

Submission regarding revisions to the PALM scheme rules (Deed and Guidelines)

Professor Stephen Howes
Director, Development Policy Centre, ANU

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Summary

Prospects for the Pacific labour schemes, formerly SWP (Seasonal Worker Programme) and PLS (Pacific Labour Scheme), now combined into PALM (Pacific Australia Labour Mobility), are uncertain. Australia's re-opening of international borders, the continued circulation of the virus, the new Australian (Asian) Agriculture visa, and the continuation of closed borders in the Pacific all pose significant risks, and threaten PALM's attractiveness.

In this context the revision of PALM rules via the creation of new Guidelines and the new Deed of Agreement (DoA) to take the place of the separate PLS and SWP ones is extremely important and should not be rushed. I make six **recommendations**.

1. The new PALM Deed and Guidelines and the Australian Agriculture Visa Deed and Guidelines should be finalised at the same time.

It makes no sense to have different guidelines for different nationalities to come to Australia to do the same sort of work (fruit picking, meat processing). Indeed, [this could be racist](#). Obvious questions of fairness of treatment of both employers and employees would arise as to why, say, fruit-pickers from Vanuatu should be subject to different rules to those sourced from Indonesia. Hence the two sets of rules should be finalised at the same time. Alternatively, the government should make a public announcement that the Australian Agriculture visa rules will be consistent with PALM rules.

2. No change should be implemented that makes PALM more expensive to employers.

SWP, despite its growth in recent years, remains very unpopular among many farmers, who continue to complain that it is too expensive and bureaucratic, and continue to agitate for alternatives. The government made the right decision when it announced that PALM's "centrepiece" would be "more flexibility and less red tape". In fact, however, the clearest implication of the proposed rule changes is that PALM will become more expensive for employers, with the introduction both of higher air fare co-payments by employers (reversing a 2018 decision to decrease them) and of more onerous minimum hour requirements. In the competitive market within which it operates, where PALM workers make up a minority share of the horticultural workforce and are outnumbered by backpackers, any increase in PALM costs will reduce PALM growth. DFAT's aim should be to maximise PALM numbers, not average earnings. It would be particularly bad timing if the higher costs come as the outcome of a process intended to make the SWP and PLS more attractive to employers.

3. The portability reforms are encouraging but require more clarity.

The government is proposing to introduce portability arrangements between employers, similar to the "Joint Agreement to Recruit" (ATR) mechanism that New Zealand has long had as part of its Pacific seasonal work program (RSE). This is a positive step. However, any employer who acts in a labour hire capacity (under the so called "secondment" mechanism) should have to be licensed as such; and reference to transfers being of "net benefit" to

workers should appropriately caveated, since in many cases workers will realistically have no say in the matter.

4. The requirement that workers have functional English should be dropped.

There has been no English language requirement for SWP workers to date, but now the government proposes to introduce one – one that many current workers would fail (at least first-time workers). This would be another burden on the SWP that is (largely) not imposed on the backpacker program (most backpacker visas have no language requirement). It would further bias SWP recruitment towards workers from urban areas and those with formal sector jobs, such as teachers, and make it more difficult for sending-country governments to encourage recruitment from poorer, rural areas.

5. There are missed opportunities to deregulate the program

While some reporting requirements are relaxed by the draft DoA, others are increased or expanded. The extent of the paperwork required for the SWP has been one of the main factors leading to a grower push for an alternative visa. Pilots should be introduced to reduce the regulatory burden, with reporting requirements reduced for small employers and/or to reward PALM employers with a positive track record. Third party accreditation and auditing should also be piloted and encouraged to reduce oversight costs to government.

6. The revisions are also a missed opportunity to promote equity and diversity.

While there is no doubt that the PALM schemes are a major source of work opportunities for the Pacific and Timor-Leste, they suffer from a lack of gender balance, over-reliance on recruitment of skilled workers (e.g. teachers), and over-representation of just a couple of sending countries (Vanuatu and Tonga). Employers should be not forced but encouraged to: hire more women, hire more from rural areas, and hire more from under-represented countries such as Solomon Islands and Papua New Guinea. This guidance could appropriately appear in the “Best practice” section of the Guidelines.

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In conclusion, it is more important to get the PALM rule revisions done properly than to get them in place quickly. The scheme can continue to operate under the old SWP and PLS deeds until the above issues, as well as those raised by other stakeholders, have been properly resolved. The tight deadline imposed by the prospect of caretaker government should not lead to the PALM revisions being rushed; a better solution could be to wait till after the elections.

Background

Prospects for the Pacific labour schemes, formerly SWP (Seasonal Worker Programme) and PLS (Pacific Labour Scheme), now combined into PALM (Pacific Australia Labour Mobility), are uncertain.

Under COVID, farmers have had no choice but to embrace PALM as the only way to get extra workers, but with the re-opening of international borders, the scheme will move down farmers' lists of preferred labour sources for several reasons.

First, backpackers are now allowed back into Australia. Farmers have traditionally preferred backpackers to PALM workers. Since November, [22,000 have already applied for working holiday maker visas](#). With the government offering a rebate on the \$600 backpacker visa fee for anyone who arrives before April 19, many more may apply for backpacker visas and move to Australia quickly.

Second, continuing COVID outbreaks in Australia and closed borders in sending countries will tilt the scales against PALM. PALM employers cannot visit their main source countries to select the workers they want, and, for the same reason, they have no guarantee that their workers will want to or even be able to return home. Borders are still closed in Vanuatu, Tonga and Samoa. PALM employers are legally responsible for PALM workers' accommodation and *de facto* for their health: big burdens to bear in a time of pandemic. They have no such responsibility for backpackers.

Third, [absconding](#) has become a major issue for the PALM. Absconding was an isolated problem before COVID, but is much more commonplace now. Absconding is a major hassle and cost for PALM employers, and another issue that simply doesn't arise if you hire a backpacker.

Fourth, the government is moving to introduce an Asian version of PALM, the Australian Agriculture (AA) Visa, though note that, like PALM, it covers meat processing as well. Sadly, many farmers would rather hire an Asian than a Pacific islander. Although AA numbers will be capped, once the scheme exists and employer demand is revealed, there will be sustained pressure to increase the cap.

Changes to PALM rules

It is against this background of an uncertain future for PALM that the revisions of the PALM rules, currently underway, need to be considered. With the merger of the SWP and PLS into a single scheme, the two programs' Guidelines and Deeds of Agreement (DOA) need to be consolidated. Many changes have been proposed, but at least three seem to be very important and are the focus of this submission:

- First, under the new rules, the scheme will become more expensive for employers. Previously, SWP employers had to provide each worker a minimum of 30 hours per week averaged over the period of their assignment. Now they will have to provide that same minimum averaged over every four weeks. PLS employers will now have to provide full-time hours every week, up from 30 earlier. Also, employers will now have to contribute \$400 to the cost of each worker's airfare. Currently SWP employers have to pay \$300 and PLS employers nothing.

- Second, a system of joint approval to recruit will be introduced along the lines of the New Zealand model. Under this system, two pre-approved employers can combine to put in a single application to bring workers to Australia.
- Third, an English language requirement is proposed for workers. Workers will now have to have, at a minimum, “functional English”.

Also important are the changes not made.

- Fourth, opportunities to deliver on the promise of reduced red tape have been missed.
- Fifth, no effort is made to improve the gender balance and nationality balance of the PALM workforce, or to promote recruitment from rural areas.

Analysis and recommendations

This note makes six recommendations regarding the new Deed and Guidelines. The first is a general one, and the next five relate to the five observations made immediately above.

1. The new PALM Deed and Guidelines and the Australian Agriculture Visa Deed and Guidelines should be finalised at the same time.

It makes no sense to have different guidelines for different nationalities to come to Australia to do the same sort of work (fruit picking, meat processing). Indeed, [this could be racist](#). Obvious questions of fairness of treatment of both employers and employees would arise as to why, say, fruit-pickers from Vanuatu should be subject to different rules to those sourced from Indonesia. Hence the two sets of rules should be finalised at the same time. Alternatively, the government should make a public announcement that the Australian Agriculture visa rules will be consistent with PALM rules.

2. No change should be implemented that makes PALM more expensive to employers.

Unlike New Zealand, Australia does not carry out annual surveys of SWP and PLS employers. The last survey of SWP employers was [carried out in 2014](#) by the World Bank and the ANU. The main reason for not participating in the SWP given by employers was that they had no need of it (67%). The second most common reason was that it was too expensive (14%) and the third was that it was too risky (13%) ([Figure 4.2](#)). At that time, employers had to pay \$500 towards the international airfare of each worker. When asked what would make the SWP more attractive to growers, more SWP employers listed reducing international travel costs than any other reform: 75%. That \$500 was reduced to \$300 just [three years ago](#), in November 2018. Why is it now being increased to \$400? Perhaps it is a response to an increase in travel costs due to the pandemic. If so, it could be made temporary, say for the next year, rather than permanent.

The other reform – a minimum of 30 hours per week averaged over four weeks¹ – will add to both cost and risk. It is also a reversal of earlier deregulatory trends. In 2015, the government [removed](#) a then existing 14-week minimum work requirement, replacing it only by a requirement that workers make a “net financial benefit” of at least \$1,000.

¹ It is unclear if it is every four weeks starting with the first, or any four week period.

These concerns about costs and risks are real. A [2018 ABARES study](#) found that “non-wage labour costs are significantly higher for seasonal workers than for backpackers: \$1,620 versus \$134.”

The New Zealand experience has been cited as a precedent for the 30 hour/week minimum requirement. And it is true that New Zealand has introduced a more extreme version of this measure than the one DFAT is proposing. In New Zealand, since the second half of last year, a 30-hour average requirement has been replaced by a 30-hour minimum weekly requirement. (The DFAT proposal is for a minimum of 30 hours per week averaged over four weeks.)

However, the New Zealand precedent is irrelevant. New Zealand operates its RSE (Recognised Seasonal Employer) scheme, equivalent to the SWP in Australia, with a cap. There is significant excess for demand for RSE workers by employers. There are very few backpackers. New Zealand offers only a three-month (not a two-year) visa extension for backpackers and, unlike in Australia, seasonal workers outnumber backpackers with visa extensions not the other way round ([Table 4](#)). In such a situation, it makes sense to maximise the benefits of the program for the Pacific by increasing their average wages, which is exactly what New Zealand has done.

The Australian situation is very different. The SWP is still a small scheme, and seasonal workers are greatly outnumbered by second-year backpackers. The aim of DFAT should be to grow the scheme, to maximise benefits for the Pacific as a whole, and for as many households as possible. The SWP is uncapped, so the more expensive it is, the fewer employers will use it – this is not the case in New Zealand, because of the cap and related excess demand by employers.

Evaluations of workers have shown that average remuneration of SWP workers is high. According to a [World Bank 2017 survey](#), average weekly earnings net of tax was \$702 ([Table 5.2](#)). Assuming a 15% tax rate, that makes \$807 dollars a week. At \$20/hour, that corresponds to 40 hours a week. The same evaluation shows that PALM workers earn more than four times what they would at home.

Given this, there would seem to be no need to increase average wages, and the focus should rather be on expansion of the scheme.²

The only possible argument for the new 30-hour-minimum requirement is that it would discourage absconding. As noted earlier, absconding has become a major issue in the SWP so anything that reduced it would be worth considering. However, absconding is driven by many factors, principal among them the desire to choose one’s own employer. And absconding is a cost to the employer. From this point of view, employers should be encouraged to come up with their own strategies to reduce absconding, rather than being forced to implement a top-down strategy that may or may not work.

Cost increasing changes would be particularly damaging for PALM’s reputation at the present time. The SWP has had an image problem with farmers, and a reputation for being expensive and inflexible. When PALM was announced, [Ministers said](#) that the new combined program would “deliver on industry calls for a more streamlined and efficient approach to employing

² It is true that hours offered to casual horticultural workers have fallen as a result of the 2019 change to the Horticulture Award requiring grower to pay overtime. A [survey](#) showed that average hours by casual workers fell as a result from 45.3 to 35.8 hours. But even this comfortably exceeds the current average 30 hour per week requirement.

Pacific workers.” If in fact PALM turns out to be a more expensive and risky scheme than SWP/PLS, this will become a narrative that will harden farmer opposition to the Pacific schemes, increase lobbying for higher caps for the new agriculture visa, and lead employers to hire backpackers rather than seasonal workers.

3. The portability reforms are encouraging but require more clarity.

The new proposed portability arrangements are similar to New Zealand’s “Joint Agreement to Recruit” (ATR). They would allow two employers to submit a single recruitment plan or for a second employer to provide a recruitment plan for the transfer of workers from the employer who brought them on shore. They would also allow for “unplanned” secondments from an approved employer to a non-approved employer for up to six weeks, within the same region.

Overall, these reforms are positive, and in line with calls by several analysts for adoption by Australia of New Zealand’s ATR mechanism ([here](#), [here](#)). However, greater clarity is needed on a couple of points.

First, the “unplanned secondment” option is said to be “subject to compliance with relevant state/territory labour hire licensing laws”. It should be further clarified that any employer engaging in such a secondment is acting in a labour hire role, and therefore should be licensed.

Second, reference is made by DFAT to portability being “a net benefit to workers and with worker consent.” While this is a laudable aspiration, in practice, workers may have little say in the matter, in particular under the first option, which will likely be the most common, when the joint agreement is finalised prior to departure. Even in other cases, the choice may well be between transfer and no work. Perhaps the principle of “worker consent” could be restricted to applying “in cases where transfers are proposed after arrival in Australia”.

Third, the unplanned secondment option could be expanded to provide more flexibility to labour hire companies who hire the majority (72%) of SWP workers ([Figure 2](#)). Opportunities should be explored to provide labour hire companies with more flexibility to move workers between farms.

4. The requirement that workers have functional English should be dropped.

This is a new requirement for the SWP. This proposal has a number of disadvantages.

First, based on the field experience of ANU researchers, many workers who have thrived under the SWP would have been denied (first-time) entry if this requirement were in place.

Second, this requirement would bias the selection of workers away from the hiring of rural and uneducated workers towards the hiring of urban, educated ones. This is already a problem with the SWP. A World Bank 2018 survey showed that in Timor-Leste more than 80% of those employed under the SWP were in paid employment prior to their SWP work, and the average for the Pacific was above 50% ([Figure 5.4](#)). If an English language requirement is imposed, it will add to the likelihood that it is teachers and police who are leaving their jobs to work in Australia on the SWP. This would be unfortunate, and could lead to Pacific employer/government backlash. It may also lead to less than suitable candidates being selected. Previously, a Year 10 education level requirement was imposed on SWP workers by the PNG government. This resulted in the hiring of urban candidates, who were not productive, and this undermined PNG’s reputation as a source of reliable workers.

Third, this requirement would add to recruitment costs (and the scope for corruption) since the [requirement of functional English](#) demands that either the student demonstrates sufficient school education in English or that s/he can obtain a particular score on an English test taken less than 12 months prior to visa application.

Fourth, most backpackers are not subject to a functional English language requirement. While the Work and Holiday (462) visa has a functional language requirement, the great majority of backpackers coming to Australia ([about 85%](#)) do so under the 417 visa, and there is no language requirement at all with this visa, even though many (especially from Korea and Taiwan, two major 417 source countries) would not have functional English. Imposing functional English as a requirement for PALM workers and not backpackers would further tilt the playing field in favour of the latter group.

5. There are missed opportunities to deregulate the program

The administrative burden of participation in the SWP has long been a source of frustration for approved and potential employers, and the perception is that reporting requirements have increased exponentially over time. While some reporting requirements have been reduced in this revision of the rules (e.g. labour market testing), others have been increased (e.g. fraud risk assessments are now required, accommodation information now needs to be sent to LSUs, and PALM employers will be subject to DFAT's child protection and sexual abuse, exploitation and harassment policies, which they have not been to date³). To reassure employers, the government could commit to reducing compliance costs over time as measured by the [Commonwealth Regulatory Burden Measure](#).

The high reporting and more generally high administrative burden of the SWP is one reason why it is dominated by labour-hire companies. This can be expected to continue. Unfortunately, some large and small farmers do not like using labour-hire companies, and they will continue to be frustrated by the regulatory burden of the SWP. They will therefore continue to lobby for alternatives, such as the Australian Agriculture visa.

Several options could be pursued to reduce PALM's regulatory burden. One, there could be a lower reporting burden for small employers, say those who employ 20 or fewer workers at a time. Two, a lower regulatory and administrative burden could be used to reward "exemplary" employers, those who have used the scheme in the past without breaching any conditions and/or who as seen as implementing "best practice". Third, pilots could be introduced to experiment with scheme deregulation. As we have [argued in the past](#), third-party accreditation could be used in place of PALM accreditation. This could be piloted in one state, or with one third-party accreditation scheme, or with, say, the first ten employers to apply. Through these pilots, lessons can be learnt, and the flexibility and efficiency of PALM accordingly increased. Fourth, a pilot could be introduced with third-party auditing, which employers would pay for.

In addition, PALM guidelines should encourage employers to gain and retain third-party accreditation. Longer term, the expensive (and increasing) PALM monitoring costs currently borne by government should be shifted to industry through credible accreditation schemes. If employers knew that if they mistreated workers they would lose their accreditation and

³ Neither policy is referenced in the SWP deed and guidelines. The sexual abuse policy is referenced in the PLS rules, but employers are not explicitly made subject to it, as PALM employers will be.

therefore their export rights or their ability to supply major supermarkets, they would have strong incentives to ensure that their workers were treated well. As a result, the government would need to put fewer resources into monitoring. In effect, others would be doing what the government is now doing. As we have argued [elsewhere](#), that should be the vision for PALM, and it is one the government should actively work towards.

In order to get feedback on how the system is working, and to reassure employers that their views matter, the government should also announce that it will conduct an annual survey of PALM employers (and workers), as is done in New Zealand. This feedback combined with independent research and evaluation would be invaluable inputs into regular dialogues with employers, sending-country governments and other stakeholders.

6. The revisions are a missed opportunity to promote equity and diversity.

Overall, evaluations have shown that the SWP, and by implication the PLS, are great schemes both for the Pacific and for the Australian economy. However, their benefits for the Pacific could be improved if (a) more women were selected; (b) more rural residents were selected; and (c) there was greater diversification of source countries within the Pacific. On the former, [43% of horticultural workers are female](#), but fewer than 20% of SWP workers are ([Figure 9](#)). On the issue of rural residents, this submission has already commented on the urban bias of the SWP and the unfortunately high number of SWP workers who leave good jobs to pick fruit in Australia (see recommendation 4). On country concentration, 78% of SWP workers come from two countries, Tonga and Vanuatu ([Figure 8](#)).

Employers should not be forced to hire more women, or more rural residents, or more workers from under-represented countries such as Solomon Islands and Papua New Guinea. But they should be encouraged to do so. Such encouragement would have a valid place in the “best practice” section of the current guidelines, but is currently missing.

Conclusion

It is more important to get the PALM rule revisions done properly than to get them in place quickly. The scheme can continue to operate under the old SWP and PLS deeds until the above issues, as well as those raised by other stakeholders, have been properly resolved. The tight deadline imposed by the prospect of caretaker government should not lead to the PALM revisions being rushed; a better solution could be to wait till after the elections.