

Proposal: Seasonal Agriculture Worker Visa Program

A standalone Seasonal Agriculture Worker (SAW) visa is intended to provide a highly mobile visa which can move easily both between employers and geographically, following shifting seasonal needs, in accordance with peak labour demand. In this respect the proposed SAW visa program complements, rather than replaces existing visa programs. The program will only service Australian agriculture producers and labour hire providers, that are able to demonstrate both a need for workers and reputable employment practices.

To achieve this, the program will focus on businesses which hold recognised accreditation status (Approved Employers, GlobalGAP, Supplier Ethical Data Exchange (Sedex), Fair Farms, StaffSure etc.). These organisations have the capacity to meet the additional compliance requirements imposed by immigration law on the employers of temporary workers. Ensuring the ability to comply is critical for the program's longevity, positive public perception, and the integrity of Australia's immigration system.

Key Areas

1. Employer sponsorship criteria
2. Nomination and Visa Transfer Criteria
3. Initial Visa Criteria
4. Compliance/Sponsorship obligations

Employer Sponsorship Criteria

In this section:

- 'the applicant' refers to the business applying for sponsorship approval
- 'SAW' refers to Seasonal Agriculture Work

The sponsorship criteria are more extensive than with other work sponsor approval processes and are similar to Labour Agreement approval criteria. The aim is to create a robust set of criteria to ensure only compliant employers participate in the program. This reduces the need for extensive nomination criteria, supporting the objective of 'portability' of the SAW visa.

Criterion detail	Comment
1 Application fee: \$1500	The usual sponsorship approval fee is \$420. A higher fee may be necessary to minimise the nomination fee. A high nomination fee would detract from portability
2 Process: Online application. Formal manual assessment of applications. Simpler renewal process, with auto-approval	Subjective assessment criteria will likely require manual assessment
3 Validity: 12 months	Regular re-assessment supports the portability objective and ensures sponsors continue to be compliant
4 Review rights to Administrative Appeals Tribunal (AAT) – Available	The sponsorship approval is the key to the program and involves assessment of subjective criteria. Review rights are appropriate
5 Lawfully operating a business in Australia	Excludes overseas businesses and 'shell companies' from becoming sponsors
6 Declare in writing that the applicant will not engage in, or intend to engage in, activities that will have adverse consequences for employment or training opportunities, or conditions of employment, for Australian citizens or Australian permanent residents	To ensure that businesses engage in local recruitment and that no Australian resident is displaced by a visa holder for work or training opportunities

<p>7 Declare in writing that the applicant will not engage in discriminatory recruitment practices</p>	<p>To ensure businesses only preference employees based on relevant employment attributes</p>
<p>8 Must not be adverse information about the applicant or a person associated with the applicant, unless it is reasonable to disregard that information</p>	<p>Adverse information defined in reg. 1.13A, includes contravention of Cth or State/Territory laws</p>
<p>9 If proposing to be a direct employer of SAW visa holders, the applicant must be one of the following:</p> <ul style="list-style-type: none"> a) SEDEX member b) Global G.A.P certified c) Fair Farms certified d) <u>An Approved Employer under the SWP or PLS</u> e) <u>An employer with a Horticultural Industry Labour Agreement which is in effect</u> <p><u>The above may be disregarded if reasonable in the circumstances to do so.</u></p>	<p>To ensure that sponsors for the program have independent certification of ethical and compliant labour sourcing and management practices.</p> <p>Option for Immigration to disregard this requirement if the applicant provides other evidence of ethical and compliant practices which are of an equivalent standard to the certifications/memberships of the specified organisations</p>
<p>10 If proposing to hire out workers to a business not related or associated to the applicant (i.e., Labour Hire companies), the applicant must have one of the following attributes specified for this purpose:</p> <ul style="list-style-type: none"> a) An Approved Employer under the SWP or PLS b) StaffSure certified <p><u>The above may be disregarded if reasonable in the circumstances to do so.</u></p>	<p>To allow Labour Hire companies with verifiable or certified work practices to participate in the programme as sponsors</p> <p>Option for Immigration to disregard this requirement if the applicant provides other evidence of ethical and compliant practices which are of an equivalent standard to the certifications/memberships of the specified organisations</p>
<p>11 If proposing to hire out workers to a business not related or associated to the applicant, the applicant must be licensed under a labour hire licensing scheme in the state or territory in which workers will be located, or under a national labour hire registration scheme</p>	<p>To ensure Labour Hire companies are appropriately licensed in the state they are operating in. Presently only Queensland, South Australia and Victoria have legislated schemes</p>
<p>12 The applicant must provide evidence of labour market testing and attempts to recruit Australian citizens, permanent residents and eligible NZ citizens which must include evidence of advertising at least 3 harvest work positions in the last 12 months on Harvest Trail (JobActive).</p>	<p>To ensure sponsors engage in labour market testing to attract Australian residents to the positions</p>
<p>13 The applicant specifies the harvest work occupations it intends to sponsor and demonstrates that it has a need to sponsor those occupations</p>	<p>To ensure sponsors can demonstrate that they have a need to participate in the program and the employ people in the occupations</p>
<p>14 The applicant provides a copy of the template employment contract or contracts under which workers will be engaged</p>	<p>To ensure sponsors use a Enterprise Bargaining Agreement, Award or other industry agreement compliant employment contract for all SAW visa holders</p>
<p>15 The applicant provides a copy of its induction training program for SAW visa holders and certifies that it suitable for the purpose</p>	<p>To ensure sponsors have an adequate training program in place for induction at each site for SAW visa holders</p>

16	The applicant has in place a suitable worker compensation scheme policy in the states or territories in which it operates	To ensure sponsors have adequate insurance to cover workplace injuries or other incidents
17	The applicant certifies that a reasonable standard of accommodation is available either on site or within a reasonable distance of the site for the peak workforce period	To ensure SAW visa holders will have adequate access to accommodation and that the sponsor can provide information for this purpose
18	The applicant undertakes to comply with the sponsorship obligations for SAW sponsors	To ensure sponsors acknowledge the obligations of employing SAW visa holders

Nomination & Visa Transfer Criteria

Criterion detail		Comment
1	Application fee: \$0	There should be minimal disincentive for employers to engage existing visa holders ensuring there are minimal barriers for workers to move between employers.
2	Process: Online application. Auto-approval of applications upon making necessary certifications and providing information	Due to limited timeframe of visa and immediate needs of sponsors, applications should be auto-approved for immediate commencement of work
3	Validity: 3 months	Initial nominations. Initial visa applications must be lodged within 3 months of nomination approval
4	Review rights to AAT – None	No need for review rights given simplicity of process and criteria
5	Only approved sponsors may make applications	Due to auto-approval process for nominations, there is no need for sponsors with pending applications to be able to nominate
6	The applicant must nominate a SAW visa holder or prospective SAW visa holder ('the nominee')	Defines the categories of person that may be nominated
7	If the nominee is not in Australia, the applicant must offer a minimum of 12 weeks work If the nominee is in Australia, the applicant must offer a minimum of 4 weeks work	Option to differentiate between length of employment necessary for initial visa compared to transferring between employers in Australia
8	A list of eligible occupations to be specified in a legislative instrument, and to include: <ul style="list-style-type: none"> • 832113 Fruit and Vegetable Packer • 841211 Fruit or Nut Farm Worker • 841212 Fruit or Nut Picker • 841213 Grain, Oilseed or Pasture Farm Worker (Aus) • 841214 Vegetable Farm Worker (Aus) • 841215 Vegetable Picker • 841217 Mushroom Picker • 841412 Horticultural Nursery Assistant 	To establish a definition of Harvest Work or 'specified work'. To support portability within organisations, SAW visa holders should not be limited to one specified ANZSCO code but the whole group of specified Harvest Work occupation codes
9	The applicant must provide the following information: <ol style="list-style-type: none"> a) Legal name of organisation b) Sponsorship approval ID/TRN c) Name, passport number, date of birth, nationality of nominee 	Information to ensure Immigration can link and monitor sponsors and visa holders

<p>d) Location/s of work</p> <p>e) Date of commencement</p> <p>f) Expected duration of work</p> <p>g) The industry agreement or Award and classification of employee</p>	
<p>10 The applicant must certify that:</p> <p>a) Nominee will only undertake 'specified work'</p> <p>b) They have advertised the position for at least 2 weeks immediately before making the application on Harvest Trail.</p> <p>c) They have given the nominee 3 accommodation options including on site if applicable which are a reasonable distance from work location, phone & email of accommodation provider and minimum cost per night</p> <p>d) The nominated visa holder has not been unemployed for more than 30 days</p>	<p>Certifications to ensure sponsors and visa holders comply with obligations on an ongoing basis</p> <p>Sponsors would need to be provided with evidence of visa holder's final date of employment with former employer to ensure no more than 30 days has passed. This may be a copy of the notification record, employment cessation letter or other written communication from previous employer</p>

Visa Criteria – Initial Visa

- 'The applicant' below refers to the SAW visa applicant

Criterion detail	Comment
1 Application fee: \$485	Same as Working Holiday visa. Fee should not be prohibitive given duration of the visa and should not add pressure on employee to accept sub-standard work conditions to earn fees back
2 Process: Online application. Formal manual assessment of applications. Simpler subsequent process, with potential for auto-approval	Subjective assessment criteria will likely require manual assessment for initial application
3 Visa period: 9 months	Recommend 9 months to align with SWP. A 9-month period with at least 3 months in the home country reinforces the temporary nature of visa
4 Visa type: Single entry	Applicants will be expected to leave Australia if they do not have sufficient work to ensure compliance with visa conditions. If applicants wish to return to Australia, they will need to be re-nominated and to apply for a new visa
5 Secondary applicants (e.g. Family members) – Family members will not be permitted to apply as secondary applicants on the SAW visa.	If family members wish to visit Australia, they may use existing visa subclasses (e.g. Visitor, Working Holiday)
6 Review rights to AAT – None	Similar to most short-term offshore visas
Schedule 1 – Other validity criteria for visa	
7 The applicant is the subject of an approved nomination by an approved sponsor and that nomination has not expired	Due to auto-approval of nominations, visa application cannot be lodged until nomination is approved. Visa holders have up to 3 months to lodge visa application upon nomination approval
8 The applicant must not be in Australia at the time of lodgement	Supports the temporary nature of the visa and precludes applicants in Australia from applying

	Possible inclusion of onshore option for Bridging visa A and B holders with work rights (e.g. Visitor visa arrivals who have lodged Protection visas whose case is before Immigration, AAT or Courts conditional on withdrawal of those proceedings within 28 days of visa grant)
9 The applicant must be at least 21 and no more than 55 years old	Due to nature of work an age limit may be appropriate. Large age range allows employers to recruit from larger pool of potential workers
10 The applicant holds a passport of and resides in a country specified in a legislative instrument	Permits Immigration to add or remove countries depending on risk factors including Covid-19
Schedule 2 – Criteria for grant of the visa	
11 The applicant has adequate arrangements for health insurance	The applicant to purchase month-to-month working visa insurance equivalent to Medicare and to continue to maintain insurance for duration of stay
12 The applicant provides evidence of a fully paid and flexible (e.g. Changeable without incurring a more than \$400 fee for the change) return airfare to Australia	The applicant must purchase a return airfare to ensure they can depart Australia when needed to avoid breaching their visa or relying on employers or Immigration to meet these costs
13 There is no information to indicate that the applicant is unable to perform specified work in Australia	Setting a low bar for skills/experience ensures skills criteria can be easily met by applicants. Employers therefore may use their own methods to determine whether applicants have adequate skills/experience
14 The applicant has completed a certificate in their native language specified in a legislative instrument Instrument to specify a certificate which includes education and examination on the following topics: <ul style="list-style-type: none"> • Cost of living • Australian agricultural industry • Australian employment standards • Complaints procedures • Workplace safety regulations 	To ensure that applicants have access to information and are educated and certified in various topics relevant to their work in Australia. The course may be delivered online using various biometrics tools to ensure applicant is the person who completes the course
15 a) The applicant has completed a language test in the 12 months before applying for the visa and achieved the scores specified in the instrument; or Instrument to specify: <ul style="list-style-type: none"> (i) IELTS – Overall band score 4.5 (ii) PTE Academic – Overall band score 30 (iii) TOEFL iBT – Total band score 32 (iv) CAE – Overall band score 147 b) The applicant has held a SAW visa in the last 12 months;	The standard specified is the ‘functional English’ standard, however, testing is preferred to other forms of English language assessment such as proof of study in English due to subjectivity. Employers may request evidence of English testing before agreeing to nominate and be clear on eligibility. The need for English testing is likely to mean that only more highly educated and less vulnerable applicants are eligible

<p>c) The applicant has spent at least 9 months in Australia in the last 5 years holding a visa with work rights (eg. WHV, Student)</p>	
<p>16 The applicant intends to stay only temporarily in Australia for the purpose for which the visa is granted, having regard to:</p> <ul style="list-style-type: none"> (i) Compliance with conditions on visas previously held (ii) Intention to comply with conditions (iii) Any other relevant matter 	<p>Permits Immigration to consider range of different risk factors regarding applicants in deciding whether to grant the visa.</p> <p>E.g. Applicants for subsequent visas may be asked to provide proof of holding health insurance for duration of previous stay</p>
<p>17 The applicant satisfies standard Schedule 4 criteria (e.g. Health and character requirements)</p>	<p>Applicants from all countries will be required to provide a police clearance for each country in which they have resided for more than 12 months in the last 10 years</p>
<p>Visa conditions</p>	
<p>18 Existing visa conditions (mandatory conditions):</p> <ul style="list-style-type: none"> a) 8303 – not become involved in disruptive activities b) 8501 – must hold health insurance c) 8503 – no further stay d) 8578 - notify change of address, email, phone number, passport, place of work e) 	<p>Same as SWP</p>
<p>19 Existing visa conditions (discretionary conditions):</p> <ul style="list-style-type: none"> e) 8516 – must maintain eligibility for the visa 	<p>Standard discretionary visa condition</p>
<p>20 New conditions (mandatory):</p> <ul style="list-style-type: none"> a) 8107 (amendments required) – must not cease employment for more than 30 days unless they depart Australia within 60 days of cessation, undertake work other than specified work, work for a person or themselves other than the sponsor which last nominated them b) Must depart Australia within 60 days of ceasing work 	<p>Amendments to Condition 8107 required to support the intention that visa holder only work for the employer who last nominated them, and is not out of work for more than 30 days. Visa holders should be encouraged to arrange subsequent work as soon as practicable</p> <p>If visa holder remains out of work for 30 days, they effectively then have a further 30 days to depart Australia. Visa holders may have difficulty complying with this requirement presently. If SAW visa holders stay in Australia for the full 60 days without working it may considered adverse in subsequent SAW visa applications</p>

Compliance / Sponsorship Obligations

Many of the standard obligations applying to sponsors under the Temporary Activities Sponsorship framework should apply to Seasonal Agriculture Worker Visa sponsors. A publication of a list of approved sponsors as with the Seasonal Worker Program should be required. Additionally, the same monitoring and sanctions regime apply to Seasonal Agriculture Worker Visa sponsors, including publication of sanctions and penalties imposed on sponsors or former sponsors (reg. 2.87D).

	Obligation detail	Comment
1	Obligation to cooperate with inspectors	Existing reg. 2.78
2	Obligation to pay costs incurred by the Commonwealth to locate and remove unlawful non-citizen (capped at \$10,000)	Existing reg. 2.81
3	Obligation to keep records	Existing reg. 2.82
4	Obligation to provide records and information to the Minister	Existing reg. 2.83
5	<p>Obligation to provide information to Immigration when certain events occur.</p> <p>New obligations:</p> <p>a) Obligation to notify cessation of employment within 14 days</p> <p>b) Obligation to notify which SAW visa holders are employed every 90 days commencing from approval of first nomination. Notification must be made within 7 days before or after 90 day period. Continues until sponsor reports no visa holders employed</p>	<p>Existing reg. 2.84 with amendments</p> <p>Notifications to be made through ImmiAccount. Sponsors to notify of all SAW visa holders employed by them on a 90-day basis. Provides redundancy in the event of a visa holder ceasing employment and the employer failing to notify.</p>
6	Obligation to ensure sponsored person works in nominated activity	Existing reg. 2.86, 2.86A
7	Obligation not to recover, transfer or take action that would result in another person paying for certain costs	Existing reg. 2.87
8	Obligation not to engage in discriminatory recruitment practices	Existing reg. 2.87C