



AUSTRALIA + NEW ZEALAND

SEASONAL WORKER PROGRAMME

RECOMMENDATIONS FOR A FAIRER DEED FOR ALL STAKEHOLDERS

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Overview

The Australian horticultural industry is proud to partner with the Australian government in Pacific development through participation in the Seasonal Worker Programme (SWP).

The SWP provides Australian businesses with a workforce to produce and harvest valuable crops while supporting people in the Pacific to grow their income and skills. In 2016-17, approximately 6,166 participants from countries in the Pacific region arrived to work in Australia under the programme.¹ The World Bank estimates Australian employers have delivered approximately A\$144 million in net income gains to the Pacific region through the SWP.² In Tonga, the wages contribution through the SWP is higher than Australia's bilateral aid budget to that country.³

Approved Employers (including primary producers and labour hire companies) have made long-term investments in horticulture and need access to a reliable future workforce. These employers are highly motivated to work with the Australian government to supplement the domestic horticultural workforce with SWP participants.

PMA Australia-New Zealand Limited (PMA A-NZ) seeks to work with the Department of Jobs and Small Business to improve the SWP to ensure Australian horticultural businesses can manage risk while increasing the scope and popularity of the programme. The first step is to develop clarity around responsibilities under the Deed, which governs how businesses engage with the SWP.

Introduction

PMA A-NZ is the first stand-alone global affiliate of the Produce Marketing Association (PMA Global) - the leading global fresh produce trade association serving member companies around the world in every segment of the fresh fruit, vegetable and floral supply chain.

PMA members are buyers and sellers from every segment of the fresh produce and floral supply chain. Our global community includes growers, packers, processors, importers and exporters, wholesalers and retailers, foodservice, government agencies, associated suppliers to the industry, universities and many more.

By working across the whole supply chain, PMA A-NZ strives to assist businesses to increase their sales of fresh and safe produce to regional and global consumers. It also assists members to develop their internal business capabilities through motivated and skilled employees.

¹ World Bank (2018) *Maximizing the Development Impacts from Temporary Migration: Recommendations for Australia's Seasonal Worker Programme* Washington, DC: World Bank. Pg 19

² *ibid* pg 58

³ *ibid* pg 58

PMA A-NZ members face challenges in accessing the right people at the right time, to ensure that Australia's fresh fruit and vegetable industry contributes to the Australian economy and feeds healthy nutritious food to the nation. Accordingly, PMA A-NZ has been active in assisting our members to meet this challenge by supporting outcomes that deliver effective and fair solutions to all stakeholders.

On 1 March 2019, PMA A-NZ facilitated a forum in Melbourne with 13 representatives of Approved Employers under the SWP and large users of the programme. Additional input was provided by businesses unable to attend in person. The objective was to identify ways to improve the operation of the programme, with a focus on ensuring the Deed is fit-for-purpose. Participating companies represent in excess of 80 per cent of workers employed under the SWP in 2018-2019.

At the forum, attendees agreed that the SWP is a valuable programme and they are determined to get the best out of it for all stakeholders. The recommendations outlined below are designed to improve the operation of the Deed and through it, the SWP, for the benefit of the Government's stated objectives, the people employed under the programme and the participating businesses.

Recommendations

The focus of this submission is to improve the operation of the Deed, which is the first step in providing clarity and certainty to those businesses participating in the SWP. Approved Employers and large users of the programme believe regulation is important and will drive reform in the industry. Other areas of concern relating to the programme are outlined at the end of this submission

Mandated timelines for approvals by the Department be introduced to streamline business operations for businesses looking to participate in the SWP.

Approved Employers appreciate resource constraints occasionally occur at a Departmental level, however delays in approving recruitment or accommodation plans impacts employers' ability to plan for participation in the SWP.

The Department partner with Approved Employers to clarify the grounds for suspension, outlining criteria that ensure Approved Employers can manage operational risk.

Definitions and corrective actions need to be developed for breaches and suspensions that remove the personal or subjective nature of the interpretation of the Deed that currently exists. Approved Employers welcome more detail in the Deed, or in accompanying guidelines, that provide clarity around definitions of breaches and suspensions to support business operations.

The Department introduce a formal, tiered escalation process for managing suspected breaches and provide a mechanism for withdrawing a suspension.

A mutually agreed, tiered process for dealing with suspected breaches, which allows employers to give evidence or appeal decisions, will provide more certainty to business operations.

Suspensions that shut down or threaten to shut down a business or site at the time of year when businesses require access to reliable seasonal labour have the potential to close the business permanently. Approved Employers note that other breaches (Workplace Health and Safety, Fair Work Act, Food Safety) allow a business to continue operating while a breach is investigated.

Approved Employers do not have adequate visibility of breach conditions, and their connection to a suspension, to enable adequate risk mitigation. Approved Employers also submit that a process for seeking to withdraw a suspension is appropriate for ensuring appropriate remedies over the long term and for procedural fairness. More clarity and formality around this process would also encourage a culture of self-disclosure.

The Department consider the introduction of an accredited/approved provider for those Approved Employers with a considerable track record of success and compliance in SWP participation.

Similar in concept to the Australian Trusted Trader Programme, audited Approved Employers would have access to a range of benefits that simplify their processes and provide confidence to the Department of their integrity and compliance.

SWP reporting requirements (for reportable incidents) should mirror those for domestic employees.

The Deed does not clarify which events are reportable and therefore businesses tend to report everything in order to avoid a breach. This is a significant administrative burden and could be alleviated by simply stating that reportable incidents mirror those for domestic employees, under Australian law.

Pastoral care should be shared when SWP participants are placed through labour hire firms.

The pastoral care of SWP participants is critically important to the success of the programme. The obligations around pastoral care is the responsibility of Approved Employers, but not all Approved Employers are primary producers. It is difficult for labour hire firms to monitor all workplaces to ensure pastoral care is provided by primary producers, due to the distances involved. It is recommended that flexibility be granted to share this responsibility between the Approved Employer and the primary producer, with detailed responsibilities outlined in the respective Employment Plan.

Induction for returning workers should be streamlined

Induction with Fair Work Australia and Unions should take place during business induction periods to ensure maximum participation by workers.

Australian government work in partnership with Approved Employers to embed more flexibility on the return flight requirements to meet operational needs

Allowing Approved Employers to demonstrate they hold funds for a return flight for their SWP participants, rather than purchasing return flights at the time of recruitment would support cash flow for many businesses. This could be a benefit provided to accredited Approved Employers.

Other areas of focus outside the Deed

Approved Employers carry much of the risk in participating in the SWP and have highlighted additional areas of concern including:

- Ideally, Labour Sending Units should assume some responsibility for providing medically tested and physically fit programme participants for work in Australia and the Department should consider the introduction of a system for indemnifying Approved Employers if a participant arrives with a pre-existing medical condition that requires treatment in Australia, or repatriation.
- A process should be introduced to allow SWP participants to transfer between Approved Employers for those times exceptional circumstances prevent continued employment by the original sponsor. There is a benefit to both Approved Employers and SWP participants in being able to transfer to another business if an adverse event (eg floods, hail damage) prevents the participants being able to work on the enterprise detailed in the employment plan. Ultimately this will maximise the opportunity for workers to maximise their income for the duration of their stay.
- Approved Employers incur substantial upfront and ongoing expenses as a direct consequence of their involvement in the SWP. Currently Approved Employers can only recover what they spend on each assignment or worker. This does not enable an Approved Employer to recover ad hoc costs incurred when the circumstances of the employment plan change due to factors outside the control of the employer. There is not an intent to penalise the worker, however employers would like a fair process to ensure they are not required to subsidise workers in the event that the worker is not able to fulfil the agreed work plan.
- The Deed says employers must provide SWP participants with enough money to live on. The definition or amount supplied by the Department to Approved Employers has been variable and inconsistent, leaving them uncertain of their obligations. Approved Employers are interested in understanding if an independent index exists that provides a payment scale that could be applied, after transport and accommodation costs have been deducted. Utilising such an index would bring transparency and consistency to what is currently a contentious issue.
- The unmet demand testing requirement should run in parallel with domestic recruitment activities to enable timely, efficient workforce development.
- The cultural and language diversity of SWP participants presents several challenges in ensuring participants are aware of their rights and responsibilities. An acknowledgement of these barriers and the need for flexible approaches to supporting participants is required.
- There is a high administrative burden on the employer and the participant in relation to the recovery of superannuation. Currently the participant cannot claim their superannuation contributions until they have left the country. This is proving to be highly problematic due to poor telecommunications infrastructure on some Pacific islands, language barriers and excess red tap when dealing with superannuation companies. This system needs to be simplified.
- In moving to an online system, the Department should ensure hard copies of all forms are still available to reflect connectivity in rural areas.