



# SEASONAL WORKFORCE

**A SUSTAINABLE SOLUTION FOR THE  
FUTURE OF AUSTRALIAN AGRICULTURE**

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## ACRONYMS

<b>HILA</b>	Horticulture Industry Labour Agreement
<b>SWP</b>	Seasonal Worker Programme
<b>WHM</b>	Working Holiday Maker
<b>AFPA</b>	Australian Fresh Produce Alliance



# EXECUTIVE SUMMARY

The agriculture sector in Australia is highly dependent on overseas workforce, particularly in the thriving horticulture sector in several States and Territories.

Clearly COVID-19 has created significant challenges for the industry, but workforce shortages have existed for many years prior to the pandemic and will persist into the future. Many of the points made here are therefore relevant to a non-COVID context. COVID-19 has however provided a unique opportunity for reform in this space.

Most pre-existing visa programs are not suitable for the highly seasonal, sporadic, short-term and transient nature, characteristic of the horticulture industry. Programs that do meet these requirements, such as the Working Holiday Maker (WHM) program, do not provide a stable, sustainable solution for the sector.

Greater capacity to access legal, sustainable sources of low-skilled workers for long and short-term work is desperately needed for producers and employers in the industry. Whether it's through the extension of existing programs or the creation of new ones, greater access to low-skilled workers will be instrumental to the industry's growth in the future and reaching \$100 billion by 2030.

This policy document discusses migration programs crucial to the horticulture sector, including the Seasonal Worker Programme (SWP), the WHM, and the Horticulture Industry Labour Agreement (HILA). It considers alternative options and new proposals, such as local labour options, a dedicated harvest visa for the horticulture sector, as well as visa status resolution measure for undocumented workers in the industry. It also assesses the impact of COVID-19 on the sector.

The policy poses several recommendations that would resolve shortcomings with pre-existing programs, and others that would assist in the growth of the industry into the future. These recommendations are as follows:

- 1.** *Review in-country vetting processes in SWP partner countries to ensure appropriate workers are selected*
- 2.** *Grant producers/employers greater power in selecting workers through the SWP to ensure workers are suitable to available positions*
- 3.** *Provide education and training for SWP workers focused on community expectations and basic skills and knowledge in consultation with local officials to overcome language and cultural barriers*
- 4.** *Provide funding to regionally based organisations to fulfill pastoral care roles for SWP workers*
- 5.** *Review criteria and processes for seasonal worker portability*
- 6.** *Develop a government led co-operative model for single approved employers which manages the portability component of their workforce.*
- 7.** *Conduct nationwide consultation with employers and workers to identify challenges and improve the WHM program*
- 8.** *Consider further measures to improve protections for Working Holiday visa holders during specified work requirements*
- 9.** *In lieu of a dedicated harvest visa, investigate the inclusion of low-skilled positions for 'picking and packing' roles in the HILA program.*

**10.** *Improve marketing and messaging around the HILA to ensure benefits are properly communicated*

**11.** *Improve access and communication for industry with the Department of Home Affairs to provide greater support for HILA applicants*

**12.** *Establish regional hubs for the Department of Home Affairs where industry can meet officials face to face for assistance*

**13.** *Conduct research to approximate the total demand for low-skilled labour across the agriculture sector to inform program development*

**14.** *Design an agriculture/harvest visa program similar to that proposed by the Australian Fresh Produce Alliance (AFPA)*

**15.** *Design a measure for a timely implementation of undocumented workers in the agriculture industry through a Pandemic Status Resolution visa.*

# COVID-19

A report by consultancy firm EY, suggests the horticulture industry will experience a shortfall of up to 26,000 workers between June 2020 and December 2021, with fruit commodities forecast to make up 85% of demand for casual labour. This would represent a peak of 36-59% labour supply shortage over Nov 20 - June 21, which translates to a net gap of 20-33% over the 18-month period. In other words, only 67 – 80 out of every 100 casual roles will be filled.

In August 2020, the Commonwealth and State Governments, through the National Cabinet, entered an agreement to restart the Seasonal Worker Programme. It is the responsibility of each State and Territory Government to put in place arrangements for managing the arrival of SWP workers, consistent with their respective Public Health Orders and within their caps on international arrivals where applicable.

A recent agreement between Tasmania and Victoria, to quarantine 1,500 workers in Tasmania before being transferred to work in Victoria, is welcomed by growers in Victoria, but it is a case of too little too late. Victoria was the last of the States to outline a plan for the return of seasonal workers, resulting in insecurity and devastating outcomes for the horticulture industry. Local growers in the Mallee electorate have recently reported mulching entire crops due to the lack of workers to pick the fruit.

Several proposals have been made to the Victorian Government, including one by ASPEN Medical, that would see the development of a 200-capacity quarantine facility in Mildura, which should be pursued further. More needs to be done at the State level to expedite quarantine arrangements for workers to ensure local employers

have access to more workers. While the Tasmania/Victoria collaboration is welcome, it is far from adequate. On Farm quarantine is successful in Queensland and a national approach would provide greater security for the horticulture industry.

The extension of the Temporary Activity visa for the COVID-19 pandemic, allowing workers to remain in Australia to work in critical sectors such as agriculture for a further 12 months, has somewhat helped industry to weather the storm. However, the workers remaining in the country under this visa will not be sufficient for upcoming harvests. Many thousands of workers left the country at the beginning of the pandemic, leaving growers to make difficult decisions for harvesting.

Travel bubbles with Pacific Island nations, such as Vanuatu, have been explored. The difficulty with any bubble arrangement is that health officials in Australia need confidence that the health system in a partner country has appropriate measures in place to manage the pandemic. Under a bubble arrangement, the Australian Government can't control who enters the partner State from other countries where the virus may have a foothold. In this respect it is difficult for Australian officials to have confidence in the integrity of another country's systems.

# SEASONAL WORKER PROGRAMME

The SWP has been positively taken up, with many employers investing heavily in this source of labour. Overall, the program has been well received with a key benefit being the ability to bring back the same workers for successive seasons.

The Seasonal Worker Programme has experienced significant growth in recent years. The visa that SWP workers enter the country on is visa subclass 403. At end of FY 2014-15 there 1,281 403 visa holders in the country. By the end of FY 2018-19, this number increased to 7,526 (figure 1).

Several challenges with the program have been identified through extensive consultation with growers, employers, and industry representatives, in Mallee. The findings include:

- **Suitability of workers**
  - As workers are largely paid on a piece-rate basis, workers that aren't suitable to the task will make less money than their counterparts, leading to negative experiences in the program, and in addition, a negative perception of the program in Australia and in partner nations.
  - Lack of worker suitability is magnified by the inability of employers to have a say in who is selected to work for their business.

- **Cultural Issues**
  - While many workers assimilate well into the community, there have been some cases of excessive alcohol and drug use, as well as violence and sexual violence. These issues lead to negative experiences for growers and employers.
  - Less serious issues include language barriers, financial literacy, and driving skills.
  - Presently, approved employers are required to fulfil pastoral care roles for workers. This responsibility should be handled by third party agencies to better manage cultural sensitivities and reduce burdens for growers.
- **Pre-departure education and training**
  - Existing pre-departure materials are complicated and seem to serve as a box ticking exercise for officials.
  - Employers have found that they have had to provide information topics such as wages, taxes, super, Australia's currency, how to open a bank account, where to access to medical treatment, etc., which should have been provided pre-departure, this is creating additional burdens for employers.
- **Approved employer process**
  - The process to become an approved employer, and the regulatory standards required thereafter, are onerous and time-consuming, making it difficult for smaller growers to take this on.

**Figure 1: Seasonal Worker Programme data**

Visa Subclass	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
403 Temporary Work (International Relations)	1,281	1,544	4,657	5,724	7,526	6,161

- *Complexity in the approved employer process creates an over reliance on employment agencies such as MADEC, which increases costs for producers.*

- *Fundamentally, the system impacts growers with increased costs and burdens in lieu of other options to secure overseas workers.*

- **Portability of workers**

- *The portability of workers under the SWP has been significantly improved through the pilot Regional Agricultural Migration Program, however significant challenges remain.*

- *Moving workers from farm to farm to meet seasonal demand is only accessible if the workers remain with a single approved employer due to the regulatory burdens of moving workers from one approved employer to another.*

- *Only approved employers that are employment agencies or labour hire contractors that have access to a network of growers have the capacity to move workers to successive positions.*

- *Individual growers that undertake the approved employer process will struggle to manoeuvre their workers, reducing outcomes for both employer and worker under the program.*

SWP to ensure workers are suitable to available positions.

- Provide education and training for SWP workers focused on community expectations and basic skills and knowledge in consultation with local officials to overcome language and cultural barriers.

- Provide funding to regionally based organisations to fulfill pastoral care roles for SWP workers.

- Review criteria and system for seasonal worker portability.

- Develop a government led co-operative model for single approved employers which manages the portability component of their workforce.

## **Recommendations:**

- Review in-country vetting processes in SWP partner countries to ensure appropriate workers are selected.

- Grant producers/employers greater power in selecting workers through the



# WORKING HOLIDAY MAKER

A majority of the low-skilled positions around the country and in Mallee are filled through the Working Holiday Maker (WHM) program. A study conducted by consulting firm EY indicates WHM workers make up 49 percent of casual workers in the horticulture industry. Many employers find success through this program and extensions to the number of years available to workers under these visas have been welcomed.

The minimum period of work required to be eligible for a second WHM visa is three months, while the minimum period required to be eligible for a third WHM visa is six months. For this reason, many WHM workers will opt to return to their travels after fulfilling these minimum requirements.

Data from the Department of Home Affairs reveals the degree to which WHM visa holders participate in work requirements for subsequent visas and in the agriculture sector (*figure 3*).

In FY 2018-19, 165,817 first year WHM visas were granted, as well as 43,219 second year visas. Of these second year visas, 36,125 were obtained by completing work requirements in the agriculture, forestry, and fisheries industries.

Between FY 2014-15 and FY 2019-20, 21 percent of first year visa holders obtained a second year visa. Approximately 87 percent of people that obtained subsequent year visas during this period did so via the agriculture, forestry, and fisheries industries. This means that an average of 33,150 people worked in the agriculture, forestry, and fisheries industries each year across this period.

The data also reveals that fewer people are obtaining subsequent visas through work in agriculture. In FY 2014-15, 91.9 percent of people obtained a subsequent visa through work in the agriculture, forestry, and fisheries industries. In FY 2019-20 this figure was 75.9 percent, with a clear downward trend across the period (*figure 2*).

This trend reveals that fewer WHM visa holders are opting to work in agriculture in favour of other industries such as mining and construction. This is worrying given that WHM workers are the primary source of low-skilled labour for the agriculture industry.

Claims of lack of payment, poor living conditions, and mistreatment by employers have been well documented in media. The National Temporary Migrant Work Survey conducted in 2017 by the University of NSW and the University of technology Sydney found that 'wage theft' is widespread among international students and backpackers in Australia. The survey of 4,322 temporary migrants from 107 countries found that one in three international students and backpackers are paid about half the legal minimum wage.

The Commonwealth Government has undertaken several measures to address exploitation, including through establishing the Migrant Workers Taskforce. Legislative changes have also been made through the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017, which are intended to deter unlawful practices, including those that involve deliberate and systematic exploitation of workers.

## Recommendations:

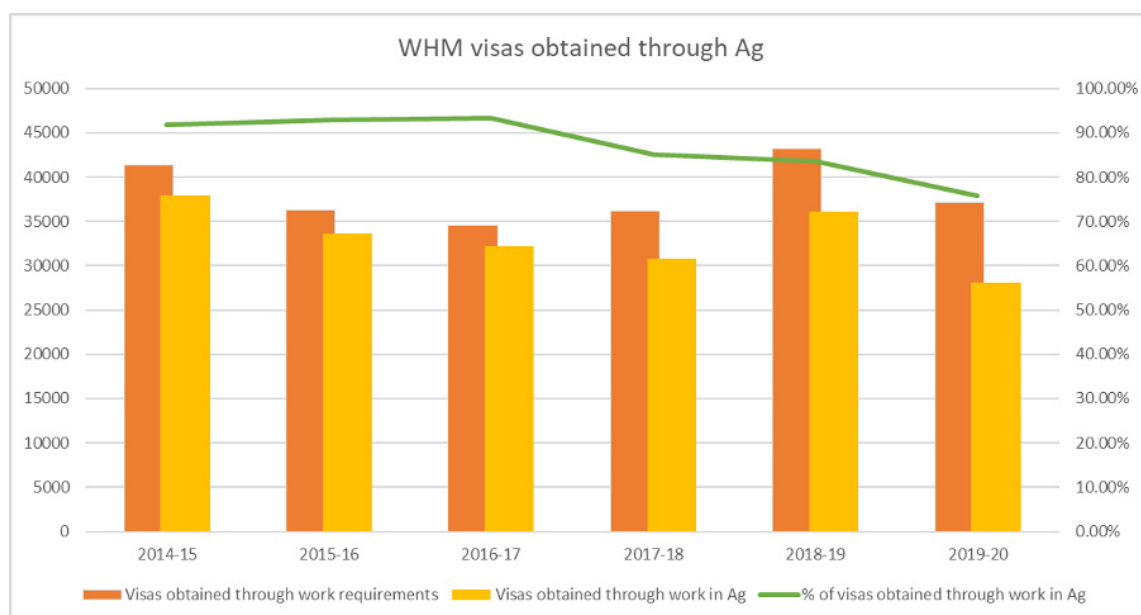
- *Conduct nationwide consultation with employers and workers to identify challenges and improve the program.*
- *Consider further measures to improve protections for Working Holiday visa holders during specified work requirements.*



**Figure 3: Working Holiday Maker visa data**

	Visa Type	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
417 Working Holiday	First year	173491	159409	157858	152622	142805	92282
	Second year	41339	36264	34097	32828	37418	28316
	Third year	NA	NA	NA	NA	NA	2075
	Total	214830	195673	191955	185450	180223	122673
	Second Year obtained through work in Ag	37974	33666	32191	30807	33768	23181
	Third Year obtained through work in Ag	NA	NA	NA	NA	NA	1562
	Total visas obtained work in Ag	37974	33666	32191	30807	33768	24743
	Visa Type	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
462 Working Holiday	First Visa	11982	18910	18647	21667	23012	19845
	Second Visa	NA	NA	409	3339	5801	6128
	Third Visa	NA	NA	NA	NA	NA	603
	Total	11982	18910	19056	25006	28813	26576
	Second visas obtained through work in Ag	NA	NA	NA	NA	2357	3141
	Third visas obtained through work in Ag	NA	NA	NA	NA	NA	254
	Total visas obtained through Ag	0	0	0	0	2357	3395
	Visa Type	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Grand Totals	First year	185473	178319	176505	174289	165817	112127
	Second year	41339	36264	34506	36167	43219	34444
	Third year	NA	NA	NA	NA	NA	2678
	Visas granted (all years)	226812	214583	211011	210456	209036	149249
	Visas obtained through completing work requirements	41339	36264	34506	36167	43219	37122
	Visas obtained through work in Ag	37974	33666	32191	30807	36125	28138
	% of subsequent visas obtained through work in Ag	91.86%	92.84%	93.29%	85.18%	83.59%	75.80%

**Figure 2: Working Holiday Marker visas obtained through work in Agriculture.**



# LOCAL LABOUR OPTIONS

Employers and producers continuously market test available positions. Despite higher unemployment due to the pandemic, we have seen a limited increase in local participation in sector. Incentives for locals to work in harvest positions have also been limited, including the Federal Government's relocation assistance scheme, which offers reimbursements for eligible costs associated with relocation to eligible job seekers. There is, however, likely to be a lag in applications for these reimbursements, considering that workers will continue incurring costs related to their relocation beyond their initial date of employment.

Employers argue that it is not cost effective to invest in local workers, as there is every likelihood the worker will leave their position in favour of other employment. Many employers also perceive local job seekers as unwilling to fill these positions. For these reasons local labour options are not a long-term solution to the sector's needs.

# HORTICULTURE INDUSTRY LABOR AGREEMENT

When it was introduced the HILA was met with great anticipation by producers and employers.

Unfortunately, the execution of the program was poorly managed, and its purpose and benefits were not adequately communicated. Inadequate marketing of the program may have contributed to the poor take up by industry.

The application process is onerous, with limited avenues for assistance from the department.

The program was originally designed in collaboration with AusVeg, who have indicated that the original design of the program was to include two low-skilled occupations for roles such as picking and packing. It is understood that these positions were not included in the agreement due to concerns the program would compete with the SWP, thereby detracting from Australia's commitments to Pacific Island partner nations.

The inclusion of low-skilled positions in the HILA would be hugely beneficial for the industry and would have increased uptake of the program significantly.

## Recommendations:

- *In lieu of a dedicated harvest visa (discussed below), investigate including low-skilled positions for 'picking and packing' roles in the HILA*

- *Improve marketing and messaging around HILA to ensure benefits are properly communicated*
- *Increase channels of communication to the Department of Home Affairs to provide greater support for HILA applicants*
- *Establish regional hubs for the department Home Affairs where industry can meet officials face to face for assistance*



# AGRICULTURE / HARVEST VISA

The establishment of a dedicated agriculture visa has received wide support from various stakeholders. It is supported by industry peak bodies such as the National Farmers' Federation and the Australian Fresh Produce Alliance (AFPA). The following inquiries have separately called for the implementation of an agriculture visa.

- **Growing Australia: Inquiry into growing Australian agriculture to \$100 billion by 2030 - House of Representatives Standing Committee on Agriculture and Water Resources, December 2020.**

- *Recommendation 9*

- **Hidden in Plain Sight: An Inquiry into establishing a Modern Slavery Act in Australia - Joint Standing Committee on Foreign Affairs, Defence and Trade, December 2017.**

- *Recommendation 9.94*

It is understood that an agriculture visa, or the provision of other low skilled visa options such as through changes to the HILA, may conflict with the SWP and therefore Australia's Aid commitments to Pacific partners. However, at present, growers are forced to engage with programs that, in many cases, are not suitable for their purposes. While the SWP and WHM programs have been adequate for some, creating more options will allow producers to grow and expand, without unnecessary costs and regulatory burdens.

There is also no reason to suggest that a dedicated agriculture visa and the SWP cannot co-exist. At present, the SWP is supplementary to the entire workforce, which also consists of workers under several

other visa programs such as the WHM. An agriculture/Horticulture visa, with appropriate caps and an effective design, can provide further supplementation to Australia's seasonal workforce requirements without competing with the SWP.

The benefits of an agriculture/horticulture visa include:

- Reduce costs for producers
- Ability to find the right worker for the job
- Reduced regulatory burdens - translates to cost savings for Government
- Consistent supply of returning workers for seasonal harvests
- Reduced possibility of exploitation in the industry
- In line with several inquiries and recommendations from Government initiatives

## Harvest Visa proposal – Australian Fresh Produce Alliance

The AFPA has developed a sensible proposal for a dedicated harvest visa for seasonal workers. They are seeking a specific Harvest Work visa to meet time critical labour needs across Australia, especially during harvest periods. They have engaged migration law specialists, Hammond Taylor, to develop recommendations and a specific visa framework.

They argue the visa should be highly portable between employers to facilitate the necessary geographic movements which characterise harvest work have a short, fixed duration of 9 months, and only renewable from outside Australia.

Priority should be given to individuals who have previously shown compliance with past Australia visa requirements, such as returned WHMs. Therefore Taiwan, Hong Kong, and South Korea should have priority among

potential countries. This recommendation is based on research showing the highest level of take up of agricultural work comes from these WHM countries.

The design of the program includes appropriate labour market testing to ensure Australians have the first opportunity at available positions, and compliance can be ensured through detailed record keeping as required with many other visa programs.

A Harvest Work Visa has the potential to complement existing visa programs by providing a flexible but well-regulated and targeted visa program to supply the Australian horticulture industry with sufficient skilled workers. Current programs fill a number of key roles in the agricultural sector but do not address the critical issue of peak demand during the harvest period. This issue has been amplified due to the COVID-19 pandemic. The proposal by AFPA should be looked at very seriously and urgently.

#### Recommendations:

- *Conduct research to approximate the total demand for low-skilled labour across the agriculture sector to inform program development*
- *Design an agriculture visa program similar to that proposed by the Australian Fresh Produce Alliance (AFPA).*

# STATUS RESOLUTION FOR UNDOCUMENTED WORKERS

It has been estimated that, prior to the COVID-19 pandemic, approximately 60,000 individuals in Australia were in the country unlawfully. That is, individuals who had previously come to Australia and no longer held a valid visa prior to COVID. The vaccination of the Australian community is an opportunity to provide visa status resolution to the 60,000 people in Australia unlawfully. A “Pandemic Status Resolution” visa would ensure that the COVID vaccination of the Australian community is effective. These individuals constitute a high epidemiological risk in a Covid-19 context. The reasons for this include excess caution and breach of confidence with respect to the authorities; language barriers and difficulty of receiving information; and the difficulties of low-income families in maintaining home confinement (Fanjul and Galvz-Iniesta, 2020).

COVID-19 provides a unique opportunity to implement a measure to resolve the status of undocumented workers in the horticulture sector for benefit of these vulnerable people, the entire industry, and wider community. Due to COVID, international travel has all but ceased and will take some time to return and the Australian border is tightly closed, providing an optimal opportunity to resolve these domestic visa matters.

In the past there has been little political appetite for such a measure, however, from a humanitarian perspective I believe we have a moral obligation to address this. The COVID-19 context and the severe shortage of workers facing the country provides greater impetus to do so.

If done correctly, it will allow Australia to confront exploitation in the horticulture industry, provide a level playing field for workers and employers, reduce the risk of spreading COVID-19, and improve health and safety outcomes for communities with hidden populations.

The Modern Slavery Act 2018 provides a clear imperative to resolve this long standing issue, albeit the status resolution of undocumented workers is only one part of systemic reform incorporating greater surveillance of ABF and action to remove criminals from the system, among other measures.

International precedent for what has been commonly referred to as an amnesty exists. The appendix provides more detail on the history of visa status resolution in Spain, US, NZ, EU, and South Korea, with links to research and evaluation. Spain has conducted a number of amnesties and legalisation programs. A country with porous borders, compared to Australia’s island status, at the end of 2019 Spain had between 390,000 and 470,000 undocumented people. Worthy of note in the report by Fanjul and Glavz-Iniesta, 2020 there are economic benefits to the nation with status resolution of these people:

*7. Fiscal effects of regularization: The irregularity of immigrants represents an average annual loss of 2,000 euros per immigrant for Spanish public coffers. In the event of regularisation, the net tax contribution of immigrants in a current irregular situation would be beyond 3,250 euros. [...]*

*10. Pull effect: There is no empirical evidence linking a significant increase in irregular immigration with administrative amnesty measures. The intensity of migratory flows to Spain during the last two years has been inversely proportional*



*to the dynamism of our economy in relation to unemployment rates (p.2).*

A measure to resolve the status of undocumented workers is also in line with recommendation 9.94 of Hidden in Plain Sight: An Inquiry into establishing a Modern Slavery Act in Australia - Joint Standing Committee on Foreign Affairs, Defence and Trade, December 2017.

Consultation with industry has provided insight into the sensitivity of the issue. The following is a brief by the Australian Fresh Produce Alliance. Industries in two of the largest horticulture states are supportive: VFF in Victoria under President Emma Germano and Growcom Richard Shannon in Queensland. In addition, AFPA Michael Rogers and Vegetables WA John Shannon are in agreement with a status resolution for unlawful non-citizens in principle. Others are considering their position at present.

#### **Recommendations:**

- *Design a measure for a timely implementation of undocumented workers in the agriculture industry through a Pandemic Status Resolution visa.*
- *Introduce a time-limited 24-month window during which undocumented workers can obtain a temporary Pandemic Status Resolution visa, for those whose previous visa has expired or was cancelled before March 2020.*
- *Grant working rights to the visa holder for two years. AFPA holds the view that a Pandemic Status Resolution visa should not be placing a requirement for the holder to work for a particular business or industry. The working rights should address concerns about informal employment in hospitality, cleaning, construction, personal services, agriculture and other sectors.*
- *Support by focused Australian government services that provide pathways*

*for individuals through the existing visa framework to stay in Australia or return to their home country.*

- *For people who choose not to apply for a Pandemic Status Resolution visa but stay in Australia unlawfully, compliance and enforcement must increase significantly to resolve their status.*

#### **In addition:**

- *This program could be linked to a newly developed harvest visa as discussed above, or to pre-existing visas such as the Safe Haven Enterprise visa, Temporary Protection visa, or Temporary Activity visa*
- *Provide opportunities for workers under this program to apply for subsequent visas, and promote links to the Horticulture Industry Labour Agreement and other skilled visas.*

# CONCLUSION

The agriculture and horticulture industry faces both short and long-term challenges regarding workforce that must be addressed to provide confidence to producers. If workforce challenges are not resolved, the horticulture industry will rapidly move to less labour-intensive products such as almonds and nuts, to the detriment of the diversity of the sector.

The recommendations outlined in this policy documents serve as discussion points that must be seriously considered by government to address seasonal workforce challenges. Improvements to the SWP, the continuation of the WHM program, and tweaks to the HILA are important to ensure our existing migration programs are fit for purpose.

The design of new programs such as a harvest visa is necessary and is widely supported by industry. This has been confirmed through several inquiries and investigations that have consulted industry extensively.

The notion of a time restricted Pandemic Status Resolution of individuals who have overstayed their visa, or breached their visa conditions and are working illegally is timely, and consideration should be given to this as not only a humanitarian cause, but to remedy the unequal playing field on which producers compete. There is international precedent for such a move and many key players in industry are behind the move in principle.

The COVID-19 pandemic provides the perfect opportunity to act on these and other calls, given the urgency of the workforce shortages currently facing sector.

# APPENDIX

## TGlobal Precedence for Visa Status Resolution Measures

### Research conducted by APH Library

#### Caveat

Amnesties for undocumented migrants take a range of different forms according to the context of each country. Terminology for government programs varies: common terms include regularisation of status, legalisation, or normalisation. Initiatives may cover a range of people in different circumstances, and may be general or targeted at individual groups, such as specific nationalities, vulnerable populations, agricultural workers, domestic workers, or asylum seekers. In many countries, there may be cross-over between undocumented labour migration and asylum issues, with amnesties or regularisation programs aimed at a mixed cohort. Programs may offer temporary status only, or pathways to permanent residence or citizenship.

In this advice, I have aimed to cover the programs most relevant to your interest in undocumented workers, but there remains some overlap and the examples should not be considered exhaustive.

In the time available, I have concentrated on sourcing citeable information, without attempting analysis or additional comparison of the material. Information is not necessarily available on the economic outcomes of amnesties, but I have indicated where the research has identified impacts or discussed the success or otherwise of the programs.

#### General

This section provides some general resources on regularisation of migrant

workers, not specific to one country or region.

A recent blog post from the Center for Global Development summarises some issues around regularisation of undocumented migrant workers during the COVID-19 pandemic.

[\(<https://www.cgdev.org/blog/regularizing-migrant-workers-response-covid-19>\)](https://www.cgdev.org/blog/regularizing-migrant-workers-response-covid-19)

An IZA World of Labor article provides an overview of the 'pros and cons' of international regularisation policies. Key findings include:

*Regularization leads to higher wages through better jobs and because wage exploitation is harder to hide.*

*Workers may become more productive after regularization because they can work in an occupation for which they are trained, more freely invest in human capital, or receive job training without fear of deportation.*

*Regularization tied to employment contracts inhibits wage increases that would normally be associated with greater job and occupational mobility.*

[\(<https://wol.iza.org/articles/what-are-consequences-of-regularizing-undocumented-immigrants/long>\)](https://wol.iza.org/articles/what-are-consequences-of-regularizing-undocumented-immigrants/long)

The Centre on Migration, Policy and Society at the University of Oxford produced a study on The Regularisation of Unauthorized Migrants: Literature Survey and Country Case Studies in 2005. It has an overview of the issues and studies of irregular migration in nine European Union countries and the United States.

[\(\[https://www.compas.ox.ac.uk/wp-content/uploads/ER-2005-Regularisation\\\_Unauthorized\\\_Literature.pdf\]\(https://www.compas.ox.ac.uk/wp-content/uploads/ER-2005-Regularisation\_Unauthorized\_Literature.pdf\)\)](https://www.compas.ox.ac.uk/wp-content/uploads/ER-2005-Regularisation_Unauthorized_Literature.pdf)



A United Nations policy brief on COVID-19 and People on the move proposes that countries should explore ‘various models of regularisation pathways for migrants in irregular situations’ as part of their responses to the COVID-19 pandemic. It states that ‘this crisis is an opportunity for countries to ‘recover better’ through socioeconomic inclusion and decent work for people on the move’.

[https://www.un.org/sites/un2.un.org/files/sg\\_policy\\_brief\\_on\\_people\\_on\\_the\\_move.pdf](https://www.un.org/sites/un2.un.org/files/sg_policy_brief_on_people_on_the_move.pdf)

## European Union

There is some research available on amnesty and regularisation programs across Europe. A paper from the Migration Policy Institute (MPI) on Regularizations in the European Union from 2011 summarises:

*Between 1973 and 2008, 68 programs were implemented in Europe; a few targeted multiple groups of people, and over half were based on labor regularization. Of those people granted regularization during this period, 87 percent were unauthorized labor migrants. (p. 3; refer also figure on p. 7)*

<https://www.migrationpolicy.org/>

<https://www.migrationpolicy.org/sites/default/files/publications/EURegularization-Insight.pdf>

Criteria for eligibility generally included length of residence, employment or possibility of future employment (for example sponsorship by an employer), humanitarian concerns, and in some cases integration into the local society and academic or professional qualifications.

A table with a breakdown by country of numbers of people regularised between 1996 and 2007 is given on page 4 of the paper. Spain and Italy granted the highest numbers, at over 1 million each. A more

detailed table of programs by country is given in an appendix (pp. 10–17).

The report notes that initially, northern European countries implemented regularisation programs, but that over the period of the analysis, the weight had shifted to southern Europe, particularly for labour migrants (as distinct from humanitarian programs). It also states: ‘Overall, there has been a shift away from general amnesties through large-scale programs, as was seen in earlier decades, to the targeted regularization of specific groups of people’ (p. 8).

An article by the International Organization for Migration (IOM) on Working for Legality: Employment and Migrant Regularization in Europe also highlights the trend towards regularisation based on employment as a requirement. It summarises previous programs including in Spain (see separate section below), France and Austria. For Austria, it states:

*The first program in 1990 involved access to work permits and therefore to residence as the latter was ancillary to employment permits before the 1992 immigration reform. In total, an estimated 30,000 persons benefited from the regularization [...]. In terms of its design, Austria’s first regularization program was not unlike regularizations in Southern EU member states in the 1990s and 2000s. However, policy makers subsequently evaluated the program as a failure – as unable to reduce the extent of irregular employment, and as a pull factor for new irregular inflows.*

<https://onlinelibrary.wiley.com/doi/full/10.1111/imig.12109>

Austria also introduced a program in 2007–08 which was much more focused, specifically for domestic care workers.

## New Zealand

New Zealand gave an amnesty in 2000 to 'well-settled overstayers' in the form of a 'transitional policy', prior to the introduction of more rigorous immigration and deportation laws. The media release stated:

*Overstayers will have from 1 October 2000 until 30 March 2001 to lodge an application for a two-year work permit.*

*It is only after the two years that permanent residence can be sought. The provisions will apply only to those considered to be well-settled in New Zealand and who arrived before 1 October 1999.*

*It is expected that these provisions will affect between an estimated 5,700 and 7,700 overstayers who have been living in New Zealand continuously for five years or more. People with well-established family links such as a New Zealand spouse or New Zealand-born child will also be eligible to apply.*

<https://www.beehive.govt.nz/feature/october-2000-transitional-immigration-policy-45>

Pacific Islanders were the main beneficiaries of this program.

## South Korea

South Korea introduced a guestworker scheme, the Employment Permit System (EPS) in the early 2000s to work in conjunction with a regularisation program. It is described in an MPI paper:

*When EPS was introduced, it gave many unauthorized foreign workers the opportunity to apply for a permit, depending on how long they had been in the country illegally. At the same time, unauthorized migrants who did not qualify for a permit were given a chance to leave the country without paying any fines.*

*Foreign workers who had been in Korea for less than three years as of March 31, 2003 were able to stay for an additional two years at most. Those present for three to four years could leave Korea with an advance approval certificate to re-enter, and if they did so within three months of their departure, they could work for a maximum of five years, including their illegal stay in Korea. Those illegally present in Korea for more than four years were required to leave Korea or face deportation. This amnesty boosted the authorized foreign worker population by 57.2 percent—from 320,558 at the end of 2002 to 504,038 one year later.*

<https://www.migrationpolicy.org/article/south-korea-carefully-tests-waters-immigration-focus-temporary-workers>

The paper notes that prior to 2003, South Korea had tight labour migration programs and very limited options for low-skilled labour, leading to a high unauthorised labour migrant population. It has since reformed its immigration programs to better address labour shortages including via the EPS.

## Spain

Spain has conducted a number of amnesties and legalisation programs.

An academic paper from 2020 concludes the following, from a snapshot of the study on page 2:

*7. Fiscal effects of regularization: The irregularity of immigrants represents an average annual loss of 2,000 euros per immigrant for Spanish public coffers. In the event of regularisation, the net tax contribution of immigrants in a current irregular situation would be beyond 3,250 euros. [...]*

*10. Pull effect: There is no empirical evidence linking a significant increase in irregular immigration with administrative*

amnesty measures. The intensity of migratory flows to Spain during the last two years has been inversely proportional to the dynamism of the economy in relation to unemployment rates.

<https://porcausa.org/wp-content/uploads/2020/07/snapshot-of-irregular-immigration-in-Spain-by-porCausa.pdf>

A paper on the amnesty introduced from 2005 concluded that:

*the legalisation of a large number of mainly low-skilled immigrants meant that:*

- *newly legalised workers started to contribute to the social security system, thus increasing public revenues;*
- *immigrant low-skilled workers became more than 30% more expensive, while still remaining cheaper than low-skilled natives; and*
- *immigrant low-skilled workers became closer substitutes for native low-skilled workers as they gained work permits.*

<https://voxeu.org/article/effects-legalising-undocumented-immigrants>

The IOM article referred to above notes that: 'In contrast to previous programs, the 2005 regularization was above all a regularization of workers intended to combat irregular employment.' The article states under the requirements of the new program, employers became central to the process. It summarises the settings as follows:

*Employers now had to request the legalization of their workers at special offices. The employment contract had to be for 40 hours per week for a minimum period of six months. The minimum period in the agricultural sector was three months, while domestic workers could personally apply for a permit if they worked at least 30 hours per week for more than one employer. In all cases, final authorization*

*was conditional on registration in the social security system and payment of the first month's contribution to ensure that the employment bond was real and effective. The resulting permits were valid for one year and tied to a particular sector and province.*

<https://onlinelibrary.wiley.com/doi/full/10.1111/imig.12109>

## United States

The US context of undocumented or unauthorised migration is particularly complex and quite different from Australia's. The below highlights some of the more relevant programs.

The US has introduced a number of 'quasi-legal' statuses including Deferred Action for Childhood Arrivals (DACA), which offer some legal protection for certain undocumented migrants and the ability to work legally.

Recently inaugurated President Biden has sent a Bill to Congress which would offer legalisation options to a range of undocumented migrants. Although it has no guarantee of passing,

*The bill allows undocumented individuals to apply for temporary legal status, with the ability to apply for green cards after five years if they pass criminal and national security background checks and pay their taxes. [...] After three years, all green card holders who pass additional background checks and demonstrate knowledge of English and U.S. civics can apply to become citizens. Applicants must be physically present in the United States on or before January 1, 2021.*

<https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca>



<https://www.aila.org/File/Related/21011407b.pdf>

The Bill also proposes a range of other immigration reforms, including a number aimed at improving economic outcomes.

A new report from the MPI looks at United States policy on the estimated 11 million undocumented migrants in the country, noting President Biden's plans to move on legalisation.

The MPI report notes that:

*When considering legalization policy options, it is also important to note that there is historical precedent for policymakers to cover narrower subgroups, rather than grant the fullest possible protections by covering the entire unauthorized population. Indeed, the United States has carried out smaller-scale legalizations throughout the past century, which have ultimately provided legal status to more people with much less political resistance than that engendered by contentious large-scale programs. (p. 5)*

<https://www.migrationpolicy.org/research/us-legalization-unauthorized-immigrant-groups>

The US previously enacted a program that covered a broad range of the population with irregular status: the Immigration Reform and Control Act (IRCA) in 1986. The MPI report summarises that:

*Of the approximately 3.2 million unauthorized immigrants living in the United States at the time of the bill's passage, 1.6 million legalized through IRCA's general legalization, and another 1.1 million farmworkers and 38,000 Cubans and Haitians also received green cards.*

*Applicants had to demonstrate continuous residence since 1982, pay a \$185 filing fee, and have a clean criminal history and proof of financial resources to ensure self-sufficiency to qualify for the initial temporary status. To adjust to permanent residence, holders of this temporary status had to additionally demonstrate either a basic knowledge of English and U.S. history and government or show that they were enrolled in courses to achieve this knowledge. Subsequent research showed that those who had legalized were able to increase their educational attainment and boost their incomes. (p. 19)*

The report notes that the program had certain flaws, including some openness to fraud, and did not assist with reducing future unauthorised immigration. Similar large-scale efforts on legalisation, in the form of Bills in 2006, 2007 and 2013, did not pass.

Separately, an immigration law passed in 1996:

*allows unauthorized immigrants who were in the United States on December 21, 2000, to adjust status from within the United States if a sponsor had filed a petition for a green card or labor certification for them by April 30, 2001 and if they paid a \$1,000 fine, in addition to the existing fee to apply for adjustment. (p. 25)*

Further US programs, largely relating to specific population groups, are detailed in an earlier MPI brief from 2010.

<https://www.migrationpolicy.org/sites/default/files/publications/legalization-historical.pdf>

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