



Department of Employment, Skills, Small and Family Business

Submission to the Consultation on the Draft Copy of the SWP Deed of Agreement and Draft Guidelines

October 2019

About

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,
- One Harvest,
- Pinata Farms,
- Fresh Select,
- Mitolo Group,
- Mackay's Banana Marketing,
- Driscoll's,
- 2PH Farms,
- LaManna Premier Group,
- Rugby Farming,
- Freshmax, and
- 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	Broccoli	Fioretto	Oranges	Strawberries
Apricots	Broccolini	Green Beans	Peaches	Sweet Corn
Asparagus	Brussel	Herbs	Pears	Table grapes
Avocado	Sprouts	Lemons	Pineapples	Tomatoes
Baby Broccoli	Butternut	Lettuce	Plums	Water Cress
Baby Corn	Pumpkin	Mandarins	Potatoes	Wombok
Bananas	Cabbage	Mango	Cucumber	
Beetroot	Cauliflower	Mushrooms	Raspberries	
Blackberries	Celery	Nectarines	Salad leaf	
Blueberries	Cherries	Onions	Spinach	



Submission

The Australian Fresh Produce Alliance and its members are very supportive of the Seasonal Worker Program as a demonstrated success in providing employment opportunities for people from East Timor and the Pacific, and meeting the employment needs of companies within the fresh produce industry. Collectively, Alliance members employed more than 2,900 people through the Seasonal Worker Program in 2018/19 and this is expected to increase significantly in coming years.

The Seasonal Worker Program has been and continues to be a success because of good fundamental program design, strong requirements of employers and commitment from all parties to operationalise the program. The continued success of the program will be built on a continued pragmatic program design which is collaboratively developed and refined with industry. The significant requirements of employers are required to support the ongoing integrity of the program.

The Alliance and its members welcome the opportunity to provide input on the changes to the Deed of Agreement for the Seasonal Worker Program. The comments below are focussed on key issues and suggestions to improve the operational effectiveness and implementation of the program.

With regard to clauses in the deed on **Intellectual Property**, Approved Employers engaged in the program generate significant intellectual property in the development of operations and procedures for employing seasonal workers. This intellectual property is of commercial importance to the operation of individual companies (Approved Employers) and their ongoing profitability. Consistent with the Commonwealth Government's approach to contracting more broadly, we request that the intellectual property provisions be limited to the purposes of the Seasonal Worker Program. The current drafting requires that the intellectual property generated by companies participating in the program can be used by the Commonwealth for any purpose, which is inappropriate given the commercial nature of much of the information.

With regard to the clauses on **variation and termination** under the deed, it is understood that the Commonwealth Government seeks to protect the program and Seasonal Workers through clauses which provide for variation and termination of arrangements where there are substantive breaches by an Approved Employer. At the same time, there hasn't been a strengthening of the process around remedy which would be a more constructive approach to addressing concerns or breaches by an Approved Employer. In the first instance, we seek an approach which more equitably balances the Commonwealth's approach to a need for 'termination without cause', with an Approved Employers investment and expectation of due process. If this is not possible, the deed must outline a clearer process to address concerns/issues/breaches that allows Approved Employers operating in good faith to remedy those issues in an appropriate manner. As outlined previously, the Alliance and its members strongly support maintaining the integrity of the program and that all Approved Employers maintain high standards but this must be reinforced through a clear remedy process.

Worker welfare and wellbeing requirements and obligations on employers are key elements of the Seasonal Worker Program. Approved Employers consider these obligations as essential to the ongoing success of the program including for the year on year return of Seasonal Workers. The obligations to support Seasonal Workers with **banking, financial and superannuation advice** outlined in the deed including the completion of documents, registering for a Tax File Number and opening a bank account may constitute 'financial advice'. The Alliance and its members are seeking formal advice from the Department that the Australian Securities and Investment Commission (ASIC) do not consider the requirements outlined in the deed to be 'financial advice', and that the completion of those activities will not create a legal liability for Approved Employers in the future.



With the continued expansion of the Seasonal Worker program, the ongoing refinement of requirements and additional reporting obligations for Approved Employers, it is vital that the Departmental administration of the program continues to receive adequate resourcing and administrative support to maintain service levels. With regard to new Approved Employers, a substantive induction process to assist with program implementation for the Approved Employers, and resolving any challenges, will be beneficial to the long term success and integrity of the program.

The Alliance would welcome the opportunity to discuss these issues with the Department in greater detail, and we continue to support the ongoing success of the Seasonal Worker Program.

