

Submission to the Senate Standing Committee on Economics

Working Holiday Maker Reform Package

Professor Stephen Howes, Director, Development Policy Centre, Australian National University
Henry Sherrell, Research Officer, Development Policy Centre, Australian National University

Summary

There is a clear case for reducing the backpacker tax from 32.5 per cent. However, such a reduction should only take place in the context of broader reforms to the backpacker or Working Holiday program.

The Working Holiday program is no longer primarily a cultural exchange program but a low-skill labour migration program. This is especially the case after employment-related incentives for a second visa were introduced in 2006. The focus on labour demand has intensified since then, with the reforms in the Northern Australia White Paper allowing a backpacker to work for a single employer during their entire stay. Despite being a labour migration program, there is no regulatory framework governing employment under the Working Holiday program. Instead, policy incentives foster an environment where systemic exploitation of migrants occurs.

Policy coherence with Australia's dedicated low-skilled labour program, the Seasonal Worker Program, would help mitigate exploitative practices. Currently, seasonal workers operate on an uneven playing field vis-à-vis backpackers. This is unfair and hurts Pacific countries. Without broader changes, a lowering of the backpacker tax rate will only exacerbate the issues of policy incoherence and a non-level playing field, two flaws which currently plague Australian horticultural workforce policies.

Recommendations

Recommendation 1: Explicitly recognise that the Working Holiday program is primarily a low-skill labour migration program.

Recommendation 2: Adjust the tax rate for working holiday visa holders to be consistent with the tax rate for employees under the Seasonal Worker Program.

Recommendation 3: Phase out or generalise the second-year visa for the Working Holiday program.

Recommendation 4: Remove labour market testing for the Seasonal Worker Program, consistent with the practice for employing Working Holiday visa holders.

Recommendation 5: Work with the state governments to licence labour-hire firms.

Recommendation 6: Provide funding to the Department of Employment for promotion of the Seasonal Worker Program to employers.

Recommendation 7: Create a process for developing countries to explicitly seek a working holiday maker agreement with Australia, prioritising Pacific countries.

Introduction

1. This submission is informed by extensive analysis of the horticultural labour market, based on two horticultural employer surveys, including interviews with relevant peak bodies (Hay and Howes 2012; Doyle and Howes 2014).

2. It is a mistake to examine the issue of the Working Holiday or backpacker tax in isolation from other issues pertaining to horticultural labour. As discussed below, a reform that might look sensible in isolation can have perverse consequences and be counterproductive when all relevant circumstances are taken into account. Therefore, this submission takes a broader approach.

The role of backpackers in the horticultural sector

3. Australia relies on backpackers to meet low-skilled labour shortages far more than any other OECD country. According to the OECD (2015, p. 26), in 2013, the 249,000 backpackers in Australia were about half of all working holiday makers in 22 OECD countries in that year.

4. 95 per cent of backpackers come from developed countries (Curtain et al. 2016). Backpacker programs are discriminatory in nature. A country has to be given access to Australia's backpacker program. Some countries (mainly developing i.e. poor countries) are given capped access, typically small caps under the 462 visa category. Other countries (developed i.e. rich ones) are given uncapped access under either the 417 or the 462 visa program.

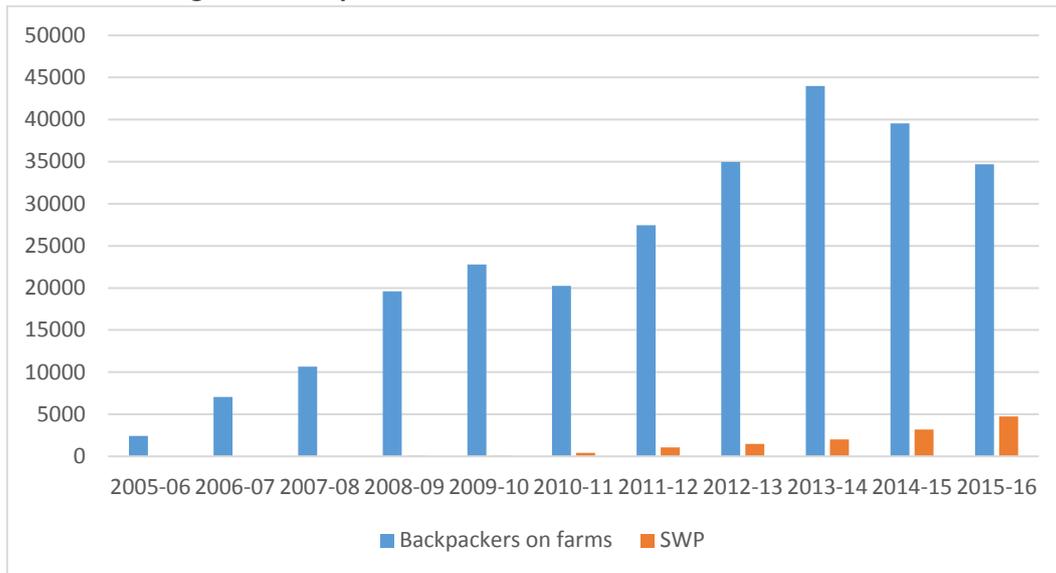
5. Tens of thousands come to Australia each year as backpackers as part of a broader immigration strategy. According to the Productivity Commission (2015, p. 302), "from 1991 to 2014, around 18 per cent of working holiday makers applied for and were granted permanent residence."

6. Backpackers generally take low-skilled jobs. In a large survey conducted in 2008, Richardson et al.(2009) found that the top four occupations for backpackers were those of farm hand, waiter, cleaner and kitchen hand, with these four occupations representing over half of all backpacker jobs. While this survey is now seven years old, it is unlikely the occupational composition of backpackers in the labour market has shifted low-skilled jobs given the age, experience and language profile of backpackers.

7. Backpackers are the most important source of labour for the horticultural sector. Hay and Howes (2012), in their nationwide survey of horticultural employers, found that 73 per cent of growers report that backpackers are their main source of labour. Doyle and Howes (2014), in a second survey of horticultural employers, found that 46 per cent of growers reported that backpackers are their main source. While there is significant variation between these two sources, both are in agreement that backpackers are by far the single largest source of horticultural labour in Australia.

8. The number of backpackers on Australian farms has grown dramatically over the last decade. Figure 1 illustrates this point. It is based on the number of backpackers who apply for a second-year visa, and makes the conservative assumption that 90 per cent of those who do apply have undertaken their requisite three months of work on a farm. (The choices are between working on a farm, or in mining or construction, and over 90 per cent work on a farm – see Productivity Commission 2016, p. 300.)

Figure 1. Backpackers and SWP workers on Australia's farms



9. Figure 1 shows that the number of backpackers working on farms has increased from about 3,000 a decade ago to at least over 34,000 today. Figure 1 also shows the small numbers by comparison working in horticulture under the Seasonal Worker Program (SWP) which is restricted to the Pacific Islands and Timor-Leste. (Note that the backpacker numbers shown in Figure 1 are an underestimate because not all backpackers who work on a farm will apply for a second-year visa.)

10. This increase in the number of backpackers working on Australian farms over this period is due to a deliberate policy decision. The introduction in 2006 of the option of obtaining a second-year visa in return for three months of regional work has a powerful effect. It had transformed work into a means for a backpacker to migrate, rather than simply a way to earn money during a limited stay.

11. It is undesirable that Australia continue to rely in a significant way on backpackers as a major source of labour supply for agriculture. Other countries, such as the United States, Canada and New Zealand, source their horticultural labour requirements primarily from developing countries, whether Central America (in the case of the US), the Caribbean (Canada) or the Pacific (New Zealand).

12. There has been a slight reduction in the number of backpackers coming to Australia in recent years, and in applications for second year visas. The number of applications lodged fell from 231,685 in 2013-14 to 214,583 in 2015-16 (DIBP, 2016). There has also been a slight fall in the number of applicants for second year visas, from 45,950 in 2013-14 to 36,264 in 2015-16

13. There are a number of possible reasons for the recent slight reduction in numbers. One is that so many backpackers have headed to Australia that it has become difficult from them to find a job. Evidence for that comes from [this](#) interview with a backpacker (“There’s definitely an overload of backpackers...”) and [this](#) one with a manager from an employment services company (“There’s a lot of people out there. Demand, especially for the working holiday visa extension is large. So the environment now is fairly competitive. Certainly at the moment we would have an excess number of people contacting our call center looking for work than the jobs that we could place them into.”)

14. Another factor may be the relative improvement in economic conditions in major source countries. For example, over 25,000 visas were granted to Irish citizens in 2011-12 compared to

6743 visas in 2015-16. This tracks a downward trend in Irish unemployment, down from 15.1 per cent in February 2012 to 9.9 per cent and falling four years later.

15. Even accounting for these effects as well as a higher tax rate, it is unlikely that there will be a large drop in the coming years in the numbers of backpackers seeking to work in horticulture. First, backpacker wages are set by the minimum wage. According to the OECD, Australia has the fourth highest minimum wage in the world before tax, and the highest after tax (OECD, 2015b). Note also that horticultural employers are required to pay an additional 25 per cent to casual workers which their backpackers typically are. This is not a benefit available in many other countries; for example, it does not apply in New Zealand. Second, from earlier numbers we know that about 20 per cent of backpackers want to stay in Australia. They are the ones who will likely get a second-year visa as part of an immigration strategy, and therefore work in horticulture.

Exploitation in the Working Holiday program

16. Our own surveys showed that illegal labour practices were prevalent in the horticultural sector. While there was anecdotal evidence to suggest a link between this prevalence and reliance on backpackers, systematic evidence has only emerged recently as a result of the inquiry conducted over the past two years by the Fair Work Ombudsman into Australia's Working Holiday program (FWO, 2016).

17. Specifically pertaining to regional work, largely undertaken in the horticultural industry, the FWO found:

- more than a third claimed they were paid less than minimum wage;
- of those who were paid for their regional work, around 27 per cent were paid cash;
- 14 per cent had to pay to secure regional work; and,
- 6 per cent had to pay an employer to 'sign off' of their regional work requirement.

18. As the report says, "the work-for-visa system is broken." The very incentives required to get working holiday makers into regional areas are the same incentives creating the conditions of exploitation. The FWO summarises (p. 4) that "the 417 visa program created an environment where":

- "unreasonable and unlawful requirements are being imposed on visa holders by unscrupulous businesses;
- "exploitative workforce cultures / behaviours are occurring in isolated and remote workplaces; and,
- "employers are making unlawful deductions from visa holders' wages, or are unlawfully requiring employees to spend part or all of their wages in an unreasonable manner."

19. The lack of any regulatory framework for backpackers in the labour market is a first-order issue for the horticultural industry. Government policies, such as the incentive of a second-visa following work in a regional area for three months, are creating a dependency on employers, leading to exploitative practices.

20. Apart from the immediate harm on the migrant, worker exploitation has other negative effects. It damages the integrity of Australia's labour markets more broadly, and harms Australia's reputation. This may have serious adverse consequences for high-end export products such as wine and fruit. There are many examples where coordinated campaigns have occurred against products for ethical reasons, including worker exploitation in the textile and manufacturing industries.

The benefits of additional Pacific labour migration

21. The alternative to such heavy reliance on backpackers is greater hiring of Pacific islanders under the Seasonal Worker Program (SWP). This would be beneficial for both Australia and the Pacific. The Seasonal Worker Program was introduced as a pilot in 2009, and as a permanent program in 2012. While the numbers under the SWP continue to grow (reaching 4,722 in 2015-16 last year), the program remains tiny relative to the Working Holiday program (Figure 1).

22. Clemens (2011, p.84) shows the gains from eliminating migration barriers “amount to large fractions of world GDP—one or two orders of magnitude larger than the gains from dropping all remaining restrictions on international flows of goods and capital.” For Pacific citizens working in Australia under the Seasonal Worker Program, this stems from remittance income to support consumption and investment in their households and communities. For Australia, this form of economic development is an important complementary measure for stability in the Pacific.

23. There are also labour productivity benefits for employers who hire seasonal workers as a part of their workforce. Leith and Davidson (2013, p. 1) evaluated payroll data for a horticultural employer in Queensland and found “seasonal workers were, on average, significantly more efficient than working holiday makers.” In addition, seasonal workers can return year after year, a process disallowed under the backpacker program. While the majority of labour in the horticultural industry is piece-rate, more experienced workers will help reduce spoilage and improve quality, important indirect benefits for employers which stem from faster picking. Lower employee turnover over the medium-term helps offset initial expenses associated with the Seasonal Worker Program.

24. Importantly, the SWP is a tightly regulated scheme which mitigates against exploitation. According to the 2016 report of the Joint Standing Committee on Migration, *Seasonal change: Inquiry into the Seasonal Worker Programme (SWP)*, the rate of complaints in relation to the SWP “is relatively low compared to all industries Australia wide” (p. 149).

25. In summary, greater reliance on Pacific islanders would help the Pacific, boost productivity in Australian horticulture, and reduce exploitation, while diversifying the workforce away from an undue reliance on a single source of labour.

26. The main way in which to achieve greater reliance on Pacific islanders is through reforms to the Seasonal Worker Program and removing the pre-eminence of the horticultural industry for second-visa eligibility. However, Pacific islanders should also be given access to the Working Holiday program. At the current time, there are no Pacific countries with formalised working holiday agreements (Papua New Guinea signed a bilateral treaty in 2011; however, due to delay on the PNG side, it has not yet come into force). There have also been discussions with Fiji but no formal agreement to date. This precludes citizens of these countries coming to Australia via a relatively light-touch process as working holiday migrants do not require a sponsor to work.

27. The Australian Government should devise a standard process for Pacific countries to apply for a bilateral working holiday agreement. This would require amending the standard eligibility provisions to lower the level of education required. In addition, minimising the role of the home government in applying for a visa would improve program outcomes. Even with a small cap of 100-200 could facilitate an important flow of labour migration from the Pacific.

Public policy principles for reform of the Working Holiday program

28. The issue of what tax rate should be paid by backpackers should not be looked at in isolation. According to “second-best theory”, partial reforms which, if looked at on their own, might be

considered welfare-improving could in fact be welfare-worsening once a broader range of considerations is taken into account. Changes in the tax rates paid by backpackers should be undertaken in the context of a broader analysis of the labour market into which their services are provided.

29. Two public policy principles could usefully guide reforms in this area: policy coherence and a level playing field. Policy coherence is the principle that policies should not undermine each other, but rather work together. The level playing field is the principle that competing economic agents should, as far as possible, compete under the same rules.

30. **Policy coherence** demands that the current incentives to funnel backpackers into horticulture should be abandoned. The current configuration of the backpacker program directly undermines the Seasonal Worker Program. It makes no sense that backpackers, who are allowed to take any job in the economy, should be encouraged to compete with Pacific Island seasonal workers, who are allowed only to work in a very limited number of sectors, mainly horticulture.

31. The second-year visa for backpackers was introduced in 2006 when the government was not prepared to contemplate a Seasonal Worker Program. Now that the SWP has been introduced and has bipartisan support, the second year visa for agricultural work should be removed. The backpacker visa, which is basically a visa available to developed countries, should not be used to source our low-skill needs. Ideally, the second-year visa should be phased out. Alternatively, the requirement for getting a second year visa could be extended to any regional work, rather than only work in agriculture, mining and construction. This would allow for work in hospitality and tourism, for example.

32. Applying the principle of a **level playing field** would entail making the employment conditions of seasonal workers and backpackers as similar as possible. Of course, the employment decision should be left to the employer, but it should be on the basis of a level playing field. At the moment, the playing field is heavily tilted in favour of backpackers, which is why they so outcompete seasonal workers (Figure 1). It is not possible to make the conditions between the two groups identical given the differences between them. For example, it would not be feasible to make employers responsible for the accommodation of backpackers or their travel to or within Australia. To this extent, even with the reforms proposed below, the playing field would still be tilted in favour of backpackers and against seasonal workers.

33. Nevertheless, several measures could be taken which would substantially even the playing field.

a. **Same tax rate applied to both groups.** Seasonal workers are taxed at the rate of 15 per cent. The same tax rate could be applied to backpackers.

b. **Market testing.** At the current time, market testing is required prior to the hiring of seasonal workers, but not prior to the hiring of backpackers. The labour market testing requirement should be dropped for seasonal workers. The initial rationale for providing horticultural employers with incentives for working holiday makers was the complete lack of Australian's working in the industry. Given this, requiring employers to test the labour market is futile. The process is administratively burdensome, and [undermines confidence](#) in the SWP.

c. **Registration of employers.** At the current time, employers who want to hire seasonal workers are required to undergo an intensive, non-automatic registration process with the government; employers who want to hire backpackers are not required to register with any government agency. Requiring the registration of employers who hire working holiday makers would assist in the

provision of information and knowledge about the horticultural industry. On the other hand, it would add to the regulatory burden. At a minimum, the [compliance burden](#) on SWP employers should be reduced. And labour-hire firms, which are responsible for the hire of backpackers and much of the exploitation, should be licensed, as recommended by the March 2016 Senate Inquiry report *A national disgrace: the exploitation of temporary work visa holders*. While this is a state responsibility the Commonwealth could encourage the states through COAG.

Conclusion

34. While there is a case for setting the backpacker tax at a rate below the 32.5 per cent proposed, such a reduction should only take place in the context of broader reforms to the Working Holiday program to ensure policy coherence and, as far as possible, a level playing field with seasonal workers. Without these broader changes, a lowering of the tax rate will only exacerbate the problems of policy incoherence and a non-level playing field, two flaws which currently plague Australian horticultural workforce policies.

References

- Clemens, M 2011. "Economics and emigration: trillion-dollar bills on the sidewalk?" *Journal of Economic Perspectives* 25(3).
- Curtain, R, Dornan, M, Doyle, J and Howes, S 2016. *Pacific Possible – Labour mobility: the ten billion dollar prize*. ANU/World Bank.
- DIBP 2016. *Working Holiday Maker visa programme report*, 30 June 2016
- Doyle, J and Howes, S 2015. *Australia's Seasonal Worker Program: demand-side constraints and suggested reforms*, Devpolicy/World Bank.
- Fair Work Ombudsman. *417 Visa Inquiry*, October 2016.
- Gibson, J, McKenzie, D and Rohorua, H 2013. "Development impacts of seasonal and temporary migration: a review of evidence from the Pacific and Southeast Asia", CReAM Discussion Paper 08/13, University College London.
- Howes, S and Hay, D 2012. "Australia's Pacific Seasonal Worker Pilot Scheme: why has take-up been so low?" Development Policy Centre Discussion Paper 17.
- Leith, R and Davidson, A 2013. "Measuring the efficiency of horticultural labour: case study on Seasonal Workers and Working Holiday Makers" ABARES, Department of Agriculture, Canberra.
- OECD 2015. *International Migration Outlook 2015*, Paris: OECD.
- OECD 2015b. "Minimum wages after the crisis: making them pay", May, OECD Directorate for Employment, Labour and Social Affairs.
- Richardson, S, Tan Y, Lester, L and Sun, L 2009. "Evaluation of Australia's Working Holiday maker program", National Institute of Labour Studies, Flinders University.