



Migration Amendment (Protecting Migrant Workers) Bill 2021

Feedback on Exposure Draft

August 2021

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
- One Harvest
- Pinata Farms
- Fresh Select
- Mackay's Banana Marketing
- Driscoll's
- 2PH Farms
- LaManna Premier Group
- 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 fresh produce industry is a large employer of temporary migrants. Historically, the industry has been a significant employer of visa holders with work rights, who are not sponsored by an employer; including working holiday makers (“backpackers”) and international students. With the introduction of the Seasonal Worker Programme, Pacific Labour Scheme and Horticulture Industry Labour Agreement, the number of migrant workers linked to a sponsoring employer is increasing significantly.

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, informing potential migrant workers, providing increased visibility of employers using the migrant workforce and equipping the Australian Border Force (ABF) to meet compliance expectations.

The five key areas addressed by the Bill are:

1. new criminal offences in relation to the coercion or the exertion of undue influence or pressure on a migrant worker in relation to a work arrangement;
2. provisions to prohibit employers from employing additional non-citizen workers;
3. positive obligations on employers and other parties in the employment chain to use the VEVO system to verify a non-citizen’s immigration status and visa conditions prior to employing or referring a non-citizen for work;
4. aligning and increasing penalties for work-related breaches and related offences; and
5. new compliance tools for the ABF to support behavioural change.

These areas, applied across all employers of migrant workers, will provide a significantly increased level of protection to migrant workers, and as outlined in the Context Paper supplied with the Draft Exposure Bill will also address the competitive challenge faced by industry when a small number of employers are able to engage in exploitative behaviour.

To ensure that these amendments have the desired effect, it is important that not only is the Department and ABF empowered via legislation but must also be resourced appropriately to implement these improvements. To that end, industry strongly supports further educational materials around these amendments should they be introduced, being made available. This would assist in further informing workers of their rights and provide a further 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 poor employer behaviour, breaches or unscrupulous employers for action.



Background

The Australian Bureau of Statistics reports that Australian horticulture employs 72,800 people¹ across 11,490 individual businesses². The fresh produce workforce is defined by a significant requirement for production/harvest labour roles, relative to output. The harvest workforce in fresh produce is dominated by temporary migrants/visa holders, specifically Working Holiday Makers and Seasonal Worker Program visa holders. This is predominantly due to the seasonal nature of work in fresh produce.

As employers of a number of migrant workers, the horticulture sector have been strong advocates for ethical sourcing programs, greater access to sponsored and regulated visa schemes as well as a National Labour Hire Licensing Scheme. Outlined in the Context Paper provided with the exposure draft, the Bill includes five key proposals aimed at deterring unscrupulous employers, informing potential migrant workers, providing increased visibility of employers using the migrant workforce and equipping the ABF to meet compliance expectations. These are:

1. new criminal offences in relation to the coercion or the exertion of undue influence or pressure on a migrant worker in relation to a work arrangement in certain circumstances
2. provisions to prohibit employers declared as ‘prohibited employers’ from employing additional non-citizen workers (excluding permanent residents)
3. positive obligations on employers and other parties in the employment chain to use the relevant departmental system (currently the Visa Entitlement Verification Online (VEVO) system) to verify a non-citizen’s immigration status and visa conditions prior to employing or referring a non-citizen for work
4. aligning and increasing penalties for work-related breaches and related offences
5. new compliance tools for the ABF to support behavioural change.

A number of the five proposals above directly address recommendations from the Migrant Workers’ Taskforce Report.

Feedback on Proposed Legislative Amendments

The Context Paper supporting the Exposure Draft of the Bill acknowledges that the proposed legislative changes in the Bill will expand the remit of the ABF to play a greater role in addressing the exploitation of migrant workers who are not engaged through the employer sponsor program (i.e., temporary migrant workers with work rights whose visa has not been sponsored by an employer).

The horticulture sector is increasingly moving away from the employment of working holiday makers and other types of unsponsored visa holders and are increasing participation in more highly regulated employment programs with sponsorship obligations including the Seasonal Worker Program, Pacific Labour Scheme and Horticulture Industry Labour Agreement. While there is a structural change underway in the composition of the industry’s workforce that would make many employers subject to these conditions via existing sponsorship arrangements, the proposed amendments are important in protecting migrant workers and ensuring all employers are subject to the same conditions.

¹ ABARES (2018), Agricultural commodity statistics 2018

² ABS (2019), Agricultural Commodities 2017-18 Cat no 7121.0



Important in operating these proposed amendments, the Department and ABF need to be appropriately resourced to investigate, manage and prosecute and breaches where they occur.

Feedback on Exposure Draft

Part 1 – New Employer Sanctions

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, or by using migration rules is strongly supported as a vehicle to not only protect migrant workers but to deter poor employers from utilising this tactic.

Industry is strongly supportive of further educational materials around these new sanctions, should they be introduced, being made available. 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.

Part 2 – Prohibition on certain employers employing additional non-citizens

The AFPA are supportive of the establishment of a framework that enables the Minister to declare certain employers to be “prohibited employers”. As outlined in the Migrant Workers Task force 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.

It is common practice in the horticulture sector to utilise labour hire providers. These labour hire providers often employ temporary visa holders both via sponsorship arrangements (e.g. Seasonal Worker Program visa holders) or unsponsored arrangements, typically working holiday makers. 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 changes are not a substitute for a robust National Labour Hire Licensing Scheme, which could see these provisions better enacted.

Part 3 – Use of computer system to verify immigration status

As regular employers of temporary migrants, most horticulture employers are familiar with the requirement to undertake VEVO checks. While generally supportive of the intent of these conditions, that is to specify that a VEVO check must be undertaken before a visa worker commences employment, care must be taken to ensure that host employers in a labour hire arrangement are able and encouraged to determine the working rights of temporary visa holders on their property.

Part 4 – 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.

Part 5 – Enforceable undertakings for work related-breaches

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.

Part 6 – Compliance notices for work related breaches

The AFPA support the establishment of a framework and powers in the Migration Act to enable an Authorised Officer to issue a compliance notice. Important to the success of this provision is appropriate resourcing to enable the Department and ABF to work efficiently with employers to remedy any work-related offences or contraventions of work-related provisions. This is particularly relevant to follow up or reviewing evidence that has been provided to ensure that a compliance notice has been complied with; re-engagement with an employer after the issues of a compliance notice will produce better compliance and outcomes.

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.

