



Consultations on PALM scheme Deed of Agreement and Guidelines

Expanding and improving the PALM scheme

March 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
- Perfection Fresh
- Montague
- Pinata Farms
- Fresh Select
- Mackay's Banana Marketing
- Driscoll's
- Australian Produce Partners
- Premier Fresh Australia
- Rugby Farming
- Freshmax
- 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	Blueberries	Cherries	Nectarines	Raspberries
Apricots	Broccoli	Fioretto	Onions	Salad leaf
Asparagus	Broccolini	Green Beans	Oranges	Spinach
Avocado	Brussel Sprouts	Herbs	Peaches	Strawberries
Baby Broccoli	Butternut	Lemons	Pears	Sweet Corn
Baby Corn	Pumpkin	Lettuce	Pineapples	Table grapes
Bananas	Cabbage	Mandarins	Plums	Tomatoes
Beetroot	Cauliflower	Mango	Potatoes	Water Cress
Blackberries	Celery	Mushrooms	Cucumber	Wombok

Summary

The AFPA have supported the merge of the Seasonal Worker Programme (SWP) and Pacific Labour Scheme (PLS) into a single Pacific Australia Labour Mobility (PALM) scheme. As part of this merge, requirements for Approved Employers (AEs) under the SWP and PLS have been streamlined into a single overarching Deed and Guidelines covering all PALM scheme AEs. The intent in aligning these programs is to reduce red tape and more streamlined processes for Approved Employers.

The AFPA have previously provided two submissions on two earlier drafts of the consolidated Deed and Guidelines. The Department of Employment and Workplace Relations (DEWR) is seeking stakeholder feedback across seven areas of the Deed and Guidelines.

The AFPA continue to advocate for appropriated standards within the program that ensure worker welfare and ensure the sustainable development of the PALM scheme. Members of the AFPA employ more than 6,000 PALM workers and are invested in the ongoing, sustainable operation of the program. The AFPA have offered feedback and suggested ways forward across the seven areas for consultation. Below is a summary of AFPA feedback:

Requirements to address low working hours and low net pay after deductions for PALM workers	The AFPA continue to support that short term workers are offered a minimum of 30 hours per week, averaged over an 8 week period. This provision (which is yet to be implemented) provides a suitable minimum earnings outcome for PALM workers.
Pay parity for PALM workers as a condition of recruitment (including for long term workers)	The AFPA supports the principle of pay parity and notes the government has signalled its intention to reintroduction the Same Job, Same Pay Bill this year to broadly address pay parity within the labour hire sector. This Bill would likely address pay parity concerns within the PALM scheme.
Recognising High Performing Approved Employers	In principle, the AFPA have been supportive of recognising model Approved Employers. The AFPA would welcome working with Government and industry to determine a suitable set of criteria, based on other successful programs of a similar nature.
The role of Approved Employers - Labour Hire companies under the PALM scheme	Labour hire plays a critical role both in the horticulture sector and the PALM program. Labour hire providers offer a range of expertise, skills and support beyond just the provision of people. The AFPA supports initiatives to work with new and existing AEs to recruit and employ PALM workers directly, while supporting the ongoing participation of labour hire in the program.
Welfare and Wellbeing Support Person	The AFPA support the role of welfare and wellbeing support services being offered in both the short and long term PALM stream. Raising program requirements (i.e. reducing distance from 300km to 100km) is unlikely to be effective as a single measure to improve welfare and wellbeing.
Cultural Awareness and Competence	The AFPA strongly support cross cultural awareness and competence; that is cultural awareness amongst employers and also better understanding among workers of life in Australia. This is a critical role for DEWR/PLF in providing materials, training and advice to assist employers and importantly offer collaboration between the LSU, CLO and potentially selected experienced PALM workers
Reimbursement of worker airfare	The AFPA have strongly supported the election commitment from the current Government to reimburse the mobilisation costs of workers that disengage from the program and cannot be recouped (at no fault of the employer). This would be supported through repayment of actual costs incurred, submitted via existing portal infrastructure, if there is worker disengagement within the first 12 weeks of employment.

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Introduction

The AFPA welcome the opportunity to provide feedback to the PALM scheme Deed of Agreement and Guidelines and thanks the government for its ongoing consultation on the program as part of its broader expansion and improvement. The elements of the Deed and Guidelines for consultation are:

1. Requirements to address low working hours and low net pay after deductions for PALM workers
2. Pay parity for PALM workers as a condition of recruitment (including for long term workers)
3. Recognising High Performing Approved Employers
4. The role of Approved Employers - Labour Hire companies under the PALM scheme
5. Welfare and Wellbeing Support Person
6. Cultural Awareness and Competence
7. Reimbursement of worker airfare

Responses to Consultation Questions

1. Requirements to address low working hours and low net pay after deductions for PALM workers

The AFPA understands that a key goal of workers participating in the program is to maximise their earnings and that ensuring suitable hours of work are offered enables this outcome.

The horticulture sector is defined by seasonal production. This seasonal production is further defined by shoulder seasons (i.e., coming in or out of harvest) and peak periods. While a general time period for a season is known, often specific times of peak harvest and shoulder seasons can be delayed/brought forward by several weeks at a time. It is these seasonal fluctuations that make workforce planning in the sector challenging and require greater levels of flexibility from the PALM scheme.

Considering the seasonal nature of horticulture production, 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 be offered to short-term stream workers provides a suitable safety net. This approach strikes the balance between ensuring earnings outcomes are achieved, accounting for seasonal variation in the horticulture sector and enabling workers to have autonomy to make decisions about their employment (i.e. to work or not) while in Australia.

Ensuring that workers are offered a minimum of 30 hours per week, averaged over 8 weeks also appropriately takes into consideration employment arrangements, particularly where workers are engaged casually. The Deed and Guidelines must consider these casual arrangements in which a worker is able to decline work/a particular shift at their discretion. The minimum hours should be recorded as a minimum of 30 hours per week (averaged over 8 weeks) *offered*.

While this arrangement may require additional record keeping requirements from employers, it is an important distinction that more accurately reflects the employment relationship where a worker is engaged casually. This important distinction reflects the nature of casual employment arrangements, while also achieving the program objective in ensuring that minimum hours are available and that workers have the autonomy to make decisions about their employment and time in Australia.

Under current settings, employers are required to offer an average of 30 hours per week, over a workers contract/engagement period. The current consultation suggests *“Low and inconsistent working hours have been reported as one of the main drivers (cited by PALM workers) for disengagement, alongside pay, leave refusal, deductions and a lack of trust”*. Given that the provisions consulted on to reduce the averaging period for hours

worked to only 8 weeks (down from as high as 9 months) have **not** been implemented, it is impossible to assess their effectiveness in addressing the reports of low working hours.

Further, employers indicate that workers are engaged on average at least 30 hours per week and there is not substantive evidence to the contrary. Offering a minimum of 30 hours a week, averaged over 8 weeks is in effect a minimum pay guarantee. This ensures that PALM workers, employed casually at Level 1 under the Horticulture Award are guaranteed an income of \$6,415.20 (gross) over 8 weeks. This further builds on changes to the Horticulture Award in 2022 which saw changes to piece rate provisions that add a further minimum wage safety net for those employed under these conditions.

The AFPA would support an initial introduction of the previously agreed minimum of 30 hours per week *offered*, averaged over 8 weeks. The AFPA would then encourage DEWR to record data against this measure, and to undertake a range of enforcement and assurance activities to ensure that these parameters are being met. This would provide greater guidance on the need to add a minimum payment to the existing safety net.

If the intent of the proposals in the consultation are to address that a minority of workers, at times, have a small number of working hours, continue to pay deductions and therefore have low net pay, addressing these specific examples would be more meaningful. Where a worker has low net pay consistently, there is a role for DEWR in investigating this and addressing the cause. Remedies to this could include enabling a worker to move promptly to a new AE or work location to increase hours worked.

2. Pay Parity for PALM long-term workers as a condition of recruitment

The AFPA support 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 AFPA notes the Albanese government's proposed labour hire reforms expected later this year will revisit the Fair Work Amendment (Same Job, Same Pay) Bill 2021 that was dissolved at the conclusion of the previous government. That Bill focused on ensuring that workers that are employed by a labour hire providers receive the same pay as workers employed directly by the same employer. The AFPA is also aware of a private member's Bill currently before parliament, Fair Work Amendment (Equal Pay for Equal Work) Bill 2022, which is of the same purpose.

DEWR is seeking feedback on pay parity for long-term PALM workers as a condition of employment, specifically: *Approved Employers would need to demonstrate that:*

- *PALM workers will be paid the same wage as other workers in the same workplace doing the same tasks;*
- *PALM workers' pay will need to be in line with the relevant industrial instrument (award or Enterprise Agreement) to ensure pay parity.*

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

Given the prevalence of labour hire employers within the long-term stream of PALM and the anticipated outcomes of the Same Job, Same Pay Bill before parliament, there may not be a need to separately operationalise this intent through the Deed and Guidelines. Further, DEWR may consider how a possible Same Job, Same Pay Bill introduced by Government in 2023 will be operationalised and enforced and look to enact the same, or refer to these provisions within the Deed and Guidelines.

3. Recognising high performing Approved Employers

In principle, the AFPA have been supportive of recognising model Approved Employers - recognising past performance and sharing best practice will be critical to the expansion and further development of PALM. A method by which to recognise past performance is to acknowledge employers that apply best practice and have

a demonstrable track record within the program should be able to engage with lighter touch regulation. This could be similar to the Trusted Trader program.

The AFPA does not support linking recruitment proposals to additional standards. The provision of recruitment services should be based on participation within the program and this timeframe should be standard within the system to ensure that AEs are best able to work with relevant Departments and LSUs. The provision of accurate recruitment timeframes is vital in assisting with workforce planning requirements.

In terms of recognising high performers this should be based on a history of strong compliance within the program – this would encompass compliance with pay, accommodation and welfare. Basing criteria off higher pay creates barriers for smaller AEs and does not necessarily show compliance. Conversely, there would be greater benefit to the program introducing consequences for poor performing AEs and a focus on non-compliance within the program rather than recognising high performers.

Noting that there are a number of programs that currently measure and reward compliance (e.g. Trusted Trader), DEWR should consider a review of these programs, their principles and how they provide recognition and incentive to participants and based any acknowledgement of AEs on these proven systems.

In terms of enhancing PALM workers time in Australia, suggest more education, community connections involvement and development of local programs and partnership between AEs and CLOs to assist with collaboration, consistency of accurate information and communication.

4. The role of Labour Hire Approved Employers

The AFPA supports the ongoing use of labour hire within the PALM scheme, across both the short and long term streams, and continues to call on the government to deliver on its commitment to introduce a National Labour Hire License Scheme for the entire economy.

The role of labour hire in the horticulture sector is beyond that of simply providing labour on site. Labour hire providers within the horticulture sector provide a range of HR services and support including pay roll services, recruitment, provision of accommodation and a variety of other critical services. Importantly, labour hire providers also offer the sector a variety of flexibility which matches the seasonal fluctuation of workforce requirements on Australia's horticulture farms.

We understand that Government is seeking to increase the participation of direct employers in the program, and to address a concern or perception that labour hire dominates the PALM scheme. It is important to note that labour hire companies have historically been responsible for the growth of the PALM program and enable ongoing access to the program for a range of host employers.

Within the short term stream, labour hire providers offer a range of critical services to horticulture companies, many of whom do not have suitable resources, or experience to engage directly in the PALM scheme. Labour hire has also been critical in enabling worker portability; which was demonstrated during COVID and the significant movement of workers between locations and AEs. Labour hire will likely play a critical role in further enabling worker portability, ensuring that short term workers are able to achieve ongoing hours of work and maximise their time in Australia.

With regards to the long-term stream, labour hire again provide and leverage significant experience in attraction, retention and ongoing management of workforce that may be not exist within some host employers within the long-term stream.

In order to address concerns that the long-term stream of PALM is over reliant on labour hire companies, firstly, the role of labour hire must be well understood (i.e. the lack of capability, resources and for seasonality reasons), further a significant investment in implementing activities that support direct employment of PALM workers must be made.

An investment to improve direct employment (particularly for new AEs) would be required, with a focus on training and processes. This will require a significant resource investment from DEWR to both provide this, but also to operate more recruitments, with fewer workers as labour hire providers aggregate recruitments.

Instead of reducing the role of Labour Hire companies in the PALM Scheme, which removes a range of benefits to industry and government, government should instead look to deliver on its commitment to introduce a National Labour Hire Licensing Scheme to better regulate the sector (along with the broader economy). The AFPA have long supported a National Labour Hire Licensing Scheme, to ensure that all labour hire providers within the sector, including those that are Approved Employers under the PALM scheme, are operating from the same regulatory requirements.

In the absence of a federal scheme, since mid-2019, four state and territory governments have introduced labour hire licenses and laws (Queensland, Victoria, ACT and South Australia); New South Wales is a notable exception on the east coast, creating an opportunity for unregulated labour hire providers to continue to engage in the economy. While the introduction of labour hire licences in the four states and territories is welcomed and has made positive impacts, variations in licence application, regulation, enforcement, and penalties mean the need for a national scheme, with federal oversight, is still required. The AFPA encourage DEWR to consider how a National Labour Hire Licensing Scheme could benefit the PALM Program and its participants.

5. Welfare and Wellbeing Support Person

The AFPA support the role of welfare and wellbeing support services being offered in both the short and long term PALM stream.

Under the previous SWP (and current “short term” stream) requirements, a welfare and wellbeing support person must be within 300km of each placement. This current system within the SWP is currently working to support workers and balances the regional location of many of Australia’s farms with the need to offer support to workers.

Within program operations, there are a small number of ongoing welfare concerns that require resolution. On this basis, raising program requirements (i.e. reducing distance from 300km to 100km) is unlikely to be effective in resolving these specific issues. The PALM program, holistically, must be focussed in its responses to specific issues and challenges which typically occur when the welfare process breaks down.

In order to support improved worker welfare, a more holistic approach is required that

- Supports the engagement of a welfare and wellbeing support person within 300km of placement and encourages the use of technology to offer regular support and emergency assistance (if required)
- Recognise the importance and value of Pacific leaders within worker groupings
- Integrate the support network within the local community; rather than having a disaggregated approach causing breakdowns in issue management
- Development of further support for workers; in particular should this role currently performed by the PLF no longer be undertaken by DEWR

Further, as the scope of a worker welfare and wellbeing support person is not currently defined, there are a range of people (with differing levels of experience) engaged in these roles. To this end, a ratio is not a suitable

measure of ensuring welfare outcomes are delivered. Ensuring that workers have access to appropriate people, at appropriate points in time and that there is support for serious issues and clear escalation processes is key to improving worker welfare and support.

6. Cultural Awareness and Competence

The AFPA strongly support cross cultural awareness and competence; that is cultural awareness amongst employers and also better understanding among workers of life in Australia.

This is a critical role for DEWR/PLF in providing materials, training and advice to assist employers and importantly offer collaboration between the LSU, CLO and potentially selected experienced PALM workers. A lead agency (DEWR) delivering information and training would ensure consistency amongst information and its communication – ensuring baseline understanding achieved by all AEs.

Feedback from AFPA members indicates that current cultural education delivered via webinars is well received, and the continuation of this supplemented with country specific content would be useful in improving cultural understanding.

Similarly, better information provided to workers on types of work, living environment in Australia and a range of other “life in Australia” resources would be well received and help to bridge the gap between employers and workers.

With regard to specific provisions proposed for inclusion in the Deed and Guidelines:

- *Approved Employers will be required to provide assurance and evidence that they have cultural awareness of the specific country they are planning to recruit from prior to the recruitment plan approval;*
- *For existing recruitments, the department can request Approved Employer to undertake relevant cultural competency training and/or present evidence of cultural awareness in their business.*

The AFPA would support solutions that address communication problems, misunderstandings and poor outcomes often blamed on ‘cross cultural’ issues. The process needs to be a two-way cross-cultural understanding and mutual respect of culture, property and equipment. We propose the following to address these concerns through criteria that AEs meet:

- Cross cultural training for new AEs, or structured workshops/briefings from the country, (delivered by country liaison officer) or
- Confirmation by sending country that the AE has engaged with them culturally, or
- Successful recruitment of more than 100 employees, or more than 3 years recruitment, from a single country

7. Reimbursement of worker airfares

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

The AFPA support the situations outlined by DEWR in the consultation documents that could lead to reimbursement:

1. worker does not board a flight.
2. worker disengagement.
3. worker early return due to personal circumstances (such as serious illness or injury).

4. Approved Employers must be compliant with all deed and guidelines requirements, i.e. minimum hours, pay, accommodation standards, worker flights not to be purchased prior to Home Affairs visa approval, health insurance requirements etc.

The AFPA recommend adding an additional

- fifth situation, namely, where a worker is unable to continue working but remains in Australia due to personal circumstances (such as serious injury or illness), and
- a sixth situation, if not already counted under personal circumstances, where a worker returns early due to family circumstances (such as the death of a family member)

With regard to situation 4, specifically the requirement that flights are not purchased prior to Home Affairs visa approval, it is not practical that worker flights are purchased prior to visa approval due to the timeframe of group travel bookings. Waiting for visa approval to make flight bookings would increase costs for AE and the workers and require multiple flights being booked for one cohort/recruitment. In order to operationalise this, DEWR may wish to receive further views from industry on if not receiving visa approval is a condition to be eligible to make a claim.

In order to implement the commitment to reimburse worker airfares in the right circumstance. We support the following to address these concerns:

- Within the first 12 weeks, if a worker leaves and the employer has not recouped the mobilisation costs, the Commonwealth will reimburse the employer directly, according to the actual costs incurred.
- Mobilisation costs to be recovered quarterly for those workers that have left their employment.
- Costs to be recovered include airfares, internal transport, and transit accommodation.
- If a worker has a visa but does not board then this would meet the definition.

Submissions for reimbursement could be made through the PALM portal/s and when submitting an AE would need to provide an invoice, details of the circumstances and what (if anything) has been deducted to date. In order to deliver on this commitment, there must be no set limits for flight costs, as these costs must reflect the actual cost incurred (less \$300 contribution from the AE).

Comments on previous Deed & Guidelines Consultation Summary

The AFPA have previously provided two (2) submissions on the consolidated Deed and Guidelines for the new PALM scheme.

The submissions provided by the AFPA have provided specific feedback on a range of arrangements within the Deed and Guidelines, based on the significant experience as both Approved Employers and direct and indirect employers within the PALM scheme. Following the mid-2022 consultation, industry had not been provided an update on the proposed Deed and Guidelines, based on all stakeholder feedback.

The summary table at Appendix 1 provides a narrow collection of key points for consultation of the Deed and Guidelines, and in some instances (e.g. 7. Accommodation provision for PLS workers) is a significant departure from previous consultations.

The AFPA would recommend that DEWR release a full draft Deed and Guidelines for consultation and feedback to enable all stakeholders to view these documents in full context, rather than focuses on specific areas for consultation.

Appendix 1: Current SWP and PLS requirements and PALM Deed and Guidelines settings from previous consultations

SWP + PLS Deed and Guidelines settings	PALM scheme Deed and Guidelines settings (consulted on 2021-2022)
1. Minimum Work Hours – Short Term Workers (SWP - up to 9 months)	
Under the Seasonal Worker Programme (SWP), employers must offer 30 hours per week averaged over the placement.	<ul style="list-style-type: none"> a. Minimum 240 hours per week averaged over 8 weeks (under a casual or part-time contract) offered by employer, or b. Full-time work under relevant Award/Agreement
2. Minimum Work Hours – Long Term Workers (PLS – from 1 to 4 years)	
Under Pacific Labour Scheme (PLS) employers must offer a minimum of 30 hours per week across the life of a deployment (averaging is allowed where this is permitted under awards). No casual employment allowed.	<ul style="list-style-type: none"> a. Full-time employment, and b. Relevant Award/Agreement must be complied with.
3. Requirement to invite FWO and unions to the workers’ arrival briefing	
<p>Employers are required under SWP to invite the FWO and the relevant union representatives to the arrival briefings.</p> <p>There is no mandated minimum notice period.</p> <p>Under the PLS Deed employers are not required to invite the union or FWO</p>	<p>The requirement to invite the FWO and unions to worker arrival briefings will be extended to all PALM employers</p> <p>PALM employers will be required to provide the FWO and unions with a minimum one week notice to provide sufficient time to organise attendance.</p>
4. Employer contribution of \$300 (minimum) to the cost of flights	
This is a current requirement for SWP employers to contribute \$300 to workers travel costs, but not PLS employers	This requirement will apply to all PALM employers, for short-term and long-term workers.
5. Welfare and Wellbeing Support Person and Plan	
<p>Currently under the SWP, employers must have an approved Welfare and Wellbeing Plan. They must also ensure a welfare and wellbeing support person is located within 300 km of the workers location to provide support and hold fortnightly meetings with workers.</p> <p>PLS do not require a Welfare & Wellbeing Support Person and Plan</p>	This requirement will be extended to all PALM employers.

SWP + PLS Deed and Guidelines settings	PALM scheme Deed and Guidelines settings (consulted on 2021-2022)
6. Workers Portability (Short-term workers only)	
The department facilitates worker redeployments (with their agreement) if there is insufficient work or if there are concerns for their safety or wellbeing	3 options for worker portability (with agreement of the worker): <ul style="list-style-type: none"> • agreed between AEs offshore. • agreed between AEs onshore. • short term secondments, including to non-Approved Employers, of no longer than six weeks – subject to labour hire regulations in QLD, VIC and SA.
7. Employers required to provide accommodation for workers for the full duration of their deployment unless the worker opts for their own accommodation.	
This has been a longstanding requirement under the SWP Deed. PLS employers are required to provide accommodation for just the first three months.	The SWP requirement will be extended to longer term PALM scheme workers to ensure secure access to accommodation, given challenges around supply in regional and rural areas.
8. Additional transparency requirements around deductions	
All employers must comply with the applicable industrial instruments in relation to deductions	All deductions must be itemised in detail on worker payslips AEs must provide evidence to substantiate deductions upon request by workers (e.g., rental agreement, utility bills, balance of deductions)