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Governance of the Seasonal Worker Programme in Australia and sending countries

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Executive summary and recommendations

From a slow start in 2008, Australia's Seasonal Worker Programme (SWP) has become a growing source of employment in the Pacific and Timor-Leste, and an important part of the seasonal workforce for Australian farmers.

While research has demonstrated the benefits of the SWP for both workers and farmers, less is known about how the program is governed, especially in sending countries, and about the determinants of national participation. This report analyses these issues, and recommends ways to improve SWP governance, both in Australia and in the sending countries, with the objective of promoting the sustainable growth of seasonal labour mobility from the Pacific into Australia. It is the culmination of years of research, including fieldwork undertaken over nine years in 11 countries.

The report begins with how the SWP operates in Australia, the characteristics of the employers who use it, and a comparison of the SWP to New Zealand's equivalent, the Recognised Seasonal Employer (RSE) scheme. The report then turns to an analysis of SWP participation across sending countries, and to an explanation of why some countries have done better than others. Detailed case studies of the three biggest SWP sending countries – Vanuatu, Tonga and Timor-Leste – are then presented. While most of the research in this report was undertaken prior to the closure of international borders due to the COVID-19 pandemic, the concluding section of the report reflects on the current situation, and its implications.

This executive summary presents our conclusions and recommendations under four headings: sending countries; Australia; interactions between Australia and sending countries; and responses to COVID-19.

Sending countries

The governance of migrant seasonal labour schemes is complex because the arrangements involve different sovereign governments and legal systems, and a range of government agencies. There is intense competition for SWP positions, given the high levels of underemployment in the Pacific, and the high level of SWP pay by Pacific standards. Sending-country governments not only want to maximise opportunities for their workers, they are also concerned about equity and the avoidance of exploitation, often in situations of limited information.

Participation rates vary enormously across sending countries. The SWP is not an aid program, and has no country quotas. If nationality was irrelevant, we would expect SWP participation to be proportional to sending-country size. But nothing could be further from the truth, with Vanuatu and Tonga sending many times more workers than Solomon Islands and Papua New Guinea (PNG), despite their much smaller populations.

Our analysis shows that there are a range of country-specific factors that have disadvantaged some countries and benefited others. In particular, some have benefited from an "early-mover advantage", with their early participation in the SWP workforce giving them an advantage over latecomers. However, not all early movers have succeeded, and Timor-Leste, a relative latecomer, is now the third biggest sending country.

The more successful sending countries have two things in common. First, they have attracted large employers. The SWP hiring market is extremely concentrated with the top four approved employers hiring 48 per cent of workers between 2012 and 2019, and the top ten hiring 70 per cent. All of the top four employers are labour hire companies, which

can increase their workforces rapidly by signing up more farmers. Attracting one or two of these companies opens up a large and potentially rapidly growing demand for a country's workers. These employers, or their representatives or agents, are also able to take on a lot of the transaction costs associated with SWP hiring and travel.

Second, in general, the more successful sending countries show a higher reliance on return workers. In any one year, fewer than half of SWP workers are working in Australia for the first time. Return workers are key to making the SWP work; the average SWP worker works in Australia for about four seasons. Not only are return workers more productive than new ones, they are also trusted by their employer to recommend new workers. It is a mistake to think of return and new workers from the same country as competing for jobs; rather the evidence suggests that a high reliance on return workers makes it more likely that employers will hire more new workers from the country concerned.

The ways in which sending countries govern labour mobility differ greatly. Most countries set up a "work-ready pool" of eligible workers from which employers can, or in some cases must, select the workers they want. But the two biggest senders – Vanuatu and Tonga – either have no work-ready pool at all, or give it a very marginal role.

More generally, we characterise sending countries as taking either one of three approaches. The "government-light" approach is the one Tonga and Vanuatu have taken. This is one in which the government plays a minimalist role, largely outsourcing to employers or their representatives the responsibility for not only recruitment but also many of the supportive functions, such as helping workers to get a visa or health test, as well as worker welfare. The "government-central" approach is at the other end of the spectrum. Here, although employers make the final recruitment choice, they have to select from the work-ready pool. Timor-Leste, PNG, Kiribati, Tuvalu and Nauru all require hiring from the work-ready pool. Finally, there are three countries – Fiji, Samoa and Solomon Islands – which take a "mixed" or "in between" approach: there is a significant work-ready pool, but employers either do not have to use it, or can nominate the workers they want to hire into it.

The diversity and complexity of country experiences should caution us against nominating any one approach as "best practice". However, there is much that countries can learn from each other, and from their own experience.

Recommendation 1: *Sending governments should avoid exclusive reliance on a work-ready pool.*

Two surveys of employers confirm that they do not like having to hire from the work-ready pool because of the high level of uncertainty they have about workers' reliability. Employers prefer to either directly select workers themselves, or to take advice from a trusted intermediary, such as a selected return worker or agent. In the past, Timor-Leste has allowed employers to hire workers they wanted even if they were not originally in the work-ready pool; recent announcements by government have indicated that this will no longer be possible. If Timor-Leste maintains its stance, we predict this will erode its SWP success. More generally, countries need to bear in mind that limiting the extent to which employers can rely on return workers (both for work and for recruitment) will lead employers to divert their employment efforts to other countries.

Recommendation 2: *Sending governments should use the private sector to help fulfil governance functions.*

The government should take a regulatory and monitoring role, not a processing one. Governments should ensure that briefings are of good quality, that intermediaries are not charging workers, and so on. But much of the actual work of visa facilitation, travel arrangements and briefing delivery can be done by employer representatives or agents. If governments try to take on all these tasks, they risk being overwhelmed, and unable to manage growth in worker numbers. The result might be delays in dispatching workers, or workers travelling poorly prepared.

Recommendation 3: *Most countries need to provide increased resourcing to the governance of labour mobility as numbers grow, both at home and abroad.*

As labour mobility becomes a major business, governments need to treat it as such. With growth, government responsibilities obviously become more expensive to fulfil, but also more important. Critical government functions which are often under-resourced include: record-keeping; pre-departure briefings (the low quality of which is a constant complaint of employers); enforcement of blacklisting rules in response to worker misconduct; and troubleshooting when problems arise abroad. No countries systematically collect and publish feedback from employers and workers, but major sending countries should, regularly.

Recommendation 4: *The main priority for countries that have struggled to break into the SWP market has to be responsiveness to employer needs.*

It will not be easy for countries with small SWP numbers to gain market share. The large firms that dominate the SWP recruit from two, three or at most four countries. Nevertheless, the SWP has been growing rapidly, and the case of Timor-Leste suggests that it is possible to be a latecomer and become a major player. Gaining a positive reputation among employers for responsiveness and reliability is the most important thing that countries sending few workers now can do to gain market share.

Australia

Over time, political and sector-wide changes have contributed to making the SWP more attractive as a source of reliable, productive workers. The result has been rapid growth in SWP numbers, which have increased eightfold since 2012 to reach 12,200 in 2019/20.

Despite the rapid growth, reforms are needed. Seasonal workers are still greatly outnumbered by backpackers, who, as it has been richly documented, are vulnerable to exploitation, especially when seeking a work-based visa extension – some 30,000 backpackers every year get a second-year visa for working in agriculture for three months in their first year. Continued use of illegal workers by growers in some regions is another source of low-cost labour compared with SWP workers

Also, many farmers and farmer associations are still suspicious of the SWP because of the red tape, and, more broadly, the perception that it is an aid scheme, or at least a scheme over which they have no control. While the SWP will always be tightly regulated, failure to address employer concerns could lead to the scheme growing below its potential, or even to losing support altogether.

Two types of reforms are therefore needed: one, to create a level playing field between different migrant labour sources; and, two, to make the SWP more responsive to employers. Our recommendations follow accordingly.

Recommendation 5: *Visa changes to incentivise backpackers to work on farms should be reversed. There should be a national licensing scheme for labour hire companies, with the resources needed to monitor compliance.*

Abolishing the third-year visa extension (or making all visa extensions conditional on any work, not just agricultural) would reduce worker exploitation, and promote fair competition between different horticultural migrant labour sources. While a start has been made, much more needs to be done to counter the use of illegal or “undocumented” workers by many growers. Labour contractors should be nationally licensed, as is now government policy. These reforms would benefit all workers.

Our recommendations regarding the SWP are based on our comparisons with the RSE, which has benefited from a stronger employer voice, and a more collaborative approach to how regulation is implemented.

Recommendation 6: *A reference group consisting of approved employers (growers and labour hire operators), and key industry associations should be established. Together with government representatives, this group would be tasked with developing a more collaborative approach to identifying and resolving key problems.*

The RSE was set up to address the problem of the lack of reliable, trained horticultural workers. New Zealand growers and their peak association played a key role in its design and the changes made to it over time. Horticulture growers in Australia need to take a greater role in ensuring that the SWP better meets their needs.

Recommendation 7: *The SWP should be managed by the federal Department of Agriculture, Water and the Environment.*

New Zealand’s RSE is managed by the Ministry of Business, Innovation and Employment. The arrangement proposed for Australia would be to give a major government agency with strong links to regional Australia a clear brief to identify the labour needs of growers and to address them.

Recommendation 8: *The Australian Government should place relationship managers, with a brief to resolve problems close to where they occur, in each of the main horticultural areas where SWP workers are most concentrated.*

In any scheme, problems will arise, and this is certainly true of the SWP. They need to be addressed more quickly and cooperatively. RSE relationship managers, who are regionally based, take a non-punitive approach to resolve critical incidents involving employers and seasonal workers. Recent initiatives of the Australian Government suggest a more decentralised approach to compliance monitoring and welfare is now being adopted based on where the workers are located.

Interactions between Australia and sending countries

The governance of a labour mobility scheme is more than its separate management by sending and receiving countries. The relationship between the two sets of governments is also critical. While multi-country dialogue opportunities have increased in recent years, what is still missing – and needed – are regular bilateral labour mobility meetings focused on improving each other’s performance.

Recommendation 9: *Australia and New Zealand should initiate (separately or preferably jointly) bilateral or trilateral monitoring mechanisms with each sending country to address a range of operational issues in private.*

A good practice system of labour mobility governance on both sides will only emerge when regular mutual feedback is offered on performance and needed changes made by those with the strongest interest in making the arrangements work well. Annual bilateral or trilateral mechanisms would provide an ongoing forum in which sending countries could raise their concerns about practices in receiving countries, and vice versa.

Recommendation 10: *Approved employers, either individually or jointly, should have an ongoing presence in the three main sending countries, and should take more responsibility for compliance in relation to the recruitment and preparation of workers.*

The largest New Zealand hirer under the RSE has a permanent presence in Vanuatu. To improve equity in how workers are selected, and to make sure workers are well informed, we suggest large Australian approved employers consider following suit. This would enable them to recruit workers directly and/or to work closely with their intermediaries to ensure that new workers are selected from under-represented areas. It would also help them better prepare their workers, and to ensure workers have specific information in their preferred language about the working and living arrangements in their workplace. To the extent that employers work through intermediaries, they should ensure that workers are not being charged fees – and should refuse to work with any intermediaries who do not comply with this requirement.

Responses to COVID-19

The international border closures have created two pressing issues for the SWP. First, some 7,000 seasonal workers have been stranded in Australia. Their situation has exacerbated the problems that already existed with the governance of the SWP, with some workers starting to abscond, and some employers frustrated by the regulatory barriers in the way of finding employment quickly for existing workers. Second, with the summer harvest approaching in Australia, it is widely believed that a special pathway will be needed to bring more Pacific workers to Australia prior to the resumption of normal international travel, which might not be till mid-2021. A first group of some 160 workers arrived in September 2020 to work on mango farms in the Northern Territory. Our final two recommendations relate to the establishment of the special pathway.

Recommendation 11: *The reference group recommended earlier (see Recommendation 6) should be established now, with an initial mandate to solve SWP-related problems arising from the closure of international and state borders.*

Recommendation 12: *New COVID-19 bilateral agreements should be established with willing sending countries.*

While it is clear that there are many obstacles to restoring the SWP during the pandemic, the governance changes discussed in this report will need to be accelerated. This is needed so that there can be confidence that all workers are recorded and tracked while they are working overseas. The new bilateral agreements could in turn provide the basis for the regular bilateral dialogue advocated in Recommendation 9.

The current pandemic is unprecedented in the modern era, and would have caused problems for even the best-run scheme. But the steps needed to respond in the context of the pandemic are consistent with the broader reforms the program would benefit from, both in Australia and in sending countries. COVID-19 has disrupted the SWP, but it also represents an opportunity to reform its governance to ensure its continued growth.