley Regional Council experiences first-hand the vital contribution of the working holiday visa temporary labour hire industry and is most concerned about the flow on effects of an increase in taxation to backpackers. A reduction in the backpacker tax would remove an impediment to the engagement of casual labour and enable more sustainable agricultural production in our regions and in turn more sustainable local government.