



**Submission to the  
Working Holiday Maker Tax Review**

NSW Farmers' Association  
Level 6 35 Chandos Street  
St Leonards NSW 2065

**NSW Farmers' Association Background**

The NSW Farmers' Association (the Association) is Australia's largest State farmer organisation representing the interests of its farmer members – ranging from broad acre, Livestock, wool and grain producers, to more specialised producers in the horticulture, dairy, egg, poultry, pork, oyster and goat industries.

## 1 About NSW Farmers Association

NSW Farmers Association is Australia's largest state farming organisation representing the interests of the majority of commercial farm operations throughout the farming community in NSW. Through its commercial, policy and apolitical lobbying activities it provides a powerful and positive link between farmers, the Government and the general public.

NSW Farmers is the key state representative body for both intensive and extensive industries ranging from broad acre, meat, wool and grain producers to more specialised producers in the horticulture, dairy, poultry meat, egg, pork, oyster and goat industries. As part of its services, NSW Farmers provides workplace relations services to its members, offering advice, assistance and representation in employment related matters.

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## 2 Background

- 2.1 The NSW Farmers Association (“the Association”) welcomes the opportunity to provide commentary on the themes set for the working holiday maker tax review.
- 2.2 The backpacker tax was introduced in May 2015 Federal Budget Announcement, proposing for holders of working holiday visa (more colloquially known as backpackers) to be deemed as non residents for tax purposes, effectively taxing working holiday makers at 32.5% from the first dollar they earn.
- 2.3 The tourism industry and the agriculture industry voiced significant concerns with the backpacker tax. There are indications that the backpacker tax announcement has started to drive change in behaviours amongst working holiday makers who are changing their travel plans or planning to cut short their stay in Australia once the backpacker tax is introduced.
- 2.4 The Government conducted a review of the tax earlier this year in April. As a result of the process, industry came together and put forward a number of recommendations, including:
  - 2.4.1 A compromised flat tax rate of between 13% to 19%
  - 2.4.2 Rethinking of superannuation paid to working holiday makers
  - 2.4.3 A number of longer term solutions that include introduction of a dedicated work visa for agriculture and changes to the current working holiday maker program.
- 2.5 In May 2016, the Government announced a six months delay to the backpacker tax review and another round of review process.
- 2.6 We look towards this Review to find a resolution for the backpacker tax issue. Growers need certainty of seasonal labour supply to be able to plan and maximise their production. However, it would be selling the industry short to attempt to solve a number of the industry’s labour challenges in such a rushed and tight timeframe. We look forward to continue working the Government to establish a process and strategy for the development of secure and sustainable labour supply for the farming sector.

## 3 Introduction

- 3.1 Agriculture is a critical contributor to the State’s economy and crucial to the economic well being of rural and regional NSW.
- 3.2 Agriculture contributed approximately \$15.577 billion directly to the NSW economy in financial year ending June 2015<sup>1</sup>. In 2012-2013, the NSW agricultural industries contributed \$5.293 billion to the NSW exports<sup>2</sup>. Approximately 55,375 people are

<sup>1</sup> ABS, *Australian National Accounts, State Account, 2014-2015*, 52220.0, June 2015.

<sup>2</sup> DAFF, *Food Stats 2012-2013*, Table5.8 Australia’s Food Exports by transformation and states

directly employed in the NSW agricultural industry<sup>3</sup>. Importantly, that employment is regionally based with 30% of employment in rural communities involving primary industries services and activities, half of which is directly attributable to agriculture<sup>4</sup>.

- 3.3 Based on current global and national trends, the industry has enormous potential for growth, but it also faces significant challenges that it must overcome to realise its potential, one of them being labour supply issue.
- 3.4 Farmers' preference has always been to employ from the local community. However, the reality is if the farming sector is to rely solely on domestic labour, it could not survive. According to the Department of Foreign Affairs and Trade, Australian farmers lose \$700 million per year due to shortage in seasonal workers. The ability to access foreign workers is important for addressing labour shortage in the agriculture sector.
- 3.5 Working holiday makers have provided crucial supply of seasonal labour for the industry. In the context of already declining number of incoming working holiday makers, we need to be championing policies that encourage working holiday makers to come to Australia instead of introducing a tax that will deter them from coming.
- 3.6 The NSW Farmers participated in a consultation meeting with Deloitte Touche Tohmatsu on 31 August 2016. This submission is supplementary to the comments and recommendations we have put forward during the meeting. We also support the submission and recommendations made by the National Farmers Federation.

## **4 Visa labour needs of the agriculture sector**

### **The significance of working holiday maker visa for agriculture industry**

- 4.1 Working holiday makers are vital in keeping Australian agriculture going. These young people are mobile, willing to travel to regional areas and take up work as part of their travel, making them a suitable source of seasonal labour pool desperately needed by the agriculture sector.
- 4.2 Working holiday makers fill a huge gap in the number of people available for seasonal work: harvesting, sowing, spraying, picking and packing fruits, or dairying. These are the types of work that not many Australians would do. Not many Australians are willing to relocate to perform temporary work.

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<sup>3</sup> ABS Census 2011, employment by place of work.

<sup>4</sup> Ibid.

**Examples**

A cherry grower in Hillston, NSW, requires around 350 pickers during their picking season each year, usually lasts for 4 weeks, around end of October to November. There are not enough people locally to support the operation.

A blueberry grower in northern NSW indicated they cannot survive without backpackers. 90% of their picking and packing workers are working holiday makers. Without working holiday makers, they wouldn't be able to operate at their optimum capacity, jeopardising the employment of their 13 local permanent employees.

Working holiday makers allow a mixed farming operation in North Star, NSW, to fill seasonal positions for planting and harvesting. Some working holiday makers have grown up on farms and can be involved in plant operation and/or livestock management, some have trade skills that are able to put to great use on the farm. Not having these temporary positions filled means that the farm would not operate efficiently, core staff would be burdened to complete all tasks during busy periods, increasing the chance of workplace incidents due to workers being fatigued.

An apple and cherry grower in Orange, NSW, required 50 pickers and packers during their 2015 cherry season. After going through a process of recruiting, they could only recruit 6 local workers and the remaining workers were all working holiday makers.

4.3 There has been a consistent decline of incoming working holiday makers in the last three years affecting the number of workers available to work seasonally in agriculture. Generally, around 20% of 417 visa holders apply for a second year visa. As the total number of incoming working holiday makers reduce, so is the pool of seasonal workers available to work in agriculture:

Period	Number of second year (subclass 417) visas granted	% of visa applicants who worked in agriculture	Number of visa applicants who worked in agriculture
July'13 to June '14	45,950	90%	41,355
July'14 to June '15	41,339	92%	38,032
June'15 to Dec'15	19,320	92%	17,774

4.4 The backpacker tax will cause working holiday makers to choose another country as their working holiday destination and those who come here may not stay as long. Working holiday makers are well connected cohorts who are well informed and active on social media. We are already experiencing the impact of the backpacker tax announcement and declining rate of working holiday makers is expected to sharply exacerbate if the backpacker tax is to go ahead.

4.5 Apple growers in Orange had experienced shortage of available working holiday makers during apple harvest season at the beginning of this year. To ensure the fruits were picked, growers in the region had to collaborate and organise a sharing arrangement of the available working holiday makers.

4.6 A number of members have also reported reduced response rate from working holiday makers for seasonal job advertisements. When members discuss tax with their working holiday maker workers after the backpacker tax announcement, the

overwhelming response they receive is working holiday makers will choose not to come to Australia, especially when there is an alternative country they can go.

- 4.7 These examples are in line with the findings of a survey done by Agrilabour Australia. The survey involved around 1,250 working holiday makers and 150 prospective working holiday makers. 52% of the respondents decided not to stay in Australia after backpacker tax is implemented and 84% had since heard of working holiday makers changing their plans about coming to Australia because of the tax.

#### **88 days specified work requirement**

- 4.8 The Department of Immigration and Border Protection required payslips as supporting document for working holiday makers' second year visa (subclass 417) application from 1 September 2015. As a result of this policy change, employers are placed in a position where they need to carefully assess a working holiday maker's work days, and determine how many days of "specified work" they can sign off for the working holiday maker's second year visa application.
- 4.9 While some information is available on the Department's website, it is unclear how the Department would assess certain situations. For example, whether a working holiday maker working 30 hours a week over 5 days can claim the entire week (7 days) as specified work, or only the exact days of work?
- 4.10 The Department of Immigration and Border Protection's internal Procedures Advice Manual provides guidance for officials on how to assess the 88 day requirement, some parts are published on their website. It includes the following statements"

"In calculating 88 days of specified work, only full days of work are counted. One full day of work is the minimum number of hours considered a full time standard day by the particular industry in which the applicant is employed."

"The shortest period that may be counted towards the specified work requirement is one day of full time work (for that industry). It is not acceptable to add two half days to make one full day of work, or to count one double shift as two full days of work."

"Applicants whose work is equivalent to full time (even if employed on a casual basis) in the industry in which they are employed, or who are working the Australian standard working week of 35 to 40 hours, may count weekends which fall within their period of employment towards their 88 day total. However, if their work is not equivalent to full time employment, i.e. less than the standard, then only actual full days worked can be counted."

- 4.11 The terms "day" is not defined in migration legislation and the current approach excludes any part-time or casual work of less than 7 hours per day. The consideration of when weekends can be calculated is confusing. The guidelines seems to suggest casual employees may claim 7 days per week on certain week when they work full time equivalent hours but only claim 5 days as specified work when there is a wet day that cause them to work less than 35 hours.

- 4.12 In our view, this approach particularly narrows the scope of the second year initiative. On a practical level, it causes unnecessary uncertainty for the employer and the working holiday maker involved.
- 4.13 NSW Farmers share the same view with the National Farmers Federation that a better approach is to calculate work on an hourly basis if the payslip requirement remains. This approach provides better clarity, and ensures that working holiday makers are not unfairly disadvantaged by working part time or on a casual basis or when there are other factors that limit work hours in a particular week such as wet days, breakdown of machinery.
- 4.14 In addition, there should be flexibility afforded to employers to determine what constitute as a full day of specified work for employees who are being paid by piece-rate when no work hours are recorded.

### **Seasonal Workers Programme**

- 4.15 There have been suggestions for the Seasonal Worker Programme (SWP) as a source of seasonal workers to reduce the agriculture industry's reliance on working holiday makers. While the SWP is a valuable program, it is far from being able to replace working holiday makers as adequate labour source for the agriculture industry.
- 4.16 Despite consistent growth since its inception, the latest figures show that workers involved in the SWP are less than 12% of working holiday makers working in agriculture. 4485 workers were approved in 2015/2016 for agriculture work under the SWP, compared to 38,000 working holiday makers who did their qualifying work in agriculture for their second working holiday (subclass 417) visas<sup>5</sup>.
- 4.17 While there have been a number of changes made to the SWP earlier this year, the uptake of the program from the farming sector will likely to continue to be low as the programme continues to be unviable to small and medium farming businesses.
- 4.18 The main hurdle is the cost impost of upfront payment of workers' transportation costs. As an example, if the average transport cost per worker is \$1,500, the initial outlay required to bring in 10 workers would be \$15,000. This is cost prohibitive for most small and medium farming businesses, especially when most fruit harvest operation would require more than 10 workers. It requires a leap of faith by growers to invest significant sums of money before any work is done, especially when harvest could easily be impacted by unexpected weather condition.
- 4.19 In addition, the lack of flexibility in the design of SWP acts as deterrence for farmers to access the program, particularly:

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<sup>5</sup> Department of Immigration and Border Protection, *Working Holiday Maker visa programme report 31 December 2015*  
<http://www.border.gov.au/ReportsandPublications/Documents/statistics/working-holiday-report-dec15.pdf>

4.19.1 Labour Market testing - Approved Employers under the program are required to prepare a recruitment plan for each group of workers they seek to employ, place job advertisements for a minimum of 2 week period and report back to the Department of Employment. The requirement to advertise and offer work to Australian jobseekers before seeking to recruit is problematic and unnecessary red-tape when in practice Australians don't apply for these jobs. Australians who are seriously looking for seasonal jobs wouldn't be looking for vacancies 2 or 3 months ahead.

4.19.2 Guarantee of minimum hours - Approved Employers are required to guarantee an average of 30 hours per week during the duration of workers stay. Agriculture is heavily reliant on the weather and a particularly wet season could mean that workers are not able to be provided with work over a number of days.

## 5 Wages and taxes applicable to working holiday makers

5.1 Currently all temporary work visa holders in Australia are taxed depending on whether they are considered as resident for tax purposes, with the exception of workers involved in the Seasonal Workers Programme who are taxed at 15% flat tax rate.

5.2 The tax rates that apply to residents and non-residents are as follows<sup>6</sup>:

Taxable income	Tax for residents	Tax for foreign residents
0 – \$18,200	Nil	32.5c for each \$1
\$18,201 – \$37,000	19c for each \$1 over \$18,200	
\$37,001 – \$80,000	\$3,572 plus 32.5c for each \$1 over \$37,000	
\$80,001 – \$180,000	\$17,547 plus 37c for each \$1 over \$80,000	\$26,000 plus 37c for each \$1 over \$80,000
\$180,001 and over	\$54,547 plus 45c for each \$1 over \$180,000	\$63,000 plus 45c for each \$1 over \$180,000

5.3 The residency test for tax purposes is based on whether person has stayed in Australia for more than 6 months and maintains a base during their stay.

5.4 Our alternative proposition to deactivate the tax free threshold for working holiday maker is still in keeping with the existing tax rates.

5.5 While we believe that working holiday makers should pay tax when they are working in Australia, 32.5% is just too high. Working holiday makers earnings are

<sup>6</sup> Australian Taxation Office, accessed 20 August 2016: <https://www.ato.gov.au/rates/individual-income-tax-rates/>



spent in the community where they work. With the incentive of the 88 days approved work, they travel and stay in regional communities, stimulating the local economy with their expenditure. Additional revenue generated from the backpacker tax will be at the expense of economic activities in regional areas.

**Comparative wages and tax**

5.6 New Zealand is our closest competitor in attracting working holiday makers due to geographical proximity between the two countries. Working holiday makers can easily move between the two countries once they arrive in this part of the world.

5.7 Working holiday visa holders in New Zealand would be considered as resident for tax purposes if they have been in New Zealand for more than 183 days, and the following tax rates apply: <sup>7</sup>

<b>Tax rates for the 2015-2016 tax year</b>	
<b>Taxable Income</b>	<b>Tax Rate</b>
Up to \$14,000	10.5%
Over \$14,000 and up to \$48,000	17.5%
Over \$48,000 and up to \$70,000	30%
Remaining income over \$70,000	33%

5.8 The current minimum wage rate (before tax) in New Zealand as at 1 April 2016, which applies to employees is \$15.25.

5.9 The proposed backpacker tax will cause working holiday makers to be worse off in Australia compared to their cohorts in New Zealand should the backpacker tax be introduced. New Zealand will be a more attractive destination, especially when financial consideration is one of the top priorities for a young person planning an extended trip.

	<b>Australia</b>	<b>Australia</b>	<b>New Zealand</b>
<b>Minimum pay</b>	\$17.70	\$17.70	\$15.25
<b>Tax rate</b>	32.5%	19%	10.5%
<b>Net pay</b>	\$11.95	\$14.34	\$13.65

**Superannuation**

5.10 The purpose of Australia’s superannuation system is to provide income in retirement to substitute or supplement the Age Pension. Working holiday makers are unlikely to retire in Australia by the very nature of the visa being a short term visa. Payments of superannuation to working holiday makers involve significant red tape without fulfilling its intended purpose.

5.11 Employers are required to collect superannuation details or set up a default fund for working holiday makers when they commence work. The accumulated

<sup>7</sup> Inland Revenue, accessed 18 August 2016: <http://www.ird.govt.nz/how-to/taxrates-codes/rates/itaxsalaryandwage-incometaxrates.html>

superannuation fund for a working holiday maker is generally small at the end of their stay, around \$1,235 based on an average earning of \$13,000 during their stay. Working holiday makers may apply to access their superannuation once they have left the country, incurring tax of around 35% plus fees and charges from the superannuation fund and agent (if an agent is being used).

- 5.12 While NSW Farmers believes workers are entitled to the same pay rate to perform the same type of work, payment of superannuation to working holiday makers is an area that requires streamlining to cut down on the red tape involved.

## **6 Protection for vulnerable workers**

- 6.1 NSW Farmers supports its members to grow the best produce, including promotion of best practice workplace relations practice. We have a team of Industrial Relations professionals who provide advice, assistance and guidance to members on their obligations as employers, minimum employment conditions (including minimum wages, Award conditions and the National Employment Standards).
- 6.2 We do not tolerate those who are wilfully breaching employment related laws. These operators are tarnishing the industry and making it difficult for everyone to compete on equal footing. Those who have been proven to be breaching the laws should face the full force of the law.
- 6.3 The *Fair Work Act 2009*, the underpinning legislation to the majority of private enterprise employment applies similarly to Australians and foreign workers. Minimum conditions of employment, protection from employer's unfair and unlawful conduct and protection from unreasonable deductions all apply to foreign workers, including those employed by labour hire companies.
- 6.4 The *Migration Act 1958* prohibits any person or business from supplying or providing work to people without the appropriate work rights in Australia.
- 6.5 NSW Farmers believes current Australian workplace and migration laws are sufficiently robust to protect the rights of workers including foreign workers.

### **Regulatory arrangements related to labour hire companies**

- 6.6 Most exploitation of foreign workers cases involve contractors or labour hire companies. This is likely due to low barriers of entry to set up a labour hire company that allows rogue labour hire companies to adopt "phoenix behaviour". Phoenix behaviour refers to a business that dissolves quickly and then re-emerges under a different name making it difficult to trace if it does the wrong thing.
- 6.7 There are certainly concerns from the industry about less reputable labour hire companies that fail to undertake work rights check, fail to pass on award entitlements to worker or operate in the cash economy. The acts of these recalcitrant operators are creating bad press to the industry. In addition, farmers are

increasingly getting more exposed to be implicated in any contravention as FWO steps up prosecution for accessorial liability under section 550 of the *Fair Work Act 2009*.

- 6.8 NSW Farmers does not support a mandatory licensing regime for labour hire companies as it is likely to increase red tape and penalises the majority of operators who are compliant. However, it is desirable to create a voluntary scheme that provide the farming community with better information in differentiating between reputable labour hire companies with those that are less so. One option to consider is to establish a voluntary registration scheme for labour hire companies administered by the Department of Employment. This option provides farmers with reliable information and choice when they are engaging a labour hire company.

## **7 Conclusion**

- 7.1 The proposed backpacker tax should be abolished as a matter of urgency. A better alternative in our opinion is to deactivate the tax free threshold and apply a flat tax and replaced with a flat tax rate that maintains Australia's competitiveness in attracting working holiday makers.
- 7.2 The backpacker tax announcement and prolonged uncertainty about the backpacker tax has damaged Australia's image as an attractive destination for working holiday makers. A joined effort between industries and government to advertise Australia as the destination of choice will be crucial to cease the declining numbers of incoming holiday makers.
- 7.3 NSW Farmers looks forward to continue engaging with the government to progress a number of recommendations outlined in the National Farmers Federations' submission.