



National Farmers' Federation

Submission — A Migration System for Australia's Future

15 December 2022

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NFF Member Organisations





The National Farmers' Federation (NFF) is the voice of Australian farmers.

The NFF was established in 1979 as the national peak body representing farmers and more broadly, agriculture across Australia. The NFF's membership comprises all of Australia's major agricultural commodities across the breadth and the length of the supply chain.

Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF represents Australian agriculture on national and foreign policy issues including workplace relations, trade and natural resource management. Our members complement this work through the delivery of direct 'grass roots' member services as well as state-based policy and commodity-specific interests.

Statistics on Australian Agriculture

Australian agriculture makes an important contribution to Australia's social, economic and environmental fabric.

Social

In 2019-20, there are approximately 87,800 farm businesses in Australia, the vast majority of which are wholly Australian owned and operated.

Economic

In 2019-20, the agricultural sector, at farm-gate, contributed 1.9 per cent to Australia's total Gross Domestic Product (GDP). The gross value of Australian farm production is forecast to reach \$78 billion in 2021-2022.

Workplace

In 2021, the agriculture, forestry and fishing sector employ approximately 313,700 people, including over 215,800 full time employees.

Seasonal conditions affect the sector's capacity to employ. Permanent employment is the main form of employment in the sector, but more than 26 per cent of the employed workforce is casual.

Environmental

Australian farmers are environmental stewards, owning, managing and caring for 49 per cent of Australia's land mass. Farmers are at the frontline of delivering environmental outcomes on behalf of the Australian community, with 7.79 million hectares of agricultural land set aside by Australian farmers purely for conservation/protection purposes.

In 1989, the National Farmers' Federation together with the Australian Conservation Foundation was pivotal in ensuring that the emerging Landcare movement became a national programme with bipartisan support.

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Executive Summary

While migrant workers are not the principal source of labour for the farming sector — and should not be seen as the panacea to its labour challenges— effective labour migration programs are critical to the sector.

At present farms rely heavily on three types of migrant worker: working/work and holiday makers (backpackers’), pacific labour mobility scheme (PALM) workers, and the temporary skills shortage (including industry labour agreement) workers. While these (and other) programs are highly valued by to the sector, none of them is perfect. At the very least, this review is an opportunity to address the imperfections by clearing chokepoints which are within programs and improve program resilience and reliability. Ideally, however rather than minor tweaks, the system would be reformed so that it is designed to be accessible and applicable to agriculture, with robust worker protections, which also provides growers with flexibility to meet the variable labour demands.

These submissions make a number of recommendations designed to achieve this goal:

1. Promote Australia as a destination of choice for migrants, including skilled workers, working holiday makers, students, etc.
2. Permanently increase caps from subclass 462 (Work and Holiday Maker) sending nations.
3. Regularly and frequently review ANZSCO classifications to ensure that they reflect agricultural occupations.¹
4. Reduce the restrictive education requirements for Work and Holiday Makers under the subclass 462 visa.
5. Introduce a centrally managed PALM fund to promote uptake, especially in underrepresented sectors to e.g. assist with costs, skills development, etc.
6. Empower local industry groups to support PALM employers, including efforts to foster social cohesion and integrate PALM workers into local communities.
7. Support research to understand the maximum sending potential of the PALM scheme and provide a long-term labour shortage outlook.
8. Establish a PALM support office in each state and territory to provide a concierge service assisting small employers to engage with the program.
9. Reduce skilled visa processing times e.g. increase resourcing, simplify the system, peg funding to KPIs, publish clearance rates, explore "deemed refusals".
10. Reduce process driven bureaucracy in the skilled visa scheme e.g. eliminate labour market testing, cease reliance on occupation lists, avoid duplication.
11. Keep costs reasonable e.g. reduce the Skilling Australians Fund, minimise necessity for immigration professionals (by simplifying system).

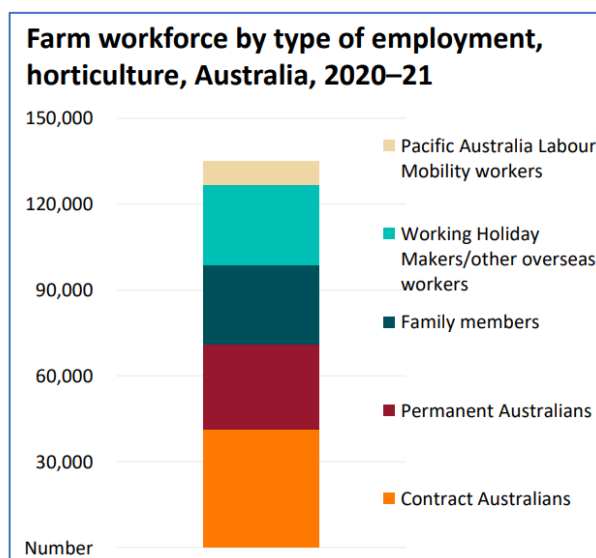
¹ NAWS Recommendation 35.

12. Ensure that expenditure of the 'Skilling Australia Fund' benefits the agricultural workforce.
13. Facilitate industry access to the knowledge, experience and expertise within Department e.g. re-establish the Home Affairs 'Outreach Officer' program.
14. Raise the TSMIT to a level equivalent to an indexed 2013 figure and/or ensure that it features regional or industry concessions in response to unique challenges.
15. Explore the introduction of an Australian version of Canada's "Agricultural Stream" and Agri-Food Pilot.
16. Reintroduce migrant worker protection laws similar to the Migration Amendment (Protecting Migrant Workers) Bill 2021.
17. Ensure any such protections are adequately resourced, recognise the special conditions relating to labour hire, and provide employers with adequate notice and guidance.

Introduction

With the high level of human welfare and social responsibility that is attached to Australia's agricultural industries, the sector is already a source of strength in the Australian economy. Indeed, positioned to capitalise on the increasing global appetite for safe, high-quality food and fibre over the coming decades, the NFF's vision is for Australian agriculture to become a \$100 billion industry by 2030. However, this vision requires continued growth in the sector, a growth which is only achievable with access to quality labour. Our future depends on attracting and retaining the next generation of farmers and farm workers. A general shortage of labour will limit the productivity of Australian farms, jeopardising some and preventing the expansion of others. A lack of skilled workers will also stifle the industry's ability to innovate and adapt to change. Shortages will also constrain regional communities.

Unfortunately, finding and retaining a reliable workforce is a significant issue for the sector. The reasons are manifold but include a relatively high level of seasonal and contract labour, a wide geographical spread with much of the work occurring in remote and rural areas, frequent requirements to work long and/or unsociable hours, and an ageing labour force². Thus, while the promotion of agricultural careers and removal of barriers for the domestic workforce are our greatest priority, migration will remain an important part of the workforce 'puzzle'. While the migration system is (understandably) designed to ensure that permanent Australian residents are prioritised in the labour market, that doesn't mean that the system should be restricted to merely providing short term, crisis relief. There



are many roles, especially in the ag' sector which are vital to the Australian economy but will not attract Australians in the short/medium term. Unlike, for example, PR consultants, IT specialists, hairdressers, etc, most farm jobs are not vacant because of a lack of foresight in planning and skills development, but because of chronic disinterest in the work and/or because it is not located in population centres. In those cases, it follows that — subject to a few reasonable checks and balances — the system should not discourage use or be significantly more costly or challenging than hiring locally. The system has failed where it is cost

² in 2018–19 the average farm worker's age is 58 compared to the national average of 39. ABS figures from 2016 indicate that people working in the agriculture, forestry and fishing industry had the highest average age at retirement (61.7 years); more than five years older than the average retirement age across all industries (55.3 years).

prohibitive, complex and slow, and/or does not enable enough workers to enter the country to cover endemic and irreversible shortages such as those which are frequently experienced in the agricultural sector.

Three migration programs feature heavily in the workforce: backpackers, the Pacific Australia Labour Mobility (PALM) scheme, and temporary skills shortage visas. It must also be recognised that a portion of temporary visa holders transition to permanent visas and residency where they are willing and satisfy visa criteria, forming a valuable part of Australian communities. We will consider the pros and cons of each program in the submissions which follow, together with suggestions as to how those programs may be improved, and then include more general statements about a fit-for-agricultural-purposes visa program, and stress safeguards for potentially vulnerable workers.

Working/Work and Holiday Makers (“Backpackers”)

Lower skilled migrant labour is drawn chiefly from the ranks of “backpackers”; that is, travellers on the *work and holiday maker* (subclass 462) and the *working holiday maker* (subclass 417) visas. While notionally on a visitor/vacation visas, backpackers have general work rights. And while many backpackers gladly spend time working on farms, a significant proportion have taken farm jobs to satisfy a requirement to work 88 days to qualify for a 2nd year visa and 6 months to qualify for a 3rd.

There has been some speculation that the number of backpackers working on farms has fallen in the past half-decade, possibly as a result of the introduction of the “backpacker tax” in 2017. However, that trend may be overstated. Given the intervention of COVID border closures in March 2020, the numbers from 2020 through 2022 are unreliable and/or unrepresentative. However, the number of 2nd and 3rd year visa holders in 2018/19, 43,219, was the second highest on record³, and the proportion of that number who nominate ag’ jobs as their ‘specified work’ have been relatively static over time, at about 85%. In short, backpackers remain a large source of worker for the ag sector.

It cannot be overstated just how important that source of worker is. In horticulture they make up to 80% of the harvest labour force, while in other commodities they are anywhere from 5% to 15% of the junior, casual and seasonal workforce. Indeed, it's no exaggeration to say that the sector was brought to its knees when borders closed during the pandemic crisis, and the backpacker numbers declined from 140,000 to just under 20,000.

However, it may also be observed that backpackers have some significant shortcomings as a source of labour:

³ The highest being 45,950 in 2013/14

- The program doesn't offer continuity in the workforce and consequential productivity gains. Few workers acquire more than 88 days experience and are unlikely to return year-on-year.
- As backpackers are notionally visitors on a "cultural exchange" vacation, their importance to the sector may be disregarded in policy development and as government priorities change.⁴
- While the three/six months of "specified work" inducement has been a positive for the sector, it has a significant drawback in that some – perhaps many — of the backpacker cohort are not willing and engaged with the work.
- The requirement for applicants to satisfy age and academic requirements has also been seen as a drawback, particularly for employers looking for a mature and experienced workforce.
- The 'backpacker' visa system — and the "specified work" component in particular — likely contributes to the potential for exploitation and mistreatment of the workers.

But perhaps most significantly, as the COVID-19 pandemic showed, the 'backpacker' cohort is inherently unpredictable and unreliable as a standing pool of labour. As noted above, international (and state) border closures in 2020/21 saw the number of backpackers in Australia fall by roughly 85%, creating an existential labour shortage and an industry wide crisis. It demonstrated the risk in relying on backpackers as a central business input. And as (1) other sectors begin to see them as a prospective source of labour when experiencing shortages — e.g. in 2019 the 'specified work' was expanded into tourism and hospitality in some regions — and (2) as we anticipate changes to the program as part of the UK FTA agreement — and potentially other international trade and treaty deals — a reliance on backpackers seems more-and-more unwise.

The former government recognised the issue when it announced an intention to introduce a dedicated ag' visa. In scrapping that proposal without any meaningful alternative, the current government is placing enormous strain on the legitimate sources of labour that remain.

Whilst we continue to depend on backpackers, international attractiveness and competitiveness is critical to the agriculture industry. Flight costs to Australia continue to be the most expensive option for backpackers seeking to move to a destination for a working holiday. The visa application costs in Australia for a 417 or 462 is internationally exorbitant at \$510, which both impact our international competitiveness in attracting backpackers.

It must also be recognised that short term temporary visas such as the backpacker and PALM schemes involve bilateral agreements. Program settings are therefore

⁴ See, for example, the backpacker tax debate.

designed and can be subject to change based on partner country requirements and preferences

Recommendations:

- *Promote Australia as a destination of choice for migrants, including skilled workers, working holiday makers, students, etc.*
- *Permanently increase caps from 462 visa sending nations.*
- *Regularly and frequently review ANZSCO classifications be reviewed and expanded to better reflect ag' occupations.⁵*
- *Reduce the restrictive education requirements for backpackers under the 462 visa.*

Pacific Australia Labour Mobility (PALM) scheme

The PALM scheme constitutes two labour migration programs: a short term (seasonal) worker stream and a longer term (1 to 3 year) stream. The PALM allows workers from participating Pacific Island nations and Timor Leste to work in Australia for up to 9 months of each year and return annually (seasonal stream) or 1 to 3 years (longer-term stream). On balance, the program has been a success and has grown year-on-year. In 2012 the program introduced just 2,000 workers. That figure has grown to about 28,000 workers at 31 August 2022⁶. The PALM provides growers with access to a regular (if not constant) source of labour for extended periods and, as such, allows for workforce continuity. PALM workers are generally viewed as reliable and committed, and an independent study estimated that their productivity levels are significantly greater — up to 20% — than those of backpackers⁷. Growers also report that they have greater control over their labour supply than when relying on other sources of labour such as backpackers.

However, participation in the program requires a significant upfront commitment from employers, a fact which has discouraged many from participating. In addition to the usual employee entitlements, a farmer who wishes to participate must negotiate a complex bureaucratic approval process, arrange, and make upfront payment for the workers' airfares and transport, ensure suitable accommodation, guarantee the worker at least 30 hours work per week, comply with government's reporting requirements, and obtain approval before making any changes to their dealings with the PALM workers. The employer is also responsible for the worker's "pastoral care", which can mean anything from ensuring the worker has access to sport and leisure activities and religious services, to more basic care such as, for example, checking whether they have adequate clothing or (unbeknownst to the

⁵ NAWS Recommendation 35.

⁶ <https://www.palmscheme.gov.au/sites/default/files/2022-09/Expanding%20and%20improving%20the%20PALM%20scheme%20-%20August%202022.pdf>

⁷ <https://www.agriculture.gov.au/abares/research-topics/productivity/productivity-drivers/seasonal-workers-report#seasonal-workers-contribute-to-productivity-and-profitability-gains>

grower) are pregnant or suffering from chronic illnesses⁸. Employers must also engage with an army of different government agencies and representatives, many of whom take a special interest in the program. The Departments Foreign Affairs and Trade, Home Affairs, Employment and Workplace Relations, and Australian Border Force (**ABF**) all have direct roles in the program, as do the Fair Work Ombudsman and the Health and Safety regulators. Many approved employers are labor hire businesses, and so must answer to labor hire licensing authorities. And, in some regions, both local council planning authorities and other state and local agencies who monitor the accommodation and provision of other services approved employers are obliged to provide.

Managing responsibilities under the scheme requires many approved employers to hire dedicated personnel and make it essentially inaccessible to smaller growers. According to ABARES, the actual non-wage cost to farms per worker is about \$1,634, with a much greater “upfront cost” of an estimated \$3,000. This is significantly more than the \$134 a backpacker (or Australian) worker would cost. The upfront investment which these requirements represent can make it difficult for farmers with short term labour needs to generate a sufficient return on investment. In addition, the sporadic and unpredictable labour needs of farmers mean any delays in the application process can frustrate their ability to rely on the program. It also means that farmers are frequently unable to guarantee adequate hours of work.

Only about 400 employers are approved to actually employ under the program, and the vast majority are limited to fruit and vegetable growers, presumably because it is best suited to very high volume, lower skill work. According to ABARES, around 4% of horticultural farms surveyed used the program directly or through labour hire companies, less than 0.5% of broadacre farms accessed the program in 2017–18, and no dairy farms used it.

We need to encourage and assist industry’s engagement to enable the PALM scheme to best assist with the sectors labour needs and maximize the scheme’s potential. To that end the NFF is proposing a ‘concierge’ service which would focus on supporting new employers seeking to enter the scheme. WA’s Labour Scheme Facilitator performed a similar function over the pandemic period.

Its functions could include some or all of the following:

- providing advice on eligibility and other program requirements, and how they can best be met in the growers’ circumstances.
- guiding employers through the process of becoming an approved employer, engage with the domestic and overseas governments, and engaging foreign workers.
- assisting in sourcing worker travel and accommodation and delivering other pastoral care requirements.

⁸ Even though the program is designed to ‘filter out’ these workers.

- providing cultural awareness and overcome other hurdles to building harmonious and productive relationships with PALM workers.
- linking potential employers interested in sharing short-term workers under the employer-initiated portability model.

The role should be focused on small farming business — with an emphasis on the short-term PALM scheme where the demand for a flexible seasonal workforce remains.

Another concern in relation to the PALM program is that the number of workers is not unlimited, and sending nations are already concerned about 'brain drain' especially when considering that New Zealand's "Recognized Seasonal Employer" scheme already draws very heavily on the same labour pool. It follows that there is a risk that the use of the program will be limited to avoid stunting the growth of the home nations' economies. This warning is particularly ominous given that the program is designed to assist these nations. Concerns have already been expressed by Samoa and Vanuatu regarding this issue. These are two of the major labour sending countries under the PALM scheme and are currently discussing capping the program. Their concerns are warranted. They do not want to lose too many of their best and brightest to migration and are particularly concerned at the idea of the PALM scheme introducing a pathway to permanent residency, as they want to see these workers return and participate in their home economy. The International Labor Organisation is assisting Pacific governments draft new employment policies, to ensure domestic industries and businesses do not suffer as staff leave to work abroad⁹. Before accepting the PALM as the panacea to the industry's labour needs, it will be important to understand the maximum labour sending potential of Pacific nations.

Recommendations:

- *Introduce a centrally managed PALM fund to promote uptake, especially in underrepresented sectors e.g. cover upfront costs, improve skills development.*
- *Empower and support local industry groups to provide support to PALM employers, including efforts to foster social cohesion and integrate PALM workers into local communities.*
- *Support research to understand the maximum sending potential of the PALM scheme and provide a long-term labour shortage outlook.*
- *Establish a PALM support office in each state and territory to provide a concierge service assisting small employers to engage with the program.*

⁹ <https://www.abc.net.au/pacific/programs/pacificbeat/pacific-worker-limits-considered-samoa-vanuatu/101517260>

Temporary Skilled Migration

General Observations

The various “skills shortage” visas allow workers with a specific skill set to migrate to Australia and work for an approved business for a number of years (depending on the role, worker’s skills, etc). These workers fill labour shortages, contribute knowledge gained in other countries to the growth and development of Australian agriculture, and provide valuable training for local Australian workers. The total number of primary skilled visa holders working in agriculture as of 30 September 2022 was 2,490¹⁰. While certainly not the heaviest user of the program, this ranks agriculture as the 8th largest out of all 20 industries. The pathway offers a level of certainty to farmers faced with chronic labour shortages. It provides farmers and processors with an alternative avenue to accessing skills and labour and is often used in the absence of suitable migration streams for ‘semi-skilled’¹¹ rather than higher skilled workers.

However, agriculture has long been vocal about the shortcomings of this program. For example, roles which are new and emerging, and/or are principally learned through practical experience with limited formal qualifications are not recognized by the Australian and New Zealand Standard Classification of Occupations (**ANZSCO**) which serves as the starting point for any visa.¹² As such the program is limited to a relatively small number of standardized occupations, and many farm job — such as “senior farm hand” and “agricultural supervisor” — are not eligible.

There are also concerns that the recognition of qualifications is too restrictive. IN addition, the assessment/approval process is too convoluted or slow. This issue can be addressed by improving the current system around skills assessments and recognition, including expansion of the list of recognised countries qualifications where appropriate.

In addition, there are significant costs associated with the programs; for example, visa fees, costs associated with engaging agents and experts, and the requirement to contribute to the Skilling Australia Fund. While some costs are understandable, many should be reduced or minimized — for example, visa processing costs and agent’s/expert’s fees — if the program was streamlined and simplified. Furthermore, the assessment and allocation of other costs could be more transparent and rational; for example, the Skilling Australians Fund (**SAF**) levies paid by farm employers should be directed to improving skills in the agricultural sector and regional locations (see below at page 16).

¹⁰ <https://www.homeaffairs.gov.au/research-and-stats/files/temp-res-skilled-quarterly-report-30092-22.pdf>

¹¹

¹² Although recently skills lists have revised to include more occupations and the Government has been admirably flexible in interpreting the classifications.

Processing of Applications

Perhaps most fundamentally, however, the migration system can be slow to process applications. Although this may not be a typical or endemic problem, there are nonetheless numerous instances of visas taking many months, even years, to reach a decision often with little transparency or communication around reasons for delays. Concerns coming out of the ag sector are that the slowness and delay to review skilled visa applications is unworkable considering the backlog of all visa applicants. Particularly given the recent Directions 100 which has meant agricultural occupations, which were previously highest priority for visa processing, no longer listed on the order of priority. In addition, while regional visas are listed as priority 3, Home Affairs definition of ‘designated regional areas’ is ‘most locations of Australia outside major cities (Sydney, Melbourne and Brisbane)’ This needs to be redefined, to enable rural, regional and remote migration needs to be appropriately supported.

The recent announcement of an additional \$36.1 million to increase staffing at Home Affairs by 500 people for nine months was applauded by industry. It has resulted in an acceleration in visa processing, with a reduction by 25% of the Covid backlog of visas applications: one million in June 2022 to 755,000 at present, and a further reduction of 155,000 expected by the end of the year. In addition to clearing the backlog of applications which accumulated over COVID-19 and generally speed-up processing times, we should see fewer of these cases of lengthy delay. However, we would strongly urge government to maintain these funding levels and focus in order to achieve a more efficient and responsive system. This should not be a one-time or temporary fix but reflect government policy going forward. Beyond the required additional resources, and streamlining (including ICT improvements) the assessment processes will also enable timelier decisions. We would also encourage government to introduce measures which peg departmental funding to key performance targets and publish clearance rates against those targets.

Being based in remote areas and part of the food and fibre supply chain — which cannot absorb delays given we are dealing with biological systems, animal welfare, and perishable goods — a fast and responsive migration system is key for agriculture and the processing sector and, as such, should be treated as priority sectors for visa processing.

Review of the Temporary Skilled Migration Income Threshold.

The Temporary Skilled Migration Income Threshold (**TSMIT**) is — subject to some isolated concessions¹³ — the absolute minimum amount any employer can pay a migrant worker on a skilled work visa¹⁴. It was set in 2013 at \$53,900 and has not

¹³ e.g. some Industry Labour Agreements allow some categories of worker to be paid 90% of the TSMIT.

¹⁴ Although in each individual case, the actual pay must also exceed the market (or AMSR) rate.

been revised or increased since. However, during the 2022 election the Labor government committed to a review of the TSMIT, and the likely outcome is that the TSMIT will be lifted to a point which is equivalent to the rate a ‘skilled worker’ is expected to earn. That position was broadly accepted across industry at the Jobs and Skills Summit. However, there are different views as to what the new TSMIT rate should actually be. The Australian Council of Trade Unions (**ACTU**) proposed raising the TSMIT by \$37,000, to \$91,000, and having it indexed annually by the wage price index. The Australian Chamber of Commerce and Industry (**ACCI**), on the other hand, suggested lifting it to \$60,000. As part of a broader push for working visas to be restricted to high wage jobs, rather than targeting occupations with a demonstrated skills shortage, the Grattan Institute has suggested a threshold of \$70,000, roughly where it would have been if it had been indexed to wages when implemented in 2013. The outcome of the Jobs and Skills Summit was to: “raise the [TSMIT] following broad engagement on equitably setting the threshold and pathway for adjustment”.

The NFF accepts that a TSMIT figure which is pegged at 2013 levels is not tenable. However, we note that the average nominated base salary for primary applications granted in 2021-22 for agriculture workers was \$68,200. As such, if TSMIT is raised to \$90,000 or even \$70,000 then the likely result would be that agriculture will no longer be able to use the skilled migration program — or at least have its use severely restricted — thereby losing yet another important avenue for accessing labour. Indeed, the Grattan Institute research acknowledges that agriculture, forestry and fishing would lose 84% of its skilled visa workers. Without more, this would be a ‘gut punch’ which would cripple many parts of the industry.

Any increase must bear these concerns in mind. As such, we would support a robust analysis of the TSMIT settings before reaching a figure; i.e. what is the TSMIT meant to accomplish? what is the rate which will allow it to accomplish those goals? and what will be the effect on workers, business, and the broader economy if it is set at that rate? This is a position which appear to align with the outcome of the Jobs and Skills Summit. Furthermore, if the program shifts to focus on high-salaried occupations then a new solution will be necessary to service industries such as agriculture which rely on migrant workers with distinct skill sets but cannot offer wages at the upper end of the market. That may be special concessions. Or it may be a more radical change such as introducing a new semi-skilled visa stream for select industries and/or roles which experience chronic; see below at page 19.

Reform the Skilling Australians Fund.

As indicated above, the NFF’s principal strategy to address workforce shortages is to attract the necessary personnel from the domestic labour market.¹⁵ Of course, for that strategy to succeed, in addition to offering attractive job/career options,

¹⁵ For a detailed overview of the requirements training and skilling requirements of Australian workers in agriculture, please see our submission to the Treasury Employment White Paper.

domestic workers will need to possess the skills which the agricultural industry requires.

The SAF was established to support the development of those skills as an ongoing arrangement by the Australian Government from the 2017–18 Budget. The purpose of the Fund is to ensure businesses that use migrant workers are also skilling Australians. The SAF levy is the principal mechanism for raising revenue for the Fund. It is paid by employers who sponsor skilled workers from overseas, under certain visa classes¹⁶.

However, there is little indication provided to those who pay it that the levies are utilised to upskill the domestic workforce in the relevant industries. Agricultural employers do not see any benefit from the SAF. They pay a not insignificant levy of at least \$1,200 — but more typical in excess of \$5,000¹⁷ — when engaging the visa worker while, frequently, also providing the worker with training “in house”, thereby effectively paying twice for training in respect of the one employee. Meanwhile the levy is apparently lost to consolidated revenue and has no impact on skills shortages which originally impelled the payment (i.e. which the migrant worker possesses). Indeed, there is no evidence, at least within agriculture if not the economy more broadly, that the SAF has actually reduced the skills gap. The roles which migrants filled in 2017, when the SAF was introduced, are largely the same roles which are being filled in 2022. Ideally, there would be a clear correlation between the skills which are being imported — and therefore, in essence, attracting the levy — and the skills programs which are being supported by the fund. That is, the SAF should finance the domestic development of the skills which businesses are currently having to source from overseas. As part of good management, there should be transparency as to how the funds are spent and evaluation of the success of that expenditure.

The National Agricultural Labour Advisory Committee recognised this issue in its 2020 report, *National Agricultural Workforce Strategy: Learning to excel*, when it recommended that:

the Australian Government, in collaboration with the state and territory governments, ensure that the expenditure of the Skilling Australians Fund levies benefit the whole AgriFood workforce.

We would encourage the government to take this recommendation on board, ideally to direct the funding into developing the skills — or at least skills the sector — which generated it.

¹⁶ <https://www.dewr.gov.au/skilling-australians-fund/resources/skilling-australians-fund-factsheet>

¹⁷ For business with an annual turnover less than \$10 million it is \$1,200 per visa year, and for all other business it is \$1,800 per visa year.

Recommendations:

- Reduce visa application processing times e.g. increase departmental resourcing, simplifying the system, peg departmental funding to KPIs, publish clearance rates against targets to increase accountability, explore introducing "deemed refusal" trigger.*
- Reduce blunt, process driven bureaucracy in the scheme e.g. eliminate labour market testing, cease reliance on occupations lists and skills assessments, avoid administrative duplication.*
- Keep costs reasonable e.g. reduce the Skilling Australians Fund, minimise necessity for immigration professionals (by simplifying system) and further streamline the system.*
- Ensure that expenditure of the 'Skilling Australia Fund' (SAF) benefits the agricultural workforce.*
- Facilitate industry access to the knowledge, experience and expertise within Department e.g. re-establish the Home Affairs 'Outreach Officer' program (extension) program with industry partners.*
- Raise the TSMIT following broad engagement on equitably setting the threshold and pathway for adjustment and/or ensure that it features regional concessions in recognition of the unique challenges of regional Australia*

Australian Visa's for Agriculture

The NFF recognises that the Government has committed to expanding the PALM Scheme in favour of delivering a dedicated agriculture visa. However, the labour market conditions of 2017, which prompted the calls for a comprehensive purpose-built solution —a dedicated ag' visa — still exist today. The then government answered that call in 2021 when it announced that it would develop and Australian Agricultural Visa (**AAV**).

With the change of government in 2022 the AAV was essentially scrapped, with a proposal to modify the PALM to introduce some AAV-like settings. This change in policy was notionally instigated due to concerns that the AAV would undermine the integrity of the PALM and dilute its usage by another visa option. However, we think these concerns were unfounded. Properly designed the AAV would not have displaced the need for the PALM or undercut its utilisation, as it would provide a solution to a different type of labour demand. It would allow travellers who want to work on farms to come to Australia and go to the work as and when they're needed. It would feature strong safeguards to ensure AAV workers are not exposed to exploitation and, indeed, allow workers to move jobs when facing mistreatment. But it would be accessible to smaller growers who currently find engaging with the PALM scheme either too expensive or too difficult when dealing with the complex administrative challenges required. It would, in short, be a better, more sustainable

alternative to backpacker workers, not the PALM. And it should be remembered that the AAV announcement was made in the context of the UK-AUS FTA, which will remove the requirement for UK backpackers to work 88 days on-farm to renew their visa. This could result in a 20% to 25% reduction in the available backpacker — i.e. seasonal — workforce.

That said, we have noted the government's firm stance on this issue and commitment to the Pacific nations. As such we have not aggressively called for a return of the AAV.

Nonetheless, it would be prudent to diversify the international labour markets that agriculture can access through our migration system. This would ease the pressure currently placed on Pacific Island nations without reducing the strong links with the region. A number of international partners have signalled their interest on expanding migration links with Australia. Furthermore, a simple porting some of the AAV settings into the PALM is unwise given that fundamental changes — as, for example, broad portability arrangements — may undermine the success of that program.

As such there may be merit in considering a dedicated solution which targets skilled and semi-skilled roles. Indeed, we would also note that in addition to a short term, seasonal 'PALM-like' stream — which would have replaced reliance on backpacker for unskilled labour — the AAV would also have had a semi-skilled worker stream which would not have impacted the PALM at all. It would, instead, have supplemented the temporary skilled visa options. As we note above, the skilled visas system is less than ideal — hence many commodities resorting to bespoke 'industry labour agreements'. That unsuitability will only become more pronounced if some of the proposed changes — such as an increase to the TSMIT or the other changes suggested by the Grattan Institute — come to pass. Much of this unsuitability is a result, we would suggest, of the skilled migration system which is superficial meant to enable access to high skilled and specialist (and high salary) employees being used to engage trade and technical workers e.g. ANZSCO skill level 4 to 8¹⁸ roles. This is not an abuse or misuse of the program, but a case of farmers simply using the only system open to them to meet their labour requirements. And while no other, purpose-built stream exists, farmers will continue to use the skilled migration stream for this end. If this is the program operating correctly, then the program should be designed accordingly; e.g. the TSMIT should be set at a rate which is appropriate for these skill level 4 and 5 roles. If it is not, then it's a result of an overall design flaw and something else is required.

In that case, we would encourage the government to consider a dedicated semi-skilled visa option specific to the agricultural sector. Canada may serve as a guide. It has two major migration streams specifically designed for the agricultural sector. In addition to Canada's version of the PALM — the Seasonal Agricultural Worker Program — it has established an "Agricultural Stream" under its "Temporary Foreign

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Worker Program”. The Agricultural Stream allows farms to hire foreign workers from any country and into virtual any semi-skilled and skilled on-farm role if a permanent resident is not available to fill the position. Under this program, a work permit can be issued for up to 3 years for a high wage position (above the median) and 2 years for a low-wage position, with the employment duration aligning with the employer’s reasonable employment needs and the salary meeting market rates¹⁹.

The circumstances in which the Canadian Agricultural Stream operates are akin to circumstances in which farmers currently use the skills shortage visa in Australia. With the likely increase to the TSMIT, it will be critical to agriculture to have alternative pathways to engage skilled workers that are suitably qualified, experienced and willing to fill these occupations. By developing a similar model in Australia, it would allow Australian farmers who can demonstrate they cannot hire an Australian worker, to recruit a foreign worker for a period of 2 or 3 years from any country in the world. The Canadian model of the Agricultural Stream has no equivalent to the TSMIT: if an employer can demonstrate there are no available citizens or permanent residences to do the job, paying a wage above the provincial median is sufficient. Similarly, in the Australian model the minimum floor should be determined by paying above or equal to the AMSR, this would ensure workers are paid no less than an Australian worker would doing the same work in the same location., thereby not placing any distortions on or undercutting the domestic labour market.

In addition, in 2020, the Canadian Government introduced the Agri-Food Pilot which provides a new pathway to permanent residence for experienced non-seasonal workers in specific agri-food industries and occupations, including “livestock labourers” and “harvesting labourers”. The pilot will run until 2023 and accept 2,750 applications each year²⁰. This pathway to permanent residency increases the attractiveness of these programs significantly in comparison to Australia where no such program exists in the standard visa system.

Recommendation:

- *Explore the introduction of an Australian version of Canada’s “Agricultural Stream” and Agri-Food Pilot.*

Migrant Worker Protections

The NFF recognises the seriousness of mistreatment and exploitation of workers. We condemn all practices, isolated or endemic, which deprive workers of

¹⁹ <https://www.canada.ca/en/employment-social-development/services/foreign-workers/agricultural/agricultural.html>

²⁰ <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/agri-food-pilot/about.html>

entitlements or deny them their rights in the workplace – whether by negligence or intent. We further oppose any misuse or violation of the visa system that would breach limitations on the right to perform paid work in Australia or any other visa condition, and we have taken steps to ensure producers are aware of their obligations and comply with all legal requirements which relate to employing migrant workers. Recent steps that the NFF has taken to collaboratively address the issue of worker exploitation and ensure that all agricultural workers are granted their full rights and entitlements include support for the Fair Farms employer accreditation and integrity program²¹, calling for the Government to develop a national labour hire regulation framework, ongoing engagement with the Fair Work Ombudsman and other regulators to address worker mistreatment²², and directly addressing worker protection through the Agriculture Workforce Working Group²³.

Specifically in relation to migrant worker protections, we note that in March 2019 the Federal Government published the report of the Migrant Worker Taskforce. That report made 22 recommendations intended to promote migrant worker protections, including criminal sanctions for ‘serious and egregious’ deliberate exploitation, a bolstering of the Fair Work Ombudsman’s capacity, and the development of a National Labour Hire Registration Scheme. The NFF supported all of those recommendation.²⁴ In 2021 the then Federal Government introduced the *Migration Amendment (Protecting Migrant Workers) Bill 2021* which would have implemented many of those recommendations. The Bill would have introduced two new types of offences in relation to employers coercing or exerting undue influence or pressure on migrant workers and provided the Minister with powers to prevent a person who has been subject to a ‘migrant worker sanction’ or ‘work-related offence’ from engaging any new foreign workers. Other provisions included a requirement for employers to use the Visa Entitlement Verification Online system to verify a non-citizen worker’s immigration status and enabling the ABF to issue ‘compliance notices’ where an officer reasonably believes that a person has contravened the relevant civil or criminal provisions. In submissions to the Senate Legal and Constitutional Affairs Legislation Committee’s enquiry into that Bill, we noted our support for the Bill and “its aims to improve work conditions for migrant workers and punish bad actors in the space.”

While that Bill lapsed when the House was dissolved in April 2022, we support the new government’s recommitment to exploring legislative amendment to deter and prevent migrant worker exploitation. We are actively participating in consultations to that end. We remain fully prepared to continue engaging with the Government and other stakeholders to ensure that all reasonable steps are being taken to address concerns about position of migrant workers.

²¹ Fair Farms - <https://www.fairfarms.com.au/>

²² Including through the Fair Work Ombudsman’s Horticulture Industry Reference Group

²³ <https://minister.agriculture.gov.au/watt/media-releases/tripartite-agricultural-workforce-working-group>

²⁴ <https://nff.org.au/media-release/nff-says-workers-and-farmers-need-an-ag-visa/>

However, we would stress the following

- Legislative/regulatory obligations (i.e. more laws) which are not adequately targeted and enforced become nothing more than a compliance burden for the good operators while the bad actors are largely untouched. As such the regulators (FWO, ABF) should be properly resourced and supported to enforce any new and existing laws.
- Special consideration should be given to the position of disreputable labour hire operators given the unique risk they present. Unlike many employers who have capital investments tying them to a business, ‘dodgy’ labour hire companies who contravene the provisions could simply “phoenix” and start anew.
- The NFF call for the Government to consider educational or informative materials to ensure farmers and employers understand their obligations under the new regulations.

Recommendation:

- *Reintroduce migrant worker protection laws similar to the Migration Amendment (Protecting Migrant Workers) Bill 2021.*
- *Ensure any such protections are adequately resourced, recognise the special conditions relating to labour hire, and provide employers with adequate notice and guidance.*

Conclusion

The NFF recognises the critical importance of migration to sustaining an agricultural workforce that is flexible, adaptable, and suited to the demands of industry. We are buoyed by the renewed focus on migration settings by the Government and would welcome reforms which properly account for the growing requirements of the agriculture workforce, and rural, regional and remote communities.

Australia’s migration system as it relates to agriculture has been built on a range of stop gap measures, for instance the 88 days farm work for backpackers was a temporary measure implemented by the Howard government. The PALM scheme was designed as an international development program, whereas the sending nations are now growing increasingly concerned with local economic ‘brain drain’. The skilled migration streams available to agriculture will require reform to ensure pathways are fit for purpose and align with current and future labour market needs. As part of this consideration should be given to current access and user experience.

The disruptions caused by the COVID-19 Pandemic have presented a critical juncture to build a migration system for the future and not simply reconfiguring historical legacies. One that is purposefully designed to be accessible and applicable to agriculture, with robust worker protections, which also provides growers with flexibility to meet the industry’s unique and variable labour demands.

Australian agriculture is a vital part of the economy and Australia's food supply chain and underpins many regional communities. The sector has much untapped capacity, but purpose-built migration system that supplements the domestic workforce. There are people wanting to come to Australia to work on farms, however we need to put in place the policy settings that enable them to do so, and ensure Australia is a competitive and desirable location for migrants.

We believe the recommendation which we make in this submission will go a long way to achieving that goal,