



# **PALM Scheme draft Deed of Agreement and Guidelines Consultation**

**AFPA Submission**

May 2023

## About the Australian Fresh Produce Alliance

The Australian Fresh Produce Alliance (AFPA) is made up of Australia's key fresh produce growers and suppliers. The members include:

Costa Group	Australian Produce Partners
Perfection Fresh	Driscoll's
Montague	Premier Fresh Australia
Pinata Farms	Rugby Farming
Fresh Select	Freshmax
Mackay's Marketing	Fresh Produce Group.

These businesses represent:

- half the industry turnover of the Australian fresh produce (fruit and vegetables) sector - \$4.5 billion of the \$9.1 billion total
- a quarter of the volume of fresh produce grown in Australia - 1 million of the 3.9 million tonne total
- more than a third of fresh produce exports - \$410 million of the \$1.2 billion export total
- more than 1,000 growers through commercial arrangements, and
- more than 15,000 direct employees through peak harvest, and up to 25,000 employees in the grower network.

The key issues the AFPA is focusing on include:

- packaging and the role it plays in product shelf life and reducing food waste landfill,
- labour and the need for both a permanent and temporary supply of workers,
- market access to key export markets for Australian produce,
- product integrity both within and outside of the supply chain,
- pollination and research into alternative sources, and
- water security, including clear direction as to the allocation and trading of water rights.

The AFPA's aim therefore is to become the first-choice fresh produce group that retailers and government go to for discussion and outcomes on issues involving the growing and supply of fresh produce.

Products grown by AFPA Member companies include:

Apples	Broccolini	Mandarins	Cucumber
Apricots	Brussel Sprouts	Mango	Raspberries
Asparagus	Butternut Pumpkin	Mushrooms	Salad leaf
Avocado	Cabbage	Nectarines	Spinach
Baby	Cauliflower	Onions	Strawberries
Broccoli	Celery	Oranges	Sweet
Baby Corn	Cherries	Peaches	Corn
Bananas	Fioretto	Pears	Table grapes
Beetroot	Green Beans	Pineapples	Tomatoes
Blackberries	Herbs	Plums	Water Cress
Blueberries	Lemons	Potatoes	Wombok
Broccoli	Lettuce		



## Introduction

The Pacific Australia Labour Mobility (PALM) scheme is vital to the fresh produce industry and now makes up the core of Australia's horticulture harvest workforce. More than 70 per cent of PALM workers, or over 27,000 workers are currently engaged in horticulture, typically undertaking harvest work. The harvest workforce is essential to maintaining Australia's supply of fresh fruits and vegetables.

The AFPA seek to ensure the PALM scheme's long-term success and recognise the benefits and opportunities it provides to many cohorts – Pacific Island and Timor-Leste nationals, sending countries, other Australian employers, regional communities, etc.

The AFPA continue to support the operation of the PALM scheme, and consider the feedback provided on the Draft Deed and Guidelines, on key issues, as essential to ensuring the ongoing operation and success of the PALM scheme.

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## Summary of Feedback

The PALM Scheme's Draft Deed and Guidelines released for consultation contain a significant volume of changes that will impact the operation of the PALM Scheme. There are a large number of minor changes, in addition to many substantive changes, the combination of which will require a significant process change from all Approved Employers (AEs), the Department of Employment and Workplace Relations (DEWR) and other involved stakeholders on how the PALM scheme is administered.

Of note, amendments to the PALM scheme Deed and Guidelines have been raised with stakeholders for some time, however, a complete Draft of these documents has only been available to stakeholders to review and provide comment on for 10 days; the breadth of changes and importance of the program to Pacific countries, workers, employers and the fresh produce industry warrants a more comprehensive consultation from Government.

The changes to the Deed and Guidelines will generate a significant increase in administration both for Approved Employers and DEWR. Given the increase in PALM workers participating in the program (with the program having doubled year on year since 2020), it is likely that this will have an impact in the short to medium term on AEs ability to recruit workers due to the administrative burden of the program.

There is a significant risk that these changes to the Deed and Guidelines will reduce the number of PALM workers engaged in the program; this is both due to a decrease in demand due to capacity to manage the scheme from an AE side, and also the ability to administer such an intensive program from DEWR's perspective.

The AFPA holds serious concerns that the proposed changes to the Deed and Guidelines, while developed from positive intent, will result in an unworkable program which sees a reduction in Pacific visa holders, a decline in the number of AEs, greater administrative burden for Employers, the Australian Government and sending countries, which would be counterproductive and counter to the Australian Government's stated intent for the program.

There are a number of changes required to support successful implementation, if the Government then requires further changes they can be implemented over time.

There are three critical areas/components of the draft Deed and Guidelines that must be addressed to support AEs, DEWR and the continuation of the PALM scheme into the future:

- Minimum Hours of Work
  - For short-term seasonal agriculture placements, AEs must offer a minimum of 30 hours per week averaged over 8 weeks (that is, a minimum of 240 hours over 8 weeks).
  - Remove the requirement for this to be reported via declaration every two months.
  - Clarify a week / 8-week period as aligning with an AEs pay period.
  - Do not include days on commencement or conclusion of a PALM workers assignment that are prior to the first or after the last full pay period within the 8 week averaging period; ensuring that averaging occurs only across full pay periods i.e. not from the PALM workers first day of arrival in country, to allow time for travel, settling and induction.
- Welfare and Wellbeing Support People
  - Remove the requirement for a ratio of welfare and wellbeing support persons and focus on the methods outlined in an AEs Welfare and Wellbeing support plan to ensure worker welfare.
- Accommodation Requirements
  - Ensure that Workers are able to select their own accommodation and that AEs are not responsible for the quality of their own accommodation.



While there are a range of other changes to the Deed and Guidelines that will impact AEs, DEWR and Workers, these three areas are substantive and if addressed as outlined will significantly improve the ability of all parties to administer the Scheme.

In addition to revised Deed and Guidelines, DEWR is also in the process of insourcing a range of functions from the Pacific Labour Facility. This insourcing, occurring at the same time the PALM scheme is being significantly altered through the Deed and Guidelines and is likely to be incredibly disruptive for DEWR, AEs, Workers and Sending Countries. In order to support a transition to new program arrangements, and DEWR's new role, it is recommended that the new Deed and Guidelines are agreed from 1 July 2023, but are not implemented until 1 January 2024 or later. This implementation period provides a balance that enables both AEs and DEWR to prepare and restructure to address new requirements.

The AFPA remains concerned that if all the changes in the Draft Deed and Guidelines go ahead as outlined, that this will lead to lower demand for the program and detract from the program's main objectives. A particular area of concern is that AEs may reduce their intake of workers, or in the case of labour hire companies, on which the sector relies, will either no longer be Approved Employers or will be required to substantially increase their cost base to recover the additional administrative time required to operate the program.

The reduction in available PALM workers that occurs as a result of the changes to the Deed and Guidelines is likely to disproportionately affect small and medium employers (SMEs) in the seasonal agriculture sector who rely on the provision of PALM workers through labour hire providers. These SMEs are typically supplier growers to AFPA members.

The reliance of horticulture on the PALM scheme, coupled with the proposed substantive changes to the Deed and Guidelines, existing changes underway to the program (i.e. DWER taking on PLF responsibilities) and the feedback on future program participation from a range of Pacific Countries warrants serious consideration of the future of the program and how this impacts the production of fresh produce in Australia.



## Summary of required changes to key elements of Draft Deed and Guidelines

Element of Deed and Guidelines	Summary of Required Changes
<p>Minimum Hours of Work (Deed 11.1, Guidelines 3.7)</p>	<p><u>Guidelines Clause 3.7.1</u>  Option 2(b) provides a balance in ensuring workers receive sufficient hours and ensuring that there is flexibility to meet the needs of seasonal agriculture – the largest employer by sector in the program.</p> <p>Proposed Guidelines Clause 3.7.1:</p> <ul style="list-style-type: none"> <li>• <i>For short-term seasonal agriculture placements, Approved Employers must offer a minimum of 30 hours per week averaged over 8 weeks (that is, a minimum of 240 hours over 8 weeks).</i></li> </ul> <p><u>Guidelines Clause 3.7.2</u>  Guidelines 3.7.2 stipulates that an AE must pay in full the costs of a worker’s accommodation and transport where a worker is offered 20 or fewer hours a week. The Clause should be amended to reflect:</p> <ul style="list-style-type: none"> <li>• Where a worker is offered 20 or fewer hours <b>for two consecutive weeks</b>, an employer is responsible for meeting the costs of accommodation and transport</li> <li>• Specific that this applies only to accommodation that is provided by an AE; not accommodation that is selected by a Worker</li> </ul> <p>Proposed Guidelines Clause 3.7.2:</p> <ul style="list-style-type: none"> <li>• <i>For short-term seasonal agriculture Placements <del>with direct employers</del>, You <b>must</b> cover the cost of accommodation and transport <del>for every week in which a</del> <b>after two consecutive weeks</b> in which a Worker is offered 20 hours or less (debt for accommodation and transport cannot be accrued).</i></li> </ul> <p><u>Additional Operational Components</u>  There are two key operational concerns that must be addressed to ensure that measures regarding minimum hours requirements can be enforced:</p> <ul style="list-style-type: none"> <li>• The requirement to provide a declaration every X (8) weeks that workers are being offered an average of 30 hours per week must be removed (Guidelines Clause 13.1.4).</li> <li>• To support compliance with the Deed and Guidelines while reducing administrative burden for AEs, Clause 3.7.1 should specify that: <ul style="list-style-type: none"> <li>○ A week (or the 8 week period) is defined by an AE’s pay period</li> </ul> </li> </ul>



	<ul style="list-style-type: none"> <li>○ On a worker’s commencement and conclusion of assignments it is likely that workers will work days outside the current pay period; these days must be remunerated but should not be included in the averaging period.</li> </ul>
<p>Welfare and Wellbeing Support People</p>	<p>The draft Deed and Guidelines introduces additional detail on Welfare and Wellbeing persons, including “9.6.4 (a) An adequate ratio is considered <b>around 1.5 percent, or 1 person per 65 workers</b>”.</p> <p>The evidence that supports this ratio is not drawn from labour programs akin to the PALM scheme globally, from evidence provided by existing Approved Employers displaying best practice, or from any relevant Australian legislation or any Australian companies displaying what is accepted as best practice. The evidence referenced for this ratio is a blog post made by “Academy to Innovate HR”; who appear to be an American company with no discernible experience in Australia.</p> <ul style="list-style-type: none"> <li>• The ratio requirement for welfare and wellbeing support person/s be removed from the Deed and Guidelines, as there is insufficient evidence to suggest the proposed ratio will improve worker welfare outcomes.</li> <li>• Proposed Clause 9.6.4:</li> </ul> <p><i>You must ensure that a Welfare and Wellbeing Support Person(s) is available to support workers. Where You have multiple Placements, more than one Welfare and Wellbeing Support Person may be required to ensure they are within 200 km of all of the Placements of Workers</i></p> <p><del>You must ensure an adequate ratio of Welfare and Wellbeing Support Person(s) to the number of Workers recruited, unless approved by Us:</del></p> <ul style="list-style-type: none"> <li><del>(a) — An adequate ratio is considered around 1.5 percent, or 1 person per 65 workers.</del></li> <li><del>(b) — If the appointed person(s) does or will also help and support to Your existing Workers, then the adequate ratio applies inclusive of these Workers.</del></li> <li><del>(c) — You can calculate the ratio using the following formula, noting that if there are fewer than 65 Workers recruited (the minimum number specified in the ratio above) You must still appoint one Welfare and Wellbeing Support Person:</del> <ul style="list-style-type: none"> <li><del>(i) — Ratio = number of support person(s) / number of workers (+ Workers) x 100.</del></li> </ul> </li> </ul>
<p>Accommodation Requirements</p>	<p>The current Guidelines clarifies that “If a Seasonal Worker chooses to arrange their own accommodation, the Approved Employer is not responsible for the quality of that accommodation. The Approved Employer does, however, retain the responsibility for providing welfare and wellbeing assistance to the Seasonal Worker.” It is proposed that this measure is formally included as per below Clause in new Draft Deed and Guidelines.</p> <p>Proposed new inserted in draft Guidelines, Clause 10.5.8:</p>



*Where a Worker has elected to arrange their own accommodation, You (the AE) are not responsible for the quality of that accommodation. You are required support workers to understand their accommodation rights and responsibilities outlined in Section 10.10.*

- Changes to Clause 10.3.7

*When considering value for money, We will consider 'like for like' properties in the region, if possible. In this context 'like for like' means the same number of bedrooms, ~~and~~ similar facilities/amenities and condition of the property including whether the property is provided furnished and with utilities included.*

Removing Clause 10.5.6 also reflects the conditions set out in 10.11 – Transport Plan, specifically, Guidelines Clause 10.11.1(b) which outlines that where a worker has made their own accommodation arrangements, transport does not need to be provided.

Changes to Clause 10.5.6 (remove clause)

~~*You are still required to provide transport for Workers, even when they arrange their own accommodation, unless the Worker has also organised their own transportation.*~~





## Feedback on Key Elements of Draft Deed & Guidelines

There are 3 key elements of the Draft Deed and Guidelines that must be reviewed and amended prior to adoption of the new Deed and Guidelines. These three elements are critical to the successful ongoing operation of the PALM scheme; particularly in seasonal agriculture, where the significant majority of PALM workers are currently employed. These key areas are:

1. Minimum Hours of Work
2. Welfare and Wellbeing Support People
3. Accommodation Requirements

### 1. Minimum Hours of Work (Deed 11.1, Guidelines 3.7)

The AFPA have consistently advocated, across both consultations on PALM Deed and Guidelines (2021 and 2022) that a minimum of 240 hours of work, averaged over 8 weeks should be offered to short-term stream workers, as this provides a suitable safety net – the equivalent of option 2 (b) in this consultation.

The other options presented in the consultation are not suitable as they:

- Do not reflect the seasonal fluctuations of agriculture; which is the largest employing sector within the PALM scheme
- Create a scenario where employment by a labour hire provider is more favourable than a direct employer; which should not be the intent of the Government or program

The requirement to reduce the averaging period from the length of a worker's placement (under previous SWP Deed) is understood by industry. With regard to other proposed options, Option 2(a) as proposed in the consultation documents (30 hours averaged over 8 weeks) does not appropriately address the seasonal nature of horticulture. Further Option 2(a) is not required as a protection mechanism for the risk of low earnings as the Draft Deed and Guidelines prescribed a minimum net pay guarantee for workers of \$200 after tax and deductions, in addition to the inclusion of Clause 3.7.2. These protections are further bolstered by changes to the Horticulture Award (under which the majority of PALM workers are employed) which includes a minimum wage guarantee where piece rates are utilised.

Both Option 3(a) and 3(b) are also not appropriate, as these options make a distinction between direct and indirect employment and require labour hire providers to offer a minimum of 30 hours per week – this has two significant impacts on the Scheme:

- This makes labour hire a more desirable mode of employment for workers due to the minimum hours offered; driving workers away from direct employment in the horticulture sector; and,
- Limits the flexibility of labour hire providers to provide workers to the horticulture sector where work is seasonal. Labour hire arrangements are often contractual of time periods that require an element of flexibility to meet workforce needs. These minimum hour requirements are likely to flow to host employers, who will in turn be unable to utilise workers from the program.

Implementing 2(b) is critical to the horticulture sector in Australia to ensure that demand for workers from the Pacific is not weakened, and ensuring that employers are able to continue to utilise PALM workers across a season of production. Noting the likely comparison between the minimum hours requirements in the New Zealand based RSE scheme and the Australian PALM scheme; it is important to consider the PALM scheme in Australia provides a more significant portion of the harvest workforce than the RSE scheme does currently in New Zealand. Option 2(b) reflects Australian operating conditions, primacy of the PALM scheme as a labour source, and the nature of seasonal horticulture production in Australia.



In the application of 2(b), proposed language must reflect that work be “offered”. Ensuring that the Deed and Guidelines reflect work offered is critical to ensuring that workers are able to engage in work at their discretion, in the same way Australian permanent residents and citizens are able to accept or decline shifts from their employer.

Proposed Guidelines Clause 3.7.1:

- *For short-term seasonal agriculture placements, Approved Employers must offer a minimum of 30 hours per week averaged over 8 weeks (that is, a minimum of 240 hours over 8 weeks).*

### **Guidelines Clause 3.7.2**

Guidelines 3.7.2 stipulates that an AE must pay in full the costs of a worker’s accommodation and transport when a worker is offered 20 or fewer hours a week. Understanding that the intent of this Clause is to ensure that workers, where they may not have sufficient funds, are able to meet accommodation and transport costs (via their AE), the Clause should be amended to address insufficient hours occurring recurrently. The Clause should be amended to reflect:

- Where a Worker is offered 20 or fewer hours for two consecutive weeks, an employer is responsible for meeting the full costs of a Worker's accommodation and transport for that week.
- Specify that this applies only to accommodation provided by an AE; not accommodation that is selected by a Worker

Where a worker is offered consistently low hours (20 or fewer hours a week) this demonstrates that there are challenges in meeting the requirements of the Deed (Minimum of 30 hours per week offered, averaged over 8 weeks, for Seasonal Agriculture placements). For Workers, the solution to receiving consecutively low hours is not for accommodation and transport costs to be paid for by the AE, but to encourage AEs to consider alternative arrangements (i.e. a change of location) to ensure the Worker can be offered the required hours, and where this isn’t possible, to consider alternative employers.

Experience within the program suggests that it can take approximately 2 weeks to make alternative arrangements for workers (e.g. relocation to other AE, or potentially secondment under new Deed and Guidelines). Therefore, amending the Clause to reflect 20 hours or fewer being offered for more than two consecutive weeks strikes the balance between ensuring workers have appropriate funds (including Minimum Guarantee of \$200), and enabling an AE to have sufficient time to engage with the administrative process at DEWR to relocate workers, where the low hours offered reflect an ongoing shortage of work due to seasonal fluctuations, weather conditions or other conditions beyond an employers’ control.

Proposed Guidelines Clause 3.7.2:

- *For short-term seasonal agriculture Placements ~~with direct employers~~, You **must** cover the cost of accommodation and transport ~~for every week in which a~~ **where after two consecutive weeks**, a Worker is offered 20 hours of less (debt for accommodation and transport cannot be accrued).*

### **Additional Operational Components**

The AFPA is supportive of arrangements that see AE’s offer short term workers a minimum of 30 hours per week, averaged over 8 weeks (Option 2b).

There are two additional operational concerns that must be addressed to ensure that this measure can be enforced:



1. The requirement to provide a declaration every 8 weeks that workers are being offered an average of 30 hours per week must be removed (Clause 13.1.4).

This Clause places a significant and unnecessary administrative burden on AEs and DEWR;

- A declaration is not an act of proactive enforcement. DEWR is able, at any point in time deemed suitable, to request pay data from an AE for worker/s. The provision of declarations does not replace the critical role of DEWR in undertaking enforcement and compliance activities.
- Administratively, each arrival of workers is likely to be on a different 8 week cycle. Where an AE has a large number of workers, or multiple arrivals of small groups of workers, each arrival will require a declaration every 8 weeks – for some AEs this is likely to amount to several hundred declarations over a 9-month period.
- It is unclear what a declaration is – if this is a Statutory Declaration it is unlikely that administrative staff will be authorised to complete this declaration, or should be subject to the criminal penalties associated with an incorrect declaration.

On balance, the significant red tape added by this Clause (both for AEs in submitting declarations and for DEWR in reviewing these documents) outweighs the potential compliance benefit with this Clause given that DEWR is able to proactively engage in enforcement and compliance activities and may choose to do so based on a range of factors.

2. The 8 week averaging period presents an administrative challenge particularly with regard to the first and last week of a worker's 9-month placement.

Guidelines Clause 3.7 as *"For short-term seasonal agriculture placements, Approved Employers must offer a minimum of 30 hours per week averaged over 8 weeks (that is, a minimum of 240 hours over 8 weeks)."* Creates a requirement for AEs to calculate average employment for workers over an 8 week period.

While this period is not defined (e.g. what is a week), the AFPA recommends that a week is considered and managed as a Pay Period as this is consistent with the management of the Horticulture Award (under which most Seasonal Agriculture Workers are employed). This would mean that the first day of the 'week' is the first day of an AE's designated Pay Period, and the final day of the week is the date on which a worker is paid – or the end of the pay period.

The AFPA recommends that weeks are considered pay periods to both assist AE's in ensuring compliance with Deed and Guidelines requirements and to support any monitoring, compliance or enforcement activity required by DEWR or other agencies (e.g. FWO).

This presents a challenge to formalising averaging arrangements, as there will likely be times at the commencement and conclusion of a placement where a worker starts/finishes work midway through a pay period; meaning a worker may only be able to work part of that period. This creates an averaging challenge as these weeks are likely to lower the average of hours offered, either making the AE non-complaint, requiring an employer to compensate by increasing a worker's hours for subsequent weeks or requiring the AE to become responsible for accommodation and transport costs under Clause 3.7.2.

Further, where an AE has multiple groups of workers (defined by different arrival times), this requires an AE to keep multiple different averaging periods for each group of workers. This is a significant administrative burden. For example, if an AE had 48 workers arrive on Monday, and two workers who missed their initial flight and arrive 3 days later; this requires the AE to keep two averaging periods for these distinct group of workers. This is a substantial administrative requirement.



In order to address this, the AFPA recommends specifying that the starting and finishing period of a worker's placement not be counted towards the averaging period, specifically the days between a workers arrival and the beginning of the AEs next pay period, and the days between the end of a workers last full pay period and the completion of their assignment/departure. This addresses the compliance trap created by the averaging requirements and enables a simpler review of records by DEWR.

This could be achieved by adding further context to Guidelines Clause 3.7.1

Proposed Clause 3.7.1:

*For short-term seasonal agriculture placements, Approved Employers must offer a minimum of 30 hours per week averaged over 8 weeks (that is, a minimum of 240 hours over 8 weeks), where;*

- (i) The 8 week period is determined by an AE's pay period*
- (ii) At commencement of a Worker's assignment, the averaging period begins from the commencement of the Approved Employer's pay period*
- (iii) At conclusion of a Worker's assignment, the average period concludes at the end of the last full pay period determined by the Approved Employer*
- (iv) For the avoidance of doubt, Worker's must be remunerated for each day work, even where work occurs outside specified averaging period*

Recommendation:

- The requirement to provide a declaration every 8 weeks that workers are being offered an average of 30 hours per week must be removed (Guidelines Clause 13.1.4).
- To support compliance with the Deed and Guidelines while reducing administrative burden for AE's Clause 3.7.1 should specify that:
  - A week (or the 8 week period) is defined by an AE's pay period
  - On a worker's commencement and conclusion of assignments it is likely that workers will work days outside the AE's pay period; these days must be remunerated but should not be included in the averaging period.

## 2. Welfare and Wellbeing Support People

The draft Deed and Guidelines introduces additional detail on Welfare and Wellbeing persons, including "9.6.4 (a) An adequate ratio is considered **around** 1.5 percent, or 1 person per 65 workers".

The evidence that supports this ratio is not drawn from labour programs akin to the PALM scheme globally, from evidence provided by existing Approved Employers displaying best practice, any other Australian companies displaying what is accepted as best practice, or from any relevant Australian legislation. The evidence referenced for this ratio is a blog post, made by "Academy to Innovate HR". The blog post does reference 1.5 per 100 employees (1 to 65) as the medium (not best practice) of two American studies on company HR to employee ratios. The AFPA do not consider this sufficient evidence from which to establish a ratio of welfare and wellbeing support roles for the PALM Scheme.

The AFPA does not support a ratio of 1.5% / 1 to 65 as it does not reflect the described role of Welfare and Wellbeing persons, it does not take into account the size of the average AE, industry, and other factors, such as those mentioned in blog post by 'Academy to Innovate HR' for determining an appropriate ratio, including; *organisation's number of employees, technological capabilities of HR, staffing budget, degree to which HR is strategic, unionization and collective agreements.*



The AFPA supports Welfare and Wellbeing Persons being within 200km of a worksite despite this being challenging for most rural and regional horticulture production locations. Members of the AFPA, among a range of other Approved Employers, are experienced employers with many years of experience operating the PALM scheme. Feedback from employers indicates that to best deliver worker welfare outcomes, appropriately skilled, trained and supported staff members, with dedicated time and resource are best to be designated welfare and wellbeing support persons.

The introduction of a ratio indicates that there is a preference for more people offering support, rather than a focus on encouraging and supporting employers to deliver appropriate welfare and wellbeing plans (including number of persons undertaking this work) that supports workers in relevant circumstance.

Investment from the Federal Government in the 2023-2024 Budget also provides additional funding for an increased number of Country Liaison Officers (CLOs). Increased numbers of CLOs, coupled with regional extension networks and AE's own individualised welfare and wellbeing support arrangements will provide a greater and more appropriate level of support.

In order to best support worker welfare, flexibility in how welfare and wellbeing support is delivered is required. AEs are required to submit a welfare and wellbeing plan to DEWR for approval and this document should be the basis from which DEWR assess if the AE is appropriately meeting their obligations under the Deed and Guidelines.

#### Recommendation:

- The ratio requirement for welfare and wellbeing support person/s be removed from the Deed and Guidelines, as there is insufficient evidence to suggest the proposed ratio will improve worker welfare outcomes.
- Proposed Clause 9.6.4:

*You must ensure that a Welfare and Wellbeing Support Person(s) is available to support workers. Where You have multiple Placements, more than one Welfare and Wellbeing Support Person may be required to ensure they are within 200 km of all of the Placements of Workers*

~~You must ensure an adequate ratio of Welfare and Wellbeing Support Person(s) to the number of Workers recruited, unless approved by Us:~~

~~(d) — An adequate ratio is considered around 1.5 percent, or 1 person per 65 workers.~~

~~(e) — If the appointed person(s) does or will also help and support to Your existing Workers, then the adequate ratio applies inclusive of these Workers.~~

~~(f) — You can calculate the ratio using the following formula, noting that if there are fewer than 65 Workers recruited (the minimum number specified in the ratio above) You must still appoint one Welfare and Wellbeing Support Person:~~

~~(i) — Ratio = number of support person(s) / number of workers (+ Workers) x 100.~~

If a ratio must be included:

As of 31 March 2023, there were 274 Approved Employers of Short-term PALM workers and 24,891 Short-term PALM workers in Australia, therefore, on average every Short-term PALM Approved Employer has 91 workers. Current experience from AE's is that a ratio of 1 to 120 PALM workers is optimal to meet obligations under the Deed and Guidelines. Employers who have engaged in the Scheme from its inception, have supported the growth of the Scheme and workers throughout COVID and engage significant numbers of workers have demonstrated that this ratio is suitable. This is also the requirements under the current SWP Deed and Guidelines, based on average number of workers per AE.

If a ratio is to be implemented, a ratio should be 1:120 PALM workers, this is based on the average number of short-term PALM workers per AE currently being 100. A ratio of 1:120 strikes the balance between ensuring that



welfare and wellbeing support people are available to workers and ensuring that employers are not required to engage a substantial number of new resources without demonstrated improvement in program operation.

- Proposed Clause 9.6.4:

You **must** ensure an adequate ratio of Welfare and Wellbeing Support Person(s) to the number of Workers recruited, unless approved by Us:

- (g) An adequate ratio is considered around ~~1.5 percent, or 1 person per 65 workers.~~ 1 person per 120 PALM workers
- ~~(h) If the appointed person(s) does or will also help and support to Your existing Workers, then the adequate ratio applies inclusive of these Workers.~~
- ~~(i) You can calculate the ratio using the following formula, noting that if there are fewer than 65 Workers recruited (the minimum number specified in the ratio above) You **must** still appoint one Welfare and Wellbeing Support Person:~~
- ~~(j)  $\text{Ratio} = \text{number of support person(s)} / \text{number of workers (+ Workers)} \times 100.$~~

### 3. Accommodation Requirements

In general, the draft Deed and Guidelines are far more prescriptive on accommodation requirements. It should be noted that there are significant accommodation shortages being experienced across Australia, with these shortages particularly acute in regional Australia. Across seven key growing regions in February 2023, the average vacancy rate was 1.03%; the National rental vacancy rate in February 2023 was 1.47%. In these key regions, there have been rental price increases of up to and over 20% across the past 12 to 24 months. While assuring PALM workers are safely and appropriately housed, it must be noted that where accommodation standards are increased, there must be significant efforts from all parties engaged in the PALM scheme to support initiatives to increase the amount of regional housing stock. Access to accommodation is a critical limiting factor in the growth and operation of the PALM scheme.

#### **Guideline Clause 10.5**

Guidelines Clause 10.5 outlines the requirements of AE's where workers elect to arrange their own accommodation. There is an increase in workers electing to make their own accommodation arrangements, this is driven by the tight supply of suitable accommodation in regional areas increasing the costs of suitable approved accommodation.

Workers' autonomy in selecting their own accommodation must be respected, and the role of the Approved Employer must be to support workers where practicable but not to coerce workers in making these decisions.

Guidelines 10.10 outline the role of an AE in supporting workers to understand their rights and responsibilities where workers have found their own accommodation. This is important in supporting workers who would like to make this choice. In order to support AEs, for the avoidance of doubt, the following should be added (beyond the header of Guideline's page 65 in summary) as a formal clause to the Guidelines:

Proposed new inserted Clause 10.5.8:

*Where a Worker has elected to arrange their own accommodation, You (the AE) are not responsible for the quality of that accommodation. You are required support workers to understand their accommodation rights and responsibilities outlined in Section 10.10*



This is similar to the current SWP Guidelines, which clarifies that (4.1.5 – third dot point) *“If a Seasonal Worker chooses to arrange their own accommodation, the Approved Employer is not responsible for the quality of that accommodation. The Approved Employer does, however, retain the responsibility for providing welfare and wellbeing assistance to the Seasonal Worker.”*

### **Additional clarifications on accommodation required**

#### **Guidelines Clause 10.3.7**

The clause outlines that when considering value for money, like for like properties will be considered. While ‘like for like’ is outlined based on the same facilities, bedrooms etc., this does not acknowledge that the majority of properties provided to workers are partially or fully furnished (including a range of consumables) and often with utilities included in total accommodation amount. ‘Like for like’ consideration must include this.

- Changes to Clause 10.3.7

*When considering value for money, We will consider ‘like for like’ properties in the region, if possible. In this context ‘like for like’ means the same number of bedrooms, ~~and~~ similar facilities/amenities and condition of the property including whether the property is provided furnished and/or with utilities included.*

#### **Guidelines 10.5.6**

This Clause requires AEs to continue to provide transport where a worker has selected their own accommodation. This Clause is impractical as AEs typically arrange accommodation to and from group accommodation to reduce cost and minimise travel time. Where an AE is unable to manage a worker’s accommodation it is unreasonable to require the AE to continue to provide transport.

Where a worker is seeking their own accommodation and the AE is required to provide support for this choice, the role of transportation should be discussed and should have bearing on a worker’s decision making.

Clause 10.5.6 also directly contradicts the conditions set out in 10.11 – Transport Plan, specifically, Guidelines Clause 10.11.1(b) which outlines that where a worker has made their own accommodation arrangements, transport does not need to be provided.

- Changes to Clause 10.5.6 (remove clause)

~~*You are still required to provide transport for Workers, even when they arrange their own accommodation, unless the Worker has also organised their own transportation.*~~

### **Implementation Period**

In addition to revised Deed and Guidelines, DEWR is also in the process of insourcing a range of functions from the Pacific Labour Facility. This insourcing, occurring at the same time the PALM scheme is being significantly altered through the Deed and Guidelines and is likely to be incredibly disruptive for DEWR, AEs, Workers and Sending Countries. In order to support a transition to new program arrangements, and DEWR’s new role, it is recommended that the new Deed and Guidelines are agreed from 1 July 2023, but are not implemented until 1 January 2024 or later. This implementation period provides a balance that enables both AEs and DEWR to prepare and restructure to address new requirements.



## **Additional areas of feedback on Draft Deed and Guidelines**

### **Pay Parity (Deed Clause 11, Guidelines Clause 2.3)**

The AFPA has supported the principle of pay parity; that is that workers within the workplace, performing the same task should be remunerated equally. This extends to those employed by a labour hire provider.

The Albanese government has stated it will revisit the Fair Work Amendment (Same Job, Same Pay) Bill 2021. The inclusion of Pay Parity in the PALM Guidelines is pre-emptive of the legislation.

Currently, in terms of operationalising pay parity, we note that there may be some challenges with the implementation by individual entities due to overlapping Enterprise Bargaining Agreements with different conditions.

### **Cultural Competency (Deed Clause 9.2, Guidelines 2.1.6 and 9.2)**

The draft Guidelines now specifies that *“9.2.2 You must ensure key staff (supervisors, team leaders and managers) obtain necessary cultural competencies related to the Worker’s country of origin to work effectively and appropriately with Workers”* and goes on to state *“9.2.3 - If requested by Us—You must complete relevant online or face-to-face training as endorsed by Us.”*

There is a lack of resources available to AEs on cultural matters of relevance to support their employment of PALM workers. In many instances there is no education material or training available, and AEs can only learn from experience or by traveling to country.

The AFPA recommends supporting this requirement that the Government develop and deliver (possibly through a third party) its own programs and materials to create a clear pathway for AEs to use to ensure key staff (supervisors, team leaders and managers) obtain a necessary level of cultural competency. This would both help to determine what is required to be culturally competent, and ensure this knowledge is appropriately able to be obtained by AEs.

The AFPA also support the recognition of existing AEs cultural awareness, which could be verified by sending country, that the AE has engaged with them culturally, or the successful recruitment of more than 100 employees, or more than 3 years recruitment, from a single country.

### **Use of interpreters (Deed Clause 22.1)**

The AFPA supports the intent of Deed Clause 22.1 around the use of interpreters in appropriate circumstances. To support the implementation of this Clause, reference to interpreters must be made in the guidelines. This reference should include:

- Given the regional location of much of the work being undertaken in the PALM scheme (across all sectors not just seasonal agriculture) interpreters being provided virtually is appropriate.
- Workers, or diaspora/community members, CLOs etc. proficiency in English are suitable interpreters where there is not complex legal or technical information being communicated to workers.

This strikes the balance between ensuring that communication between AEs and workers is effective, while reflecting the reality that suitably qualified professional interpreters are unlikely to be available in remote and regional communities.





## **Family accompaniment**

In principle, the AFPA support family accompaniment for long-term stream PALM workers only, subject to a trial or pilot of family accompaniment for workers involving a small number of committed AEs.

Family accompaniment within the PALM scheme is likely to create significant operational challenges, these should be properly understood and considered before embedding this arrangement in the Deed through a trial.

It is recommended that conditions relating to family accompaniment be included as an addendum to the Deed and Guidelines on completion of a trial to ensure conditions accurately reflect learnings from initial trial of workers.

## **Worker Portability (Guidelines 8.5)**

The AFPA supports the measures regarding portability that have been included in the Deed and Guidelines. This has been an element that industry, unions and stakeholder groups have long advocated for and the inclusion in the Deed and Guidelines reflects this evolution of the program.

## **Health Insurance (Guidelines 9.3.7)**

The ongoing payment of workers health insurance for a further 28 days where a worker has disengaged from the program does not reflect the shared responsibility between AEs, Workers and DEWR. AEs should not be required to continue to pay this cost where a worker has made clear in writing their intent to disengage from their employment.

After disengagement has been reported to DEWR, AEs should no longer be financially responsible for ongoing payments to workers, other than wages where a worker has disengaged during an active pay period.

## **Reimbursement for travel costs (Guidelines 7.3)**

The AFPA have strongly supported the election commitment from the Government to reimburse the mobilisation costs of workers that disengage from the program and cannot be recouped (at no fault of the employer).

The provisions set out in the draft Guidelines are appropriate, as is the use of a statutory declaration for AEs to detail the reason why they are unable to recover the travel costs from the worker through 'No Fault of Your Own'.

## **Mutual recognition of accommodation (Guidelines 7.8)**

The mutual recognition of accommodation measures outlined in the Guidelines are a welcome reduction in red tape. These measures will support AEs in accommodation approvals and assist DEWR in application processing times.

Further, the AFPA recommends that commercially available accommodation that is regularly used in the PALM scheme should be listed in an accommodation portal, available to workers, AEs and program participants to support transparency around the types of accommodation used and support workers looking to make their own accommodation arrangements.



## Managing worker grievances

The objective of the Grievance Management Policy should ensure that grievances between AE's and PALM workers are able to be resolved in a timely and effective way; improving worker welfare and enhancing the relationship between AEs and PALM workers.

### Principles:

- These grievances must relate to an active AE-employer relationship; that is a worker is currently employed by an AE under the current Deed & Guidelines Conditions.
- The Grievance & Feedback Policy aligns with a clear escalation process.
- AE's must be notified and empowered to resolve grievances in the first instance.
- The Department takes an active role in grievances at the Medium and High Risk .
- There must be clear delineation between roles and responsibility of DEWR vs. other agencies (e.g. Home Affairs, FWO etc)

### Key Issues for the policy to address:

- Timely resolution of grievances; not allowing grievances to be unactioned or unresolved
- Clearly articulating areas of responsibility between AEs, workers, DEWR and other stakeholders
  - Including the role that DEWR plays in managing Deed and Guidelines compliance, compared to the roles of other agencies including Home Affairs and FWO.
- Articulating the process for grievance management to all stakeholders
- Ensuring that AEs are able to resolve grievances in the first instance to support worker welfare and support timely resolution of grievances.

The objective of grievance resolution should not be for AEs to simply keep and collate a list of information/grievances rather to support AEs and Workers to proactively engage to resolve any issues that arise. In order to appropriately identify what constitutes a grievance, the Guidelines may consider inserting further information in line with the current PALM First Response Escalation Process diagram that outlines common issues, recommended resolution timeframes and roles for AEs and Stakeholders.

