



National Farmers' Federation

Submission to the Department of Immigration and Border Protection

Visa simplification: transforming Australia's visa system

Public Consultation

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NNF 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.

1. Statistics on Australian Agriculture

A. Social

There are approximately 132,000 farm businesses in Australia, 99% of which are Australian family owned and operated.

Each Australian farmer produces enough food to feed 600 people, 150 at home and 450 overseas. Australian farms produce around 93 per cent of the total volume of food consumed in Australia.

B. Economic

The agricultural sector is a source of strength in the Australian economy, positioned to capitalise on growing global demand for safe, high quality food and fibre over coming decades.

At the farm gate, agriculture contributes 2.4% of Australia's total Gross Domestic Product (GDP). The gross value of farm production is forecast to increase by 8.1% to a record \$62.8 billion in 2016-17.¹ With the vital value adding processes for food and fibre after it leaves the farm, along with the value of farm input activities, agriculture's contribution to GDP averages out at around 12% (over \$155 billion).

C. Workplace

Agriculture is a significant employer, particularly in regional areas. Around 270,000 people are employed in the sector.

Seasonal conditions affect the sector's capacity to employ. While permanent employment is the main form of employment in the industry, more than 40 per cent of the employed workforce is casual.

¹ ABARES, *Agricultural Commodities (June quarter 2017)*.

D. Environmental

Australian farmers are environmental stewards, owning, managing and caring for 52% of Australia's land mass. Farmers are at the frontline of delivering environmental outcomes on behalf of the Australian community, with 94% of Australian farmers actively undertaking natural resource management. .

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3. Submissions

A. Labour Shortage in Agriculture

As the peak industry body representing Australian farmers and agribusiness across the supply chain — noting that agriculture is one of the five pillars of the Australian economy² and the largest contributor to national GDP growth on the June 2017 quarter³ — the NFF’s vision for Australian agriculture is to become a \$100 billion industry by 2030.

To achieve that vision, the sector needs government policy and legislation which promotes access to labour and the creation of a viable, long term, sustainable workforce. However, in developing that policy — and essential, even critical to its success — government must be attuned to the unique challenges facing the sector. Chief amongst those challenges is the intense peaks and troughs in the sector’s labour needs, a challenge which stretches across the whole of the industry.

- In the beef cattle sector, peak labour seasons vary depending on the location of the property. In northern Australia, the weather dictates work patterns with most work carried out in the dry season and employees leaving the property for several months of the year during the wet season. In the south, autumn and spring rains are the determining factors of higher labour activities such as calving, marking, and mustering.
- The sheepmeat and wool sectors have higher demand for labour during shearing and lambing and associated lambing activities.
- The dairy sector has a seasonal calving pattern where the whole herd calves at the same time of the year requiring additional labour, generally in late August followed by a period of peak milk production during the spring and tapering off in February;

² Commonwealth of Australia, *Agricultural Competitiveness White Paper*. 2015. Pg 1.

³ ABS. Catalogue no 5206.0. Australian National Accounts: National Income, Expenditure and Product, Jun 2017

- The broadacre farming sector has higher labour needs during sowing and harvest and less labour required for the remainder of the year.
- The horticulture sector is characterised by one of the most intense variations in labour needs with higher demand during seeding, harvest and pruning. For some farms, this must be met by an additional 100-300 employees for a few weeks or months of the year and the type of produce which is grown is highly perishable and time sensitive. We refer to the complementary submission authored by Ausveg and peak bodies representing horticulture growers in the states and Northern Territory for further information on the specific issues affecting the horticulture sector.
- In intensive animal industries, work is spread over the year to enable supply chain continuity. However, each of the intensive animal industries has peak work which is often covered by contractors with particular skills. The egg industry also is a fresh food industry and therefore has produce which is perishable and time sensitive.

Intensifying this challenge in the cropping industries, harvest times and volumes are extremely unpredictable and dependant on variances of weather, soil, and climate, the rate at which the produce matures and ripens, and other factors which are beyond the farmer's control. While all types of crop are perishable, time-sensitive, and highly susceptible to damage and spoiling, horticultural produce in particular has a very short "shelf-life"; many only have a few hours from the moment they are ready for harvest to the moment they over-ripen and can no longer be picked. Its quality, and therefore value, begins to deteriorate at essentially the moment it peaks and there is a significant risk of the product spoiling before it reaches a purchaser, compromising its price and potentially rendering it worthless.

In short, the labour requirements on farms are, whilst unpredictable and sporadic, highly intense on key occasions. This challenge — a distinctive feature of the agriculture industry — is a key factor defining the labour needs of the farmer. It means that the creation of a sustainable labour force is a significant problem for agriculture. Factors exacerbating this problem are the remote location of many farms, the ageing population of those regions, a perception that farm work is dirty and physically demanding, and difficulties in attracting young people to take up a

career in the industry. Rural and regional Australia is presently suffering from population decline, with an ageing workforce and increasing numbers of young Australian's migrating to metropolitan areas. Furthermore, the Australian workforce is relatively geographically immobile, meaning that people are reluctant to move around for work. Studies also suggest that local workers tend to be less reliable or interested in semi-skilled agricultural work and, regrettably, agricultural work is seen as demanding with limited scope for career progression.⁴ This makes it difficult for agriculture, as a seasonal industry largely based in remote or regional locations, to attract local Australian workers.

Despite assertions to the contrary, these are not problems which can simply be addressed by increasing wages. Farmers operate on small margins and are “price takers” — often in competition with international producers who have an inherently smaller labour costs. Australia’s farmers do not have the margins to pay higher wages, particularly given wages can account for more than 30% of their total cash costs.⁵ Further, it cannot be assumed that increasing salaries to attract local workers will overcome the barriers that currently exist. Indeed, the evidence is that it does not.⁶ In short, simply increasing salaries to attract workers is not a realistic or viable option.

It follows that, even at the best of times, finding a willing and able workforce is a significant problem for farmers. Indeed, the Victorian agrifood sector rates labour shortage as the number one issue hampering its performance.⁷

Mechanisation and automation may address some of the labour need in parts of the sector, bearing in mind there are still significant limitations in mechanisation; e.g. no machine is capable of picking delicate produce such as berries. But even where it can assist, the prohibitive cost means that it is out of reach for the vast majority of

⁴ Howe et al & University of Adelaide (issuing body). *Sustainable Solutions: The Future of Labour Supply in the Australian Vegetable Industry*. 2017. Pages 20, 36 to 37.

⁵ Valle et al. & the Australian Bureau of Agricultural and Resource Economics and Science (issuing body). *Labour force survey*. 2017. Page 6 (figure 1).

⁶ Howe et al & University of Adelaide (issuing body). *Sustainable Solutions: The Future of Labour Supply in the Australian Vegetable Industry*. 2017. Page 34, 112.

⁷ McKinna et al & Regional Development Victoria (issuing body). *Performance Issues impacting the development of the Victorian Agrifood Sector*. 2010. Albert Park, Vic.

family run and small business farmers. Similarly, while education and vocational training can supplement the workforce, this is dependent on factors which are not within the farmers' control — such as government support and student and community interest — and, in any event, is a long term strategy which will not solve the problem in the short to medium term.

A visa system that provides a flexible and mobile workforce capable of meeting the labour gaps presented to agriculture throughout Australia is an essential part of the labour solution for the sector.

B. Current Demand for Migrant Workers in Agriculture

Government has sought to address the issue with labour shortages — at least in part — by permitting farmers access to migrant labour.⁸ It follows, that the sector is heavily reliant on temporary migrant workers. Indeed, for one of the major sectors, horticulture, the majority of its workforce is seasonal and the majority of those workers are on temporary visas.⁹

The visas which are most often utilised by employees in the sector are:

- The subclass 462 visas and subclass 417 class visa used by working holiday makers (collectively **WHMs**);
- Subclass 403 visas used by participants in the seasonal workers program (**SWs**); and
- Subclass 457 (soon to be ‘temporary skills shortage’) visas, used by skilled migrant workers (**SMs**).¹⁰

We will consider each in detail below, but it should be noted that while these are the most common form of working visas on farms, there are other classes of visa used by farm workers. Indeed, farmers have attempted to meet their labour needs with other mechanisms, such as labour agreements or hiring students on training visas.

⁸ Commonwealth of Australia. *Agricultural Competitiveness White Paper*. 2015. Pg 105

⁹ Valle et al. & the Australian Bureau of Agricultural and Resource Economics and Science (issuing body). *Labour force survey*. 2017. Page 9

¹⁰ And its successor, the TSS program, which takes effect in March 2018.

However, none of these are tailored to the needs of agriculture and most attract unwarranted administrative and/or financial burden, and can increase potential for worker exploitation. While each helps to fill the gaps in the labour supply, they do so this in a patchwork manner.

Working Holidays — subclasses 417 and 462 Visas

Subclass 417 and 462 visas allow young people from eligible countries to holiday and work in Australia for up to a year (6 months with any one employer). The visas are primarily designed to foster cultural exchange and closer ties between Australia and the WHM's country of origin. However, both¹¹ allow the WHM to work in agriculture and, significantly, to meet the qualification requirements for a second year visa where he/she has worked in agriculture/regional areas for 88 days.

Currently, farmers rely heavily on WHMs to fill labour shortages. Indeed, aspects of these programs are well suited to assist farmers in meeting labour shortages. As “non-residents” WHM's tend to be geographically mobile and more willing than permanent residents to “follow the work”. In addition, the labour patterns of WHMs’ are flexible, and they are typically willing and able to work for discrete periods of time (e.g. during harvest when labour needs are at their greatest) rather than requiring permanent employment. Furthermore, the “88 days” requirement for the second visa creates a positive inducement to take up the work. Indeed, this element of the WHM scheme is indispensable to farmers. Due to the dearth of available workers in regional areas, the sector could not accept any changes which remove or reduce it.

While cash is not paid for work undertaken, piece rates offer WHMs incentives to pick large volumes of fruit and vegetables, with these wages often reinvested in rural and regional areas through accommodation providers, local restaurants and the tourism sector. Anecdotally, many WHMs will work across a variety of locations during a harvest season, taking advantage of work available in fruit and vegetable growing regions to fund their travels throughout Australia.

¹¹ With slight, for present purposes irrelevant, differences.

WHMs constitute approximately 25% of the agriculture sector's total workforce. Indeed, they have become one of the principal sources of labour in horticulture, making up more 50% to 85% of the harvest workforce¹² and farmers are highly susceptible to economic loss if the supply of WHMs is affected.

However, the WHMs are a “short term” option and, as a standing pool of labour, the WHM cohort is inherently unpredictable.¹³ Indeed, reports suggests a slow but steady decline in the uptake of WHM visas.¹⁴ Furthermore, the programs cannot offer the farmer any continuity in his/her workforce; that is, the farmer cannot cultivate the WHM’s experience, must train the WHM on the job, and work through the initial “learning” period before each WHM is working at his/her full capacity. Indeed, as WHM visas are primarily about “cultural exchange” their significance in meeting the labour requirements of agriculture can be overlooked, and the needs of farmers may be disregarded in favour of other political imperatives and changes to policy agendas. The backpacker tax debate is case-in-point

Finally, but perhaps most importantly, the flexibility and minimal administrative oversight of the WHMs’ visa system is said to contribute to the potential for exploitation and mistreatment of the workers. The NFF condemns this conduct. Whilst most WHMs have happy stories of working on farms, many forming lifelong friendships, there is evidence of exploitation and the NFF — and the farming sector generally — supports action to address it. Indeed, without wishing to be reductive, farmers are also conscious of the practical consequences for them: discouraging prospective workers in a sector which badly needs them and giving reprobates a commercial advantage over the vast majority who do the right thing.

¹² Senate Standing Committee on Employment, Workplace Relations and Education. Parliament of Australia. *Perspectives on the Future of the Harvest Labour Force*. 2016. Page 21.

¹³ Although individually WHMs are seen as good employees with to have a solid work ethic.

¹⁴ Kotsios. *The Weekly Times*. “Backpacker numbers: Fall-off in visa applications slows”. August 30 2017. Accessed on 31 August 2017 at 12:50 pm from <http://www.weeklytimesnow.com.au/news/national/backpacker-numbers-falloff-in-visa-applications-slows/news-story/e8b0b9037e992a0eac3cc0025198ff0b>

Seasonal Workers — Subclass 403 Visas

Subclass 403 visas allow workers from Pacific Island nations to travel to Australia to work for approved employers for (up to) 6 or 9 months (depending on the worker's country or origin) of each year. The worker may return annually.

Although uptake in the program is slow, it has had some success. SWs are viewed as reliable, committed workers. Furthermore, they provide farmers with access to a regular (if not constant) source of labour and, as such, the program allows for workforce continuity.

However, participation in the program requires a significant financial and administrative commitment by farmers which has discouraged many from participating. In addition to the employment entitlements and benefits which all employers must, a farmer who wishes to participate must:

- Negotiate the complex and bureaucratic approval process;
- Arrange and make upfront payment for the SWs transport, including return airfare;
- Arrange and pay for suitable accommodation for their employees;
- Bear responsibility for the SW's "pastoral" wellbeing;
- Guarantee the SW a minimum of 30 hours work per week; and
- Comply with arduous reporting requirements.

In addition, the sporadic and unpredictable labour needs of farmers mean delays in the process can frustrate the farmers' ability to rely on the program. It also means that farmers are frequently unable to guarantee adequate hours¹⁵ of work. On the other hand, the restriction on the time period that the SWs can stay in Australia can mean that SWs are inappropriate for farmers with a year-round labour needs.

Finally, as with WHM programs, the focus of the SW scheme is not on the labour needs of farmers. Instead, its primary purpose is to contribute to the economic development of the Pacific Island countries; i.e. it is a form of "soft" foreign aid.

¹⁵ i.e. quantities

This lack of focus on the industry's requirements has meant that the program has been seen as unattractive to many (especially smaller) farmers and the uptake of the program has been slow. Indeed, government has very recently announced changes to address the lack of support which the program has seen, although, again, these changes (while undoubtedly welcome) seem to be motivated more by foreign aid concerns.

Temporary Skills Shortage (aka 457) Visas

The Temporary Work (Skilled) visa allows workers with a specific skill set to migrate to Australia and work for an approved business for (depending on the worker's skills/industry) two or four years.

It is an important program for farmers needing skilled workers for a longer term. These skilled workers have filled labour shortages, contributed knowledge gained in other countries to the growth and development of Australian agriculture and provided valuable training for local Australian workers. The pathway to permanent residency under the TSS' predecessor, the subclass 457 visa, offered certainty to farmers faced with chronic labour shortages.

However, the agriculture industry has long been vocal about the shortfalls of this program. It is limited to a relatively small number of standardized occupations. It does not enable farmers to fill vacancies in unrecognized occupations — such as “senior farm hand” and “agricultural supervisor” — or to hire unskilled labour. Many skilled agricultural occupations are not eligible as they have limited formal qualifications, are not recognized by the ANZSCO classification codes, are new and emerging, and/or are principally learned through practical experience or proprietary information. In particular, the reliance on the ANZSCO system is misplaced. It is outdated, inflexible and unresponsive, and does not reflect the practical realities of industry's labour requirements.

In addition, as with the SW program there is a significant administrative cost and burden associated with gaining visa approval.

Summary

While each of these visa programs help to fill the gaps in agriculture's workforce shortages, they do this in a patchwork manner. More importantly, each has significant problems and draw backs, at least in part because they are not principally intended or designed to address the real problem: the labour needs of agriculture.

This review can simplify the visa system and address these issues.

C. Visa Reform in the Agricultural Sector

Industry has a strong preference for employing suitably skilled Australian workers and supports efforts to attract more Australian workers into the industry. To this end, the NFF focuses on the promotion of agricultural careers, positive messaging about Australian agriculture and training of prospective employees. Most recently we have supported the promotion of the Australian Government's Seasonal Work Incentives Trial.

Despite these efforts, there remains a gap in labour demand, and Australian workers looking for employment in the industry. The compounding factors that discourage Australian workers from agricultural employment extend beyond the industry to social and demographic challenges facing rural Australia generally.

It follows, that the agricultural industry is reliant on migrant labour to fill the gap. Unfortunately, however, this reliance on migrant labour necessitates a reliance on a visa system which has significant short coming. Access to migrant labour has been allowed by government in an ad hoc and piecemeal fashion and usually as an adjunct to other policy considerations — such as foreign aid and cultural exchange programs — meaning that the needs of the agriculture industry have not been adequately met. The system is not specifically designed to address the issue of the labour needs of agriculture, imposes prohibitive administrative and financial burdens, and is either impractically inflexible and unresponsive, or under-supervised or moderated.

In the NFF's submission, this review is an ideal opportunity to address the problem systematically, comprehensively, and sustainably.

The government's stated reason for conducting this review and the guiding objective of the review is to "simplify the system so that it is "easier to understand, easier to navigate and more responsive to our economic, social and security interests." Addressing the NFF's concerns is consistent with that aim. For those reasons, the NFF is encouraged by this review.

However, as a threshold principle, the review must bear in mind that the existing labour need will not disappear simply because the system is under review or is varied with a view to addressing the issues the NFF has identified. Any transition or change risks denying farmers access to workers. As of yet, and despite efforts by industry and government, there is an insufficient supply of Australian workers to fill the labour needs of the industry. This is not set to change in the near future and agriculture's reliance on migrant workers will continue. This review cannot recommend changes which would deny or reduce farmers' access to overseas labour. The NFF supports change to the system which addresses the problems in the current visa system that limit access to overseas workers for the industry, but not if the proposed changes ultimately aggravate those problems or, worse, create new ones.

The NFF recommends that the government consolidate the many visas used by farmers to meet their labour requirements into one dedicated agriculture class or sub-class of visa which is purpose built and responsive to the needs of the agriculture industry, grants farmers ready access to an established labour pool, and minimises or eliminates any unnecessary administrative and financial burdens which encumber the present system (e.g. cost, red tape, time-restrictions). A dedicated visa that caters specifically for the agriculture workforce would also reduce opportunities for exploitation by removing the gaps in the visa system which render migrant workers vulnerable, obscures the problem, and enables or imposes silence in the face of mistreatment. Mechanisms to ensure that visa applicants come to work in agriculture fully informed could be incorporated. Indeed, the first step in protecting overseas workers is ensuring that they work legally, and that their presence in the Australian workforce is legal and transparent.

Principal features of the new class/sub-class of visa could include:

- Permitting the visa holder to engage in agricultural work; notionally that work which is covered by the horticulture or pastoral awards; and
- Allowing flexibility and other mechanisms — the continuation of the very successful 88 day scheme to incentive working in the industry is important — to accommodate both the diversity of labour needs across the agricultural sector and the fact that those needs fluctuate and are highly time-sensitive;
- To the extent possible — and bearing in mind that a degree of red-tape and oversight will be necessary — minimizing bureaucratic, administrative, financial burden on farmers; and
- Adopting steps to minimise the risk of exploitation risk and encouraging transparency by comprehensively addressing labour shortages in the industry

Furthermore, the visa should have at least two streams:

- A short term (6 to 12 month) stream to cater for a seasonal or unskilled workforce who may return in subsequent years; and
- A longer term stream to cater for a skilled workforce who may move within industries regions or employer groups.

However, the NFF again cautions that such an approach should not come at the expense of existing migration options that are utilised by farmers, and should build on and improve existing strengths of the current system rather than totally dispense with them or render them moribund. Any new visa should be more comprehensive than existing migration pathways and not make it harder for farmers to access overseas workers or for overseas workers to find work in Australia. Furthermore, it goes without saying that the existing mechanism should not be withdrawn until the new system is proven to work; it could be cataclysmic if the a “new” system fails and farmers do not have the “old” visa programs to fall back on

D. Conclusion

In summary:

- Farmers are reliant on the Australian migration and visa system to address its critical labour shortages in the agricultural industry;

- This review is an ideal opportunity to address those shortcomings, provided it does not exacerbate the problems or create new ones.
- In the NFF's submission, the review should recommend introducing a specific class or subclass of visa intended and designed to address the needs of agriculture and avoiding present problems