



Migration Amendment (Strengthening Employer Compliance) Bill 2023

July 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 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 - \$10 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 fresh produce industry is a large employer of temporary migrants. Historically, the industry has been a significant employer of visa holders, who are not sponsored by an employer, specifically working holiday makers (WHM) or “backpackers” and international students. With the introduction of the Seasonal Worker Programme, Pacific Labour Scheme (now consolidated under the Pacific Australia Labour Mobility (PALM) scheme) and Horticulture Industry Labour Agreement, the number of migrant workers linked to a sponsoring employer is increasing significantly and rapidly.

As employers of a large number of migrant workers, the horticulture sector has been a strong advocate for ethical sourcing programs, greater access to sponsored and regulated visa schemes as well as a National Labour Hire Licensing Scheme. Given the importance of temporary migrants to the horticulture workforce, the Australian Fresh Produce Alliance (AFPA) strongly support improvements that assist in deterring unscrupulous employers and protect migrant workers who are vital to the horticulture sector.

The AFPA also support the establishment of powers to enable the Minister to declare certain employers to be “prohibited employers”. Of note, it is common practice in the horticulture sector to utilise labour hire providers. These labour hire providers often employ temporary visa holders both via sponsored (i.e. PALM scheme workers) and/or unsponsored arrangements (i.e. Working Holiday Makers / “Backpackers”).

In the instance where a labour hire provider becomes a prohibited employer, consideration must be given to the prevention of that labour hire company “phoenixing” and continuing to operate under a different name/ABN, but with the same persons/individuals managing the business. To this end, these new sanctions should not be seen as a substitute for a robust National Labour Hire Licensing Scheme, which could see these provisions better enacted.

The publication of information about prohibited employers is also supported as forming part of a framework to prevent poor employers from continuing to employ temporary migrant workers.

To assist the introduction of these changes, industry is strongly supportive of further educational materials being produced and disseminated. This would assist in further informing workers of their rights and provide a deterrent for poor employers. Additionally, consideration should be given with regards to the implementation and operation of these sanctions as to how workers, employers and industry can report this behaviour for action.

Collectively these measures, coupled with appropriate enforcement, should provide a strong disincentive for employers to breach employment and/or visa conditions. The AFPA have consistently advocated for high standards and enforcement of those standards within the horticulture supply chain. The Bill supports the integrity of visa programs and contributes to whole of government initiatives to combat migrant worker exploitation.

Addressing new provisions in the Bill

New Offences

The horticulture sector employs a number of temporary migrant workers across a number of sponsored and unsponsored schemes. The inclusion of new sanctions to address the coercion of temporary migrants to work outside their visa conditions is strongly supported as a vehicle to not only protect migrant workers but to deter poor employers from utilising this tactic.

The establishment of new criminal offences and associated civil penalty provisions for persons responsible for the offence is supported to ensure that a temporary migrant's visa status cannot be used to exploit them in the workplace. There have been media reports of this type of behaviour occurring in the horticulture sector, typically related to the requirement of working holiday makers to complete 88 days of farm work to obtain a visa extension. Ensuring that unscrupulous employers are unable to leverage this requirement to exploit workers through criminal and civil penalties is welcomed by the AFPA.

Prohibition on certain employers employing additional non-citizens

The AFPA are supportive of the establishment of a framework that enables the Minister or delegate to declare certain employers to be "prohibited employers". As outlined in the Migrant Workers Taskforce Report, extending this provision beyond employers that operate as sponsors is important in ensuring that all employers of migrant workers are covered by this provision.

The publication of information about prohibited employers as well as additional reporting requirements imposed on these employers is also supported as forming part of a framework to prevent poor employers from continuing to employ temporary migrant workers.

Aligning and increasing penalties for work-related breaches

Aligning and increasing the penalties for work-related breaches across individuals and approved work sponsors is appropriate. The penalties outlined for work-related breaches are set at a level that is a strong deterrent for offending. These measures coupled with the potential to become a prohibited employer, regardless of the type of visa holders employed, should provide a strong disincentive for employers to breach employment and/or visa conditions.

Enforceable undertakings and Compliance Notices

Enforceable undertakings where there has demonstrably been a breach of work-related provisions are supported. Obligations such as an agreement to remedy the breach and a commitment to future compliance measures are critical to ensuring that similar breaches do not occur again, and that these issues are well understood by other employers of temporary migrants. Further, the AFPA support the establishment of a framework in the Migration Act to enable the use of compliance notices. The use of compliance notices as an educational and behavioural change tool is well documented and will result in a greater level of voluntary compliance.