

# FARM LABOUR All you need to know

An employer's guide to labour options and staff requirements



**DISCLAIMER:** This is a guide only. Any decisions made for your business should be based off of research into your individual circumstances.

Make sure you are connected to the internet. Click on any of the blue text to visit the relevant website.

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#### WHERE DO I FIND WORKERS?

**COVID-19 UPDATE:** For the most up to date information on workforce matters since the commencement of the COVID-19 pandemic, <u>visit the COVID-19 page on the Citrus Australia website</u>.

#### SEASONAL WORKER PROGRAMME

02 6240 5234

seasonalworker@jobs.gov.au

COVID-19 UPDATE: Citrus Australia has been successful in our advocacy to Federal Government for Seasonal Workers already in Australia to have their working visas extended. This means they can work during harvest, since the closure of Australia's borders and grounding of international flights means they cannot return home. For the most up to date information on COVID-19 and the impact on the SWP, please see the COVID-19 page on <u>our website</u>.

The Seasonal Worker Programme (SWP) is managed by the Federal Department of Employment, Skills, Small and Family Business.

The SWP assists employers in the agriculture sector to fill employment gaps unable to be met by the Australian workforce. It is an <u>Australian Aid</u> program that contributes to the economic development of seasonal workers from nine participating Pacific Island countries, and Timor-Leste, by allowing workers to earn money in Australia to take home to their families.

The SWP brings about 8,500 workers per year (Sep 2018), and provides unskilled labour primarily in regional areas. The permitted work period is nine months per year.

Workers repay their full travel costs, except for the first \$300 which is subsidised by the Australian Government.

Employers are required to become a <u>Temporary Activities Sponsor</u>, provide sufficient accommodation to host a Seasonal Worker, and meet a number of other requirements such as ensuring a minimum average of 30 hours work per week, and monitoring overall wellbeing, due to the program falling under the Australian Aid program.

Temporary Activities Sponsors must employ a Seasonal Worker via an <u>Approved Employer</u>. An Approved Employer has been signed off by the government as fit to manage the logistics of the worker to get to Australia.

Many contractors are Approved Employers, such as <u>Jobs Australia</u> throughout New South Wales, <u>MADEC</u> throughout South Australia, Victoria and New South Wales, and <u>Top of the Crop</u> who provide services Australia wide.

#### Can I be an Approved Employer?

Yes, Temporary Activities Sponsors can also become Approved Employers, and invite the Seasonal Worker directly, rather than going through a third party. Whilst this will save paying money to a third party, it will involve extra work to organise the workers' flights, accommodation, transport, pastoral care, guaranteed work, and overall wellbeing.

You should start applications for Seasonal Workers approximately 3-4 months prior to the commencement of work.



WATCH a video on how Seasonal Workers are recruited in the Solomon Islands.

#### **Benefits**

- The most efficient workers can be invited back the following year, and can be promoted to higher skilled roles, as they have been inducted and trained by you in the first year.
- Returning workers can assist in training new staff.
- Returning, trusted workers can recommend friends, if you are seeking more workers the following year.
- The SWP is a popular source of labour for picking and packing roles, particularly citrus where workers have no issue with handling the size of the fruit, and heavy lifting.
- According to Australian Bureau of Agricultural and Resource Economics and Sciences (<u>ABARES</u>) research, the <u>productivity of Seasonal Workers working in fruit picking</u> is on average, 20 per cent higher than that of Working Holiday Makers.
- ABARES research also found that Seasonal Workers who returned to the same farm were on average, 15 per cent more productive than new seasonal workers.

#### Challenges

- Workers generally only participate in the program for 3-4 years maximum, before they have made enough money to support their families back home and do not return. Being away for so long can cause stress on their families. Some growers have developed friendships and visited the workers in their home country, whilst on holiday.
- Workers must be provided with accommodation, and some regional areas do not have enough accommodation to support the number of workers required. Some growers are also facing difficulties applying for permits to build worker accommodation on their properties. The Federal Government is working on deploying accommodation brokers to parts of regional Australia to assist with this.
- Feedback has indicated that accommodation provided for Seasonal Workers becomes very quickly worn. If possible, providing an outside kitchen has assisted with this.
- Growers sometimes find it a challenge to provide the required level of pastoral care for workers. Workers may rely on this, particularly as their English may be limited, and establishing life in Australia can be difficult.

Citrus Australia supports the Seasonal Worker Programme as a core component to a stable seasonal workforce. Read a recent story from the Citrus e-news <u>here</u>.



#### SEASONAL WORKER PROGRAMME REGIONAL PILOT

COVID-19 UPDATE: The Seasonal Worker Programme Regional Pilot has not been affected by COVID-19. Growers are encouraged to use this opportunity to consider applying to become an Approved Employer. Existing portability arrangements will continue for seasonal workers employed by approved employers in the pilot regions of Sunraysia, Goulburn/Murray, Riverina and Wimmera-Mallee, which commenced on 1 January 2020. For the most up to date information on COVID-19 and the impact on the SWP, please see the COVID-19 page on <u>our website</u>.

A 12-month pilot commenced in April 2019 in the Goulburn/Murray (VIC), Riverina (NSW) and Sunraysia (NSW/VIC) regions to improve smaller famers' access to Seasonal Workers to meet harvest requirements. The pilot was due to end on 30 April 2020, but has now been extended to April 2022. The areas of coverage are also continuing to grow, with the Sunraysia region now extending across the Wimmera/Mallee region, across to Swan Hill, and south towards Horsham.

This pilot is targeting growers who cannot provide nine months of work for a Seasonal Worker. The Seasonal Worker is still guaranteed nine months of work. However, the workers can be shared amongst growers across regions.

Growers can either:

- Apply to an Approved Employer to employ a Seasonal Worker for a short period; OR
- Become an Approved Employer themselves, and arrange the shared period amongst fellow growers who may require the worker at a different time of the season.

#### **EXAMPLE**

Peter (Grower) requires Fetu (Seasonal Worker) to pick apples in the Riverina, but only from February to April, giving Fetu three months of work.

In the Murray Valley, Peter's friend Jim needs workers to pick Navels for six months, from May to October. Peter and Jim are both Approved Employers, and between them, they arrange for Fetu to move to the Murray Valley region to work for Jim, after he has finished in the Riverina.

By October, Fetu has completed his nine-month work period and travels home. Peter and Jim were both happy with Fetu's work, and invite him back the following year.

In addition to this, there is also a restricted pilot being conducted in Western Australia by VegetablesWA throughout 2020, with 12 places available. Currently there are no citrus growers participating in the pilot. To participate, or for more information, please contact Melissa Denning, Labour Scheme Facilitator, West Australian Vegetable Growers Association Inc. on 08 9486 7515, 0477 477 044, or melissa.denning@vegetableswa.com.au

#### **Benefits**

• The Pilot is providing more flexible opportunities so that small to medium sized growers can easily access this program.

#### Challenges

• Deciding if you want to take on the extra responsibility of becoming an Approved Employer, to avoid paying a third party to do so.



#### PACIFIC LABOUR SCHEME

07 3557 7750

enquiries@pacificlabourfacility.com.au

COVID-19 UPDATE: Citrus Australia has been successful in our advocacy to Federal Government for PLS workers already in Australia to have their working visas extended. This means they can work during harvest, since the closure of Australia's borders and grounding of international flights means they cannot return home. For the most up to date information on COVID-19 and the impact on the PLS, please see the COVID-19 page on <u>our website</u>.

The Pacific Labour Scheme (PLS) is managed by the Department of Foreign Affairs and Trade.

The PLS complements the Seasonal Worker Programme to help meet business needs across all sectors in rural and regional Australia, and is also an Australian Aid program which brings workers from nine Pacific island countries and Timor-Leste.

The PLS is targeted at low and semi-skilled labour, whereby migrants can work for between one and three years in Australia.

Like the SWP, you need to become a Temporary Activities Sponsor, and then you can apply to become an Approved Employer. Once labour market testing has been proven, you can start to recruit workers.

The PLS is administered by Pacific Labour Facility (PLF), a private business based in Queensland. They provide support in financial literacy including banking and taxes, sourcing affordable accommodation, introducing workers to local communities, and provide a hotline for growers and workers to call 24/7. There is a lot of great information on their website, and you can call them any time with questions. Visit <u>https://www.pacificlabourmobility.com.au/</u>

#### **Benefits**

- Workers can be contracted for three years, so there is value in teaching and upskilling them, and they in turn can teach other new workers.
- The longer contract, and time available to learn, makes PLS workers a more reliable source to fill gaps in remote areas where there is a bigger struggle to find skilled staff.
- Growers can request what skills they are looking for, and the PLF can teach these skills to workers in their home country, prior to coming to Australia. There are a number of Australian agricultural schools operating in the Pacific.

#### WORKING HOLIDAY MAKER PROGRAM

COVID-19 UPDATE: Citrus Australia has been successful in our advocacy to Federal Government for WHMs already in Australia to have their working visas extended. This means they can work during harvest, since the closure of Australia's borders and grounding of international flights means they cannot return home. For the most up to date information on COVID-19 and the impact on backpackers, please see the COVID-19 page on <u>our website</u>.



Australia's reciprocal Working Holiday Maker (WHM) program allows young adults to have a 12-month holiday, during which they can undertake short-term work and study. It is managed by the Department of Home Affairs.

The WHM program includes over 40 partner countries or jurisdictions in two visa subclasses - Working Holiday (subclass 417) visa, and the Work and Holiday (subclass 462) visa. You can view visa comparisons <u>here</u>.

For the 417, Australia has reciprocal working holiday arrangements with 19 countries, including Belgium, Canada, the Republic of Cyprus, Denmark, Estonia, Finland, France, Germany, Hong Kong, Republic of Ireland, Italy, Japan, the Republic of Korea, Malta, Netherlands, Norway, Sweden, Taiwan and the United Kingdom.

Applicants must be aged 18-30 years, and hold a valid passport. Applicants up to the age of 35 can now apply from Canada and Ireland.

The 462 is available for tertiary-educated people from Argentina, Austria, Chile, China, Czech Republic, Greece, Hungary, Indonesia, Israel, Luxembourg, Malaysia, Peru, Poland, Portugal, San Marino, Singapore, Slovak Republic, Slovenia, Spain, Thailand, Turkey, USA, Uruguay, Vietnam and Ecuador.

Applicants must be aged 18-30 years, and hold a valid passport.

Workers can now renew their visas for a second year by working in specified jobs, in <u>specified regional</u> <u>areas</u> for three months in the first year, and for a third year by working for six months in the second year. Workers can now also stay with an employer for 12 months, up from six, without asking permission (from the Department) if they work in plant and animal cultivation anywhere in Australia.

With sufficient advertising, growers find that WHMs mostly approach them directly for work. Alternatively, many are sourced through local backpacker hostels. As WHMs are constantly travelling the best place to advertise is online. Try your website, social media, and online job sites and try to use lots of words that WHMs would search when seeking work, so that you are more likely to appear in their search.

#### Benefits

- Feedback is that backpackers are often reliable and work hard, more so in packing sheds than on farms.
- Many backpackers approach growers, therefore growers don't always have to spend time seeking them out. This is beneficial as growers may also avoid paying the middle man the hostel.
- There is little paperwork and not many requirements or costs to be met, in comparison to the SWP or PLS.

#### Challenges

- The backpacker visa is principally about cultural exchange, and labour is secondary. Not all workers are going to be overly efficient, they are there for the experience and out of necessity to get their second visa.
- Whilst growers may be happy for WHMs to stay on longer as they are good workers, not many will want to, as they will want to continue travelling.



• Farm labour is not for everyone, and some backpackers quit after a couple of days when they decide they would prefer not to do that kind of work, which is time wasted for the grower. It is good practice to try to communicate requirements and expectations to the worker prior to commencement, so they can be prepared. Try developing a fact sheet that you can email to them, or the contractor/hostel.

#### HARVEST TRAIL SERVICES

Harvest Trail Services is an Australian Government initiative that links workers (Australians and visa holders) with harvest jobs in 16 rural and remote regions of Australia, by screening and matching workers with vacancies. It is managed by the Department of Employment, Skills, Small and Family Business.

Also under this banner is the more commonly known National Harvest Labour Information Service (NHLIS). This service was reformed and launched in July 2020 as the <u>Harvest Trail Information Service</u> (HTIS).

The <u>National Harvest Guide</u> will be published and distributed in hard copy form to thousands of jobseekers, information centres and accommodation providers across the country biannually. This guide details where and when certain crops are grown across the country, when labour is needed to either pick and pack crops, and when other farm work such as pruning is undertaken.

A national contact and communications centre has also been established, which operates from 8am to 11pm Monday to Friday, to assist employers list vacancies on the Harvest Trail website, and help jobseekers understand the vacancies available to them.

These services are available free of charge. The Department of Immigration website leads Working Holiday Makers to this page to look for work.

Call 1800 062 332 or email <u>htis@madec.edu.au</u> to register vacancies, or to discuss upcoming labour needs and the options available.

#### **CONTRACTORS**

COVID-19 UPDATE: Be aware that although you are using a contractor for your labour, you still have full responsibility under WH&S laws to manage the impacts of COVID-19 on your workers, and ensure you use best management practices to slow the spread of the virus. For assistance with this, refer to Citrus Australia's Guide to COVID-19 in the Orchard & Packing Shed <u>here</u>.

Many growers utilise the services of contractors in their region to assist with finding workers for picking and packing. These contractors may also be Approved Employers for the Seasonal Worker Programme.

Some contractors have been suggested by growers on our Regional Advisory Committees.

Jobs Australia New South Wales, South Australia, Victoria, Queensland and Tasmania

MADEC South Australia, Victoria, Queensland and New South Wales

Top of the Crop Australia wide



Basu Dahal Queensland

Pick'd Queensland

PlantGrowPick Australia wide

The Job Shop Western Australia and Northern Territory

If using a contractor, it's important to be aware if there are labour hire licencing laws operating in your state. You can read about these under the <u>Labour Hire Licencing Schemes</u> section of this document, and check on your relevant state website to ensure your contractor has obtained a licence.

When employing workers through a contractor, it is still your responsibility to ensure that you are only employing legal workers. You can use the <u>Visa Entitlement Verification Online</u> (VEVO) website to show you:

- which visa the worker holds
- the date the visa will expire
- how long the worker can stay in Australia on this visa
- visa conditions (what the worker can and cannot do on this visa)

There are some <u>great guidelines</u> on the Horticulture Showcase website to help you in selecting a contractor, including questions to ask, and what to ensure is written in your contract. Fair Farms also provides some useful things to look out for <u>here</u>.

#### YOUTH PATHWAYS

Try seeking out young people in your area who may have an interest in horticulture, or who may be looking to make some money after leaving school, or during school / university holidays.

A survey conducted in 2017 on young people having a career in agriculture in Western Australia found that:

- students don't know where to look for work or career ideas, so information needs to be taken to them
- younger audiences (high school) are focused on potential salary, such as how much money they can make in their job in the future
- older audiences (university) are focused on extrinsic benefits, such as the social impact, and how they can better the earth
- a higher percentage of women are interested in agriculture, over men
- the more students know about agricultural careers, the more interest they have in the industry.
- key reasons for wanting to pursue a career in agriculture include:
  - $\circ$   $\;$  Like working with animals
  - $\circ$   $\;$  Improving lives / the world
  - o Like being challenged



• Environment / sustainability

Consider where you are targeting your job advertising. Word of mouth is always good too. Some growers have used <u>Gumtree</u> successfully to find local workers.

#### Youth organisations

On a different note, remember that there are associations for young farmers around Australia. While most people in these associations may already have their own farms, some may be studying or looking for additional experience. Reach out and see if there is a chance you could find workers through these organisations.

National - Based in Queensland, <u>Young Farmers Connect</u> is a national not for profit organisation committed to cultivating networks, resources and community for young farmers state and nationwide.

Victoria - <u>Young Agribusiness Professionals</u> (YAPs) is a network for the next generation of food and fibre leaders and decision makers. It is a division of the Victorian Farmers Federation focused on 18-35 year olds.

New South Wales - <u>NSW Young Farmers</u> is the youth branch of NSW Farmers, a volunteer organisation furthering the interests of farmers and rural communities in NSW. Members aged 18-36 years are eligible to participate.

Western Australia - The aim of <u>AgConnectWA</u> is to engage, connect, represent, educate, listen, advocate and support young people throughout the agricultural industry and communities. It recognises that in addition to young farmers, there is a myriad of young people in rural, regional and metropolitan areas with a passion for agriculture and progressing rural communities.

#### Working with children

If you hire any young people under the age of 18 to work on your orchard, be aware that each state has different child employment laws and you should be familiar with these.

These laws will include things such as:

- how many hours per week children can work, both on school days and non-school days
- start and finish times each day i.e. no earlier than 6am, and no later than 5pm
- what age children can start working i.e. in Victoria it is 15 years
- requirements for employing your own children i.e. they must be supervised by you
- permits required to hire children
- the role of child employment officers

The below links are examples of the laws and permits required for hiring children in Victoria. You should seek these out in your relevant state.

Child employment laws and requirements

#### Apply for a child employment permit: industries other than entertainment

In Australia, anyone working with children must have a Working with Children Check (WWCC). This is an assessment of whether a person poses an unacceptable risk to children. This usually involves an



assessment of a person's criminal history, and can be applied for online. You can be fined if it is found that you have employed children without first obtaining a WWCC.

Links can be found below of how to apply for your WWCC.

SA (Child related employment screening)	VIC (WWCC)
NT (Ochre Card)	WA (WWCC)
QLD (Blue Card)	NSW (WWCC)

If you are a large business, it may also be a good idea to have a policy for working with children in your work place.

#### **GREY NOMADS**

COVID-19 UPDATE: Grey nomads other interstate travellers have been advised by government to return home, or to and stay at home. Caravan parks are closed. For some, they have no home to go to and many are stranded. Visit the website if you have some work and a place for them to go.

Following the Australian tradition, many retirees sell up at the end of their working life and take to the road for an extended period to see Australia. These 'grey nomads' are often looking for short-term work, and move from location to location in response to seasonal demand. Try advertising where grey nomads might see your request. They even have their own website.

http://www.thegreynomads.com.au/classifieds/help-wanted/

https://www.greynomadsjobs.com/

#### BACKPICKER APP

The idea for the Backpicker app was derived from a culmination of experiences had by David Fevaleaki, growing up in Sunraysia (on the border of Victoria and New South Wales) surrounded by farmers, and working alongside migrant and travelling workers around Australia in farming, mining and construction.

Backpicker will create a safe and convenient platform for growers to source legitimate workers in Australia, and an opportunity for workers to view training videos and learn about safety, biosecurity and so on, as the app develops. It is linked to Facebook, and based on a rating system.

Backpicker would like to give growers the opportunity to finalise the design of the app, by registering as early adopters, advertising available roles, and providing feedback on what could work better for you.

Citrus Australia is supportive Backpicker's goal and encourages all growers to try the app when next seeking workers.

Go to https://backpicker.com.au/ to view the platform, and start using it via the website format.

The app will eventually be available for download on Android and Apple, and will be FREE.

<u>Click on this link</u> to view a short 4-minute video on how to register. And see <u>here</u> for a short video on changes made to the app so far, thanks to grower feedback, as of July 2020.



Share your feedback with David via email at <u>david@backpicker.com.au</u> <u>Follow Backpicker on Facebook</u> to stay up to date.

#### **ON SHORE MIGRATION OPPORTUNITIES**

COVID-19 UPDATE: We've been in touch with SMECC who are managing on-shore migration opportunities, by reaching out to new migrants to Australia currently based in urban areas, and relocating them to regional areas to work in horticulture. Please contact SMECC if you are.

In Mildura, Victoria, the <u>Sunraysia Mallee Ethnic Communities Council</u> (SMECC) are working to bring new migrant groups from the city to regional areas, for opportunities to find employment and build a new life. These may be people who have chosen to move to Australia, or who have been given refugee status, or a humanitarian visa, and are able to legally work in Australia. This opportunity is available throughout Victoria through the Regional Employment Service System, supported by the Victorian Government.

Contact Dean Wickham at SMECC on 0478 057 877 if you are seeking workers in regional Victoria.

#### **DESIGNATED AREA MIGRATION AGREEMENT**

A Designated Area Migration Agreement (DAMA) provides flexibility for states, territories or regions to respond to their unique economic and labour market conditions through a tiered agreement-based framework.

A designated body i.e. Northern Territory government, can negotiate a first tier agreement with the federal Department of Home Affairs that is effective for five years, and allows employers throughout the NT to sponsor workers under the DAMA. The NT has to prove through labour market testing that it is difficult for employers to source workers in the region.

The second tier agreement is when businesses in the designated area (i.e. NT) apply for a labour agreement with the Department, under the negotiated rules of the DAMA. This may give them special concessions, like a lower requirement for the English language, or a lower level of educational background, to be able to sponsor skilled migrants to their business.

## The purpose is to help businesses in regional areas to hire workers from overseas, where it otherwise might be near impossible to find them in Australia.

Workers can be sponsored under the TSS visa, or the ENS visa, both of which either provide permanent residency, or can lead to it.

An individual cannot apply for a DAMA, only a region in the first instance, and secondly, businesses via individual agreements.

Generally, the application process consists of the following:

- 1. The employer applies to the relevant Designated Area Representative (DAR) for endorsement
- 2. The DAR assesses the endorsement application
- 3. If the assessment is positive, the DAR issues a letter of endorsement to the employer and notifies the Department of Home Affairs (the Department)



- 4. The sponsoring business makes an application to enter into an individual DAMA labour agreement with the Department
- 5. The Department assesses the DAMA application
- 6. On receipt of a positive outcome from the Department, the employer can proceed to lodge a nomination for the employee, and the employee can also lodge a visa application under the labour agreement stream with the Department<sup>1</sup>

There are currently seven DAMAs in place. You can read more about each DAMA below.

The Orana region (NSW) - 73 occupations, skills and experience concessions, permanent pathway

Northern Territory (NT) - 117 occupations, language and salary concessions

Far North Queensland (QLD) - 70 occupations, language, skills, experience and salary concessions, permanent pathway

The Adelaide Technology and Innovation Advancement Agreement (SA) - 60 occupations, language, age, salary and permanent pathway concessions

The South Australian Regional Workforce Agreement (SA) - 114 occupations available, language, age, salary and permanent pathway concessions

Victoria's Great South Coast (VIC) - 27 occupations, language, skills, experience, salary and permanent pathway concessions

Goldfields (WA) - 72 occupations, language, salary and permanent pathway concessions

#### **Benefits**

- The DAMA is very flexible and can be adapted to suit the needs of the regions and the employers that it will benefit
- The concessions and benefits are negotiated by the DAR, so the grower gets the reward without the hassle, other than proving labour testing
- The visas available under the DAMA lead to permanent residency, providing the grower with a long term worker
- The Federal Government is supportive of the DAMA at the present time, and is very receptive to applications

#### Challenges

- The first tier agreement of the DAMA has to be applied for by a region, state, or territory it is not a private business that can do this, that is only for the second tier. The applicant has to cover the cost of hiring someone to travel, interview growers, get data to prove where there is a shortage and work with the Department before applying for the DAMA. This role would likely be ongoing, and this is at the expense of the applicant.
- The DAMA still refers to the ANZSCO list, so growers can't apply to sponsor a worker for an occupation that is not on the ANZSCO list, unless negotiated otherwise.
- 1. ANZSCOsearch Migration Services, https://www.anzscosearch.com/dama/, 7 October 2019



#### HORTICULTURE INDUSTRY LABOUR AGREEMENT

In 2019, Citrus Australia provided support to <u>AUSVEG</u> in <u>developing a Horticulture Industry Labour</u> <u>Agreement</u> (HILA), which was approved by the Department of Home Affairs, and made available for application from 1 January 2020.

Labour agreements enable approved businesses to sponsor skilled overseas workers when there is a demonstrated need that cannot be met in the Australian labour market, and standard temporary or permanent visa programs are not available to suit needs.

Citrus Australia consulted with members nationwide to develop a shortlist of the most sought after positions, along with job descriptions, and provided this to AUSVEG to assist with the application. Thirty-one occupations were approved, ranging all skill levels (1-5). Examples are Irrigation Designer, Farm Manager, and Mechanical Engineer in skill level 1, through to Horticulture Section Managers at skill level 5.

There are also a bunch of concessions, such as a reduction on the Temporary Skill Migration Income Threshold (TSMIT), which means that you are not forced to pay an overseas worker more than an Australian worker would earn, if you can prove the normal wage in Australia. As of February 2020, the TSMIT is \$53,900.

An agreement allows growers to sponsor workers via three visas:

- Temporary Skill Shortage (TSS) (subclass 482) visa this is a temporary skilled visa that permits a stay of up to 4 years
- Skilled Employer Sponsored Regional (SESR) (subclass 494) visa this is a provisional visa that permits a stay of 5 years in regional postcodes, with a permanent residency pathway available after 3 years
- Employer Nomination Scheme (ENS) (subclass 186) visa this is a permanent skilled visa

Horticulture industry employers can submit an individual application to the Department of Home Affairs to create an agreement between their business and the Department, with access to the aforementioned concessions.

Read facts about the new HILA here.

View the occupations it includes, and access a link to apply here.

The HILA will be reviewed annually. Growers are encouraged to <u>contact Citrus Australia</u> with any feedback, so that we may continue to advocate for useful changes.

#### **Benefits**

- Discount of up to ten per cent on the TSMIT where it is demonstrated that equivalent Australian workers do not receive annual earnings of \$53,900.
- A broader range of monetary payments (e.g. regularised overtime) and non-monetary benefits (e.g. accommodation) can be counted as guaranteed earnings.
- Access to three visa types, with pathways to permanent residency.



- Access to 31 occupations the largest amount of occupations under any Australian industry labour agreement. There are also newly approved occupations that are not currently on the <u>ANZSCO list</u>, and so would not be possible to sponsor outside of the HILA.
- Workers can apply up until the age of 50 years for the SESR and ENS visas, with no age restriction on the TSS visa. You can compare these visas <u>here</u>.
- There is no fee to apply for the HILA. Normal visa nomination and application fees will apply.

#### Challenges

- Labour market testing is still required.
- The HILA does not assist with lower-skilled roles such as pickers and packers. These should be sought from the Seasonal Worker Programme, the Pacific Labour Scheme and the Working Holiday Maker Scheme.

#### **REGIONAL AGRICULTURE MIGRATION PROGRAM**

The Regional Agriculture Migration Program (RAMP) was created in November 2019 to combat labour shortages in agriculture throughout regional Australia, by providing more options, more flexibility and pathways to permanent residency.

It includes:

- Two new skilled regional provisional visas that provide a pathway to permanent residence. Check out the <u>visa spreadsheet</u> to compare:
  - Skilled Work Regional (Provisional) visa (subclass 491)
  - Skilled Employer Sponsored Regional (Provisional) visa (<u>subclass 494</u>)
- A new skilled regional permanent resident visa:
  - Permanent Residence (Skilled Regional) visa (<u>subclass 191</u>), commencing November 2022
- A <u>refined definition of 'regional Australia'</u> for migration purposes:
  - now in three categories, with Category 1 being simplified as all of Australia, except for Sydney, Melbourne and Brisbane
- More options for international students who graduate from regional universities:
  - from 2021, international students studying at all locations in Category 1 will be offered an extension on the current two year post-study work stream of the Temporary Graduate (subclass 485) visa.
  - provides an additional incentive for international students to study at a regional institution and to live in regional areas post-study, boosting diversity and prosperity in regional Australia, and easing growing infrastructure pressures in major cities.
- Additional points under the Skilled Migration Points Test for skilled migrants nominated to live and work in regional Australia



· Priority processing of regional visa applications

Accommodation brokers will be placed in regional areas to work on innovative accommodation solutions where there is not enough accommodation for seasonal workers. There is now an accommodation broker situated in Mildura working on the Wimmera and Mallee, one in the Swan Hill region and one in Mareeba, in Far North Queensland. They will engage with stakeholders and report to government on barriers and opportunities to improve accommodation availability.

There are also five <u>Regional Outreach Officers</u> (ROO) based around Australia to promote skilled migration initiatives and provide support to regional employers.

They are based in five capital cities but their roles involve travel throughout rural and regional areas. Feel free to contact them directly for assistance, or on their central email address regional.work.visas@homeaffairs.gov.au

- NSW Servet Brennan servet.brennan@homeaffairs.gov.au
- VIC & TAS Keith Jolly keith.jolly@homeaffairs.gov.au
- QLD & NT Nadia Davies nadia.davies@homeaffairs.gov.au
- SA Kirsty Munro kirsty.munro@homeaffairs.gov.au
- WA Steve Lanyi steve.lanvi@homeaffairs.gov.au

#### **GOVERNMENT AGRICULTURE WORKFORCE ADVICE**

In Queensland, agriculture workforce officers provide a free service offering advice to agribusinesses, on topics such as:

- workforce planning advice
- sourcing labour and skilled workers
- recruitment
- induction requirements
- funded training opportunities.

Six officers are located with industry organisations, and together they are known as the Queensland Agriculture Workforce Network (QAWN). Read more about this, and access contact information for your region <u>here</u>.



#### HOW DO I SPONSOR WORKERS FROM OVERSEAS?

Do your research first.

How much will this cost the business?

What are the requirements of your business to be eligible to sponsor?

What are the requirements of the sponsored worker to be eligible to live and work in Australia?

Whilst there is a lot of information on the Department of Home Affairs website, the process can be confusing and cumbersome, and the Department does not provide a contact to answer questions.

If it is your first time sponsoring an overseas worker, you might like to use a specialist recruitment agency to provide you advice and to assist in finding the most suitable worker who will meet the visa requirements. If you already have a worker in mind, you may utilise the services of a migration agent.

#### RECRUITMENT

You may already have a temporary worker on your books that you would like to keep on long-term. Eligibility to do this is case by case, depending on their current visa and what other visas they are eligible for. If not, there are recruiters around the country to help you find the right person. A few are listed here:

<u>Agri Labour Australia</u> are based in all states and territories (except the ACT), and aid with sourcing permanent and casual workers from around the globe.

Phone: 1300 247 823. Email: info@agrilabour.com.au

<u>Rural Enterprises Australia Pty Ltd</u> is based in Western Australia, but has an online rural recruitment portal for businesses. They focus on agriculture, and advertise across New Zealand and the UK.

Phone: 08 9477 6600. Email: jobs@ruralenterprises.com.au

<u>Agricrew</u> is based in Sydney and seek out skilled farming professionals from around the globe. They not only provide recruitment services, but also migration services.

Phone: 1300 131 131

#### **MIGRATION AGENTS**

The Department of Home Affairs provides some <u>useful advice</u> on how to use a migration agent. You can also find a link on their website to the <u>Office of the Migration Agents Registration Authority</u>, where you can search for registered migration agents in your area. These might be based at your local law firm.

Note that some migration agents may be based at recruitment agencies.



#### MANAGING THE SPONSORSHIP MYSELF

If you are already familiar with the sponsorship process, and feel confident in organising the sponsorship yourself, you may like to read a <u>step by step</u> to help guide you, on the Department of Home Affairs website. You can also check out the <u>learn about sponsoring</u>' page with useful links, to make sure you are up to date with any new changes.

You can utilise the <u>Visa Finder</u>, a questionnaire to help assess which visa is most relevant for the worker you may wish to stay on at your property.

Citrus Australia has also prepared a <u>spreadsheet</u> with a number of different visa options that may be useful to growers. These are mostly for a standard employer / worker sponsorship arrangement, however there are also other options to consider, should the worker already be in Australia and managing their own visa extension, or change of visa.

#### **SPONSOR TYPES**

There are a few different sponsorship types, depending on what kind of visa you are nominating for.

#### Standard business sponsor

You can become a standard business sponsor, and sponsor a worker from overseas to work for you using one the following visas:

- TSS Temporary Skill Shortage visa (subclass 482)
- SESR Skilled Employer Sponsored Regional (Provisional) visa (subclass 494)

Your right to sponsor will last five years from the date approved, and cost AUD420.

#### Accredited sponsor

After becoming a standard business sponsor, you can apply to become an accredited sponsor for the same two visas listed above. Accredited sponsors receive priority when processing TSS visa applications. Most nominations are approved within five business days.

You must meet certain characteristics to be approved.

#### Temporary activities sponsor

You can become a temporary activities sponsor, and sponsor a worker from overseas to work for you using one the following visas:

- Temporary Activity visa (subclass 408)
- Temporary Work (International Relations) visa (subclass 403) Seasonal Worker Program stream or Pacific Labour Scheme stream
- Training visa (subclass 407)

Your right to sponsor will last five years from the date approved, and cost AUD420.



#### What is the difference between visa nomination and visa application?

Nomination – the process of identifying a position to be filled by an overseas skilled worker in a business.

If using a labour agreement, you can only nominate for occupations specified in the labour agreement. Otherwise, you must nominate for an occupation from the <u>Skilled Migration Occupation Lists</u>. There are other requirements depending on the visa you choose.

Application – Once a nomination has been processed and approved, the worker is invited to apply for the visa, within a set timeframe. The application process could involve assessments such as a skills test. There is usually a cost to nominate, and a cost to apply.

#### What is the ANZSCO list?

The <u>Australian and New Zealand Standard Classification of Occupations</u> (ANZSCO) is a list of occupations in Australia and New Zealand using the Australian Bureau of Statistics' (ABS) methodology. When a census takes place in Australia, occupations provided in the census results are recorded by the ABS under a six-digit code. If there are new occupations listed that aren't currently classified as an occupation, there needs to be approximately 300 people identified in Australia as holding that position, for it to be recognised as a classified occupation in Australia.

The ANZSCO provides information on the skill level (1-5, with 1 being high-skilled and 5 being lowskilled), qualifications (level of schooling or degree) and/or experience (number of years' experience) needed to work in each occupation.

Occupations with skill levels 1, 2 or 3 can be sponsored. Skill levels 4 and 5 cannot, unless they are under a DAMA or industry labour agreement.

You can use the search facility to type in occupations, or ANZSCO codes here.

You can download the list here.

It's unlikely that you will have to directly refer to the ANZSCO list very often, however it is important to continue to advocate for horticulture occupations to remain on the ANZSCO list. If they are not listed in the census, not advertised when seeking workers, or not sponsored from overseas, the occupations will be removed. It's difficult to get occupations added to the ANZSCO list, and the opportunity only happens once every five years or so.

<u>Contact Citrus Australia</u> if occupations you require are not listed, so we can continue to advocate when the opportunity arises. You must provide evidence of difficulties finding workers in this occupation.

#### What are the <u>Skilled Migration Occupation Lists</u> (SMOL)?

Australia's employer-sponsored, points-tested and state nominated visa programs are underpinned by three lists which are managed by the Department of Employment, Skills, Small and Family Business:

- The Short-Term Skilled Occupation List (STSOL)
- The Medium and Long-Term Strategic Skills List (MLTSSL)
- The Regional Occupation List (ROL)

The Department reviews these lists annually, conducting consultation with industry, researching what jobs are advertised, and assessing how many people are studying each course in Australia. The



purpose of these reviews is to ensure the skilled migration lists reflect genuine skill needs, and enable businesses to temporarily access the skills they need to grow, if skilled Australian workers are not available.

You can see the current lists <u>here</u>, however please note that these are under review as of February 2020.

#### VISAS

Citrus Australia has compiled a spreadsheet of visas that may be useful to citrus growers. These include visas where you can sponsor workers, but also other kinds such as training visas, which may be relevant to your current workers, or self-managed visas where workers may be looking after their own stay in Australia, and do not require direct sponsorship.

The spreadsheet also provides a snapshot of information, such as if the visa leads to permanent residency, the age limit, the cost, and what the main employer requirements are to be able to sponsor.

You can view the spreadsheet in the members section of the Citrus Australia website, here.

#### WHAT OTHER COSTS SHOULD I BE AWARE OF?

#### Sponsorship and nomination

You must pay for all costs associated with becoming a sponsor or approved employer, and for nominating a worker. The worker is responsible for paying for their visa application.

You cannot transfer your costs to the visa holder or their family members. Be aware, that it is illegal for a worker to pay an employer to sponsor them for a visa. This includes situations where the worker pays the employer, or when a deduction is made from their salary, or when the worker provides any other benefit to the employer. This could result in fines or imprisonment.

You should also be aware that if your application to sponsor a worker is unsuccessful, your costs will not be refunded. This is why it is important to have a full understanding of the requirements of the visa, and be sure that both you and the worker can meet the criteria.

#### Skilling Australians Fund (SAF) levy

For some visas there is no cost to nominate, however you will still be required to pay the Skilling Australians Fund (SAF) levy. This cost cannot be passed on to the worker either.

The purpose of the levy is for employers to contribute to the broader skills development of Australians. This is part of the Migration Amendment (Skilling Australians Fund) Bill 2018, which was passed by the Parliament of Australia in May 2018.

The levy is payable in full when you submit a nomination application. The online form will calculate the amount you must pay, which depends on the size of the sponsoring business, and the proposed period of stay of the worker.

#### HOW DO I PAY WORKERS?

#### FAIR WORK OMBUDSMAN

COVID-19 UPDATE: Find out more about your workplace entitlements and obligations if you're affected by the outbreak of coronavirus <u>here</u>.

In 2019, the Fair Work Ombudsman (FWO) launched a new website for people working in horticulture in Australia, the <u>Horticulture Showcase</u>. This includes a wealth of helpful information for growers, including how to <u>source labour</u>, <u>pay rates</u>, <u>workplace health and safety</u>, <u>self-auditing</u>, <u>ending</u> <u>employment</u> and <u>accurate recording</u>.

The FWO website has useful tools, including:

- a find my award tool, to ensure you are paying staff under the correct award
- a pay calculator, to provide accurate pay rates and allowances under the relevant award
- an interactive piecework agreement template
- an <u>app for workers to record their hours</u>, to assist them when checking against their payslips

There are FWO offices located in regional areas Australia wide that growers can visit if they have questions:

NSW - Coffs Harbour, Newcastle, Orange, Wagga Wagga

- NT Darwin
- QLD Cairns, Rockhampton, Toowoomba
- SA Mount Gambier, Adelaide
- VIC Bendigo
- WA Bunbury, Perth

Take the time to become familiar with the <u>Fair Work Ombudsman</u> website. This will make it easier for you to find answers to your questions.

For tricky questions that you are unsure about, you can <u>call the FWO</u>. Make sure you get all the questions you might want to ask together, as the average wait time is around 30 minutes.

Phone 13 13 94, 8:00-17:30 Monday to Friday (except public holidays).

Alternatively, you can <u>send your queries online</u> right away and the FWO will get back to you within a few days with a written response and links to relevant parts of the website. To do this, you must <u>register a free account</u>, then all of your queries will stay in the one place and you can refer to them later.



#### **SUPERANNUATION**

COVID-19 UPDATE: From 20 April 2020, SWP and PLS workers can apply for the early release of their superannuation up to the value of \$10,000 if they cannot meet their immediate living expenses. The government is working to ensure they collect this upon departure, however the option is there for early release if needed. See <u>here</u>.

The minimum super you must pay every quarter (or monthly for some) for each eligible worker is called the super guarantee (SG). Currently the SG is 9.5 per cent, which is multiplied by gross salary to determine super payments.

Generally, if you pay a worker \$450 or more in wages (gross) in a calendar month, you have to pay them SG on top of their wages. This includes Working Holiday Makers (WHM), and is applicable to full time, part-time, and casual positions.

WHMs can claim their Departing Australia Superannuation Payment (DASP) when they have left Australia, or when their visa has expired or been cancelled. When they claim, 65 per cent is deducted by the Federal Government. They can <u>claim online</u> and this usually takes 28 days.

If you pay a contractor that works as a freelance entity, rather than a registered company, <u>you may</u> <u>also be required to pay their superannuation</u>. This is if they perform the contract work personally. If they provide the labour by delegating to other workers, you do not pay the contractor super.

You don't have to pay SG for your employee's earnings above a certain limit, called the maximum contribution base. This base is indexed annually. In the 2019-2020 year, the maximum is \$55,270.

#### How can I check if I have to pay super?

If you're unsure about a certain situation, try inputting your information into the <u>Superannuation</u> <u>Guarantee Eligibility Decision Tool</u>. Or if you're new to managing staff, you could do the free online <u>Super Guarantee Employer Obligations Course</u>, which takes two hours and provides a certificate at the end.

If all else fails, you can <u>call the Australian Tax Office</u> with questions about super on telephone 131020, 8:00 - 18:00, Monday to Friday.

Citrus Australia supports raising the superannuation threshold from \$450 a month. See Citrus Australia's full labour policy <u>here</u>.

#### TAX

It's best not to make an assumption about the tax process for any workers on a visa – many have different rules, and some are exempt from paying tax at all.

Most workers in Australia do however need to pay tax – even if they are paid in cash. You should be provided with a Tax File Number (TFN) by each worker, and ensure that you are holding the accurate amount of tax from your workers' wages, to <u>pay to the Australian Tax Office</u> (ATO) when required.



Visit the <u>ATO website</u> for details about how to tax workers including a tax calculator and checklists to follow when you hire a new worker.

You can read about tax for the Seasonal Worker Programme and the Pacific Labour Scheme here.

In early 2017, the 'backpacker tax' was brought in, whereby Working Holiday Makers (WHM) are taxed at 15 per cent from the first dollar until \$37,000 earned in the financial year. This is still the case, though it is opposed by many, as it may be a deterrent to backpackers, and lower the current available labour workforce. If a WHM works for long enough that they make \$37,000, they are then taxed like all Australian citizens, at \$3572 plus 32.5 cents for each dollar over \$37,000.

Citrus Australia opposes the 'backpacker tax' that commenced in 2017, charging backpackers 15% tax from the first dollar. Read a recent Citrus Australia media release on this matter <u>here</u>.

In 2019, a court case was won by a British backpacker who pointed out that Australia and the UK have a double taxation arrangement, whereby British citizens should be taxed the same way as locals. This treaty also exists between Australia and Japan, Germany, Chile, Finland, Norway, and Turkey. This means the Federal Government may owe millions to WHMs from 2017 until now.

The case is now being appealed by the ATO, who have advised that most WHMs identify as Australian residents for tax purposes, and employer obligations have not changed in this regard. Employers should apply the PAYG withholding tax rate in accordance with their worker's TFN declaration until otherwise advised. Read more about how to pay tax for WHMs <u>here</u>.

If you are unsure about anything, you can always contact the ATO with questions. There are a range of ways to <u>contact them</u>, including phone, live chat, social media and online forums, in writing or in person.

#### **HORTICULTURE AWARD 2010**

COVID-19 UPDATE: On 8 April 2020, the Fair Work Commission made determinations varying 99 awards including the Hort Award. The determinations inserted a temporary new Schedule X, which provides employees with 2 weeks of unpaid pandemic leave, and the ability to take twice as much annual leave at half their normal pay if their employer agrees.

Schedule X has been extended to 30 September 2020. Full details here.

Awards are legal documents that outline the minimum pay rates and conditions of employment. There are more than 100 industry or occupation awards that cover most people who work in Australia. Most growers fall under the <u>Horticulture Award 2010</u>, or they may have established an <u>Enterprise Agreement</u> in their workplace. If you're unsure, try the <u>Find My Award</u> tool.

On 2 April 2019, the Fair Work Commission <u>handed down a decision</u> to change the Horticulture Award for casual employees, after a four year review of the Award that commenced in 2014. The changes included:

• a limit on ordinary hours of work



- a new night loading
- overtime entitlements
- penalty rates for public holidays

This page gives you examples of how to calculate the new night loading, overtime and penalty rates.

The changes have created some difficulties for growers, the obvious being the increase to labour in a country that pays some of the highest, if not the highest, labour costs in comparison to international competitors in many industries.

<u>Growcom</u> has been very active in <u>advocating against these changes</u> to the Horticulture Award, and currently has a survey open to obtain feedback from growers as to how these changes have affected their business. Citrus Australia encourages all growers to <u>complete the survey</u>, to assist with Growcom's continued advocacy.

#### Western Australia

In WA, not all growers operate under the federal award system, and instead fall under the state system.

The federal system covers Western Australian businesses and organisations that are constitutional corporations. This includes:

- Pty Ltd businesses that are trading or financial corporations (e.g. Smith Pty Ltd trading as Jane's Café)
- Incorporated partnerships (e.g. Smith Pty Ltd and Bob Smith trading as Jane's Café)
- Incorporated trust arrangements (e.g. Smith Pty Ltd as trustee for the Smith Family Trust trading as Jane's Café)
- Incorporated associations that are trading or financial corporations and other not-for-profit organisations that are trading or financial corporations.

Generally, the state system includes businesses that operate as:

- Sole traders (e.g. Jane Smith trading as Jane's Café)
- Unincorporated partnerships (e.g. Jane and Bob Smith trading as Jane's Café)
- Unincorporated trust arrangements (Jane and Bob Smith as trustees for the Smith Family Trust trading as Jane's Café)
- Incorporated associations that are not trading or financial corporations and other not-for-profit organisations that are not trading or financial corporations<sup>2</sup>

#### Hourly rate

In June 2020, the Fair Work Commission (FWC) handed down its Annual Wage Review decision.

The decision increased the national minimum wage by 1.75 per cent.

The increase applies to industry awards in three stages, with the Horticulture Award commencing from the first full pay period on or after 1 November 2020. This is to give growers more time to adjust,

2. Guide to who is in the WA state system, Government of Western Australia Department of Mines, Industry Regulation and Safety, 24 January 2020 <a href="https://www.commerce.wa.gov.au/labour-relations/guide-who-wa-state-system">https://www.commerce.wa.gov.au/labour-relations/guide-who-wa-state-system</a>



#### given the circumstances faced by COVID-19 in 2020.

The minimum hourly rate of pay increased from \$19.49 to \$19.84. The weekly minimum wage grew from \$740.78 to \$753.80 (before tax), an increase of \$13.02 per week for ongoing employees.

Every year on 1 July, Australia's minimum wage changes, subject to a decision by the FWC.

#### Piecework

The piecework rate is an agreement between the grower and the worker, which must be on paper, and signed. The aim of the piecework rate is to provide a fairer outcome for both parties. The worker receives more money, for faster work, and less money for less work. There is no minimum amount that must be paid each week.

The piecework rate has to allow the average competent worker to earn at least 15 per cent more per hour than the relevant minimum hourly rate in the award. Casual employees also get a casual loading of 25 per cent. Read all about the piecework <u>here</u> and check out templates for piecework agreements. Alternatively, you can take a look at <u>this article</u> by MADEC which provides a great overview.

Some tips to calculate piece rate: Where historical data exists, use this to assist in calculating the piece rate. Where data does not exist, use a best estimate derived from neighbouring farms or similar crops in other areas. Workers can also be initially paid on an hourly rate to help determine realistic targets for piece rates.

It is preferable that the piece rate is calculated using sample data from as many workers as possible to ensure it is representative of the workforce.

#### Citrus Australia supports the piece rate as a motivation for efficiency and reward. See Citrus Australia's full labour policy <u>here</u>.

#### Pieceworkers and overtime

Pieceworkers are not entitled to be paid overtime under the Horticulture Award, as they are paid by the piece instead of by the hour.

Hours worked while earning a piecework rate do not count towards calculating overtime. Only time worked earning an hourly rate, will count towards calculating overtime.

If an employee is doing an hourly paid task and achieves 304 hours before the eight-week overtime period is finished (which would trigger overtime payment), they cannot then be switched to piece rates (that don't attract overtime) for the same task.

If they have been doing an hourly paid shed job however, and then switched to a different piecework paid job such as picking, that will not attract overtime.

#### Labour hire workers and overtime

If a contractor has a worker picking on another farm for eight hours in the day, and then brings them to your farm to work, they would only be able to work four hours (a total of 12), before they would need to be paid overtime. The same goes for meeting the 304 hours per 8 weeks.



If a worker is picking on another farm for eight hours in the day for a contractor, and then comes to your farm to work for your contractor, they would be able to work for more than four hours without receiving overtime. The worker is only entitled to overtime for the hours worked for a particular employer and not on the basis of all hours worked for multiple employers.

#### Time off instead of overtime pay

A worker must be paid for any overtime worked, unless the employee and employer agree in writing to take time off instead of being paid overtime rates. For each hour of overtime worked, an employee has to get an hour of time off.

#### **EXAMPLE**

Drew works 3 hours of overtime, so he is entitled to be paid for 3 hours of work at the appropriate overtime rates. Instead, Drew makes an agreement with his employer to take the equivalent amount of time off instead. After a verbal discussion, Drew puts this request in writing to his employer via email, and keeps a copy of the employer's positive response to prove that the decision was agreed to by both parties.

The time off has to be taken within 6 months of working the overtime, at a time agreed by both the employer and employee.

#### Spread of hours

The minimum and maximum number of hours that can be worked per day, or per week can be a little flexible and spread out.

See the <u>FWO website</u> to determine where you can make useful changes to your rosters.

#### Casual rate

On 20 May 2020, the Full Federal Court of Australia handed down a decision about casual employment in response to the *Workpac v Rossato* case, whereby the Court found that a casual employee was actually a permanent employee because they worked over a lengthy period on a very consistent and regular basis. As of 1 June 2020, the FWO is reviewing information about the characteristics of casual employment to make sure it hasn't changed because of this decision. An update will soon be available, which you can see <u>here</u>.

The NFF Hort Council has <u>also provided some points</u> on what to do to ensure that your casual workers are in fact classified as casual.

#### Hort Award FAQs

Some questions that growers have asked since the changes to the Horticulture Award came into effect are provided with answers below.

NOTE: Many workers want to work as frequently as possibly in a short space of time so they can travel to a new location on their holiday, or move to a new location for the next harvest season of work. Some growers cannot afford to pay the overtime that is required, at a rate of 175% on top of ordinary pay.

Q. Are there set 8 week blocks in the calendar that we must follow? For example, block one is Wednesday 1 January 2020 to Tuesday 25 February 2020, and block two begins on Wednesday 26 February 2020? In this example, a picker might start with our business on 15 January and still



complete his 304 hours in 6 weeks, but within one block, then continue working into the second block without having to have a 2-week break.

- A. The answer to this is no. The 8 weeks starts from the first day that the individual worker starts on your farm. If you want your worker to work more than 304 hours in 8 weeks, or more than 12 hours per day, they must be paid overtime. The award is designed in a way that means there is no way to avoid having to pay the overtime, or the night loading if a worker is required after 8.30pm or before 5.00am.
- **Q.** If a picker has completed their 304 hours in 7 weeks, can they then work on the piece rate for 1 week so that they can keep picking, and not have to wait around for a week?
- A. The answer to this is no. As above, if you want your picker to work more than 304 hours in 8 weeks, or more than 12 hours per day, they must be paid overtime.

If they have been doing an hourly paid shed job however, and then switched to a different piecework paid job such as picking, this will not attract overtime, and would allow them more flexibility to work extra hours without overtime.

- **Q.** Can pickers share a bin and split the amount paid, so that I don't have to try to fit so many bins in the orchard?
- A. No, unfortunately this is not allowed. The Horticulture Award states that the agreement is between the employer and employee, not multiple employees:

"The piecework agreement between the employer and the individual employee must be in writing and signed by the employer and the employee."

#### AGREEMENTS

Enterprise agreements and other registered agreements set out minimum employment conditions and can apply to:

- One business
- A group of businesses
- An individual employee

When a workplace has a registered agreement, the award doesn't apply. However:

- The base pay rate in the registered agreement can't be less than the base pay rate in the award
- The National Employment Standards still apply

Registered agreements apply until they are terminated or replaced.

You can learn how to compose an enterprise agreement here.

#### 88 DAYS

There is often a lot of confusion from growers and workers alike, as to what constitutes the 88 days of work required to get a second year Working Holiday Maker visa.



Be aware, that the <u>Working Holiday visa 417</u>, and the <u>Work and Holiday visa 462</u> are different visas. In terms of the 88 days, the rules are basically identical, but make sure you are on the right page, in case there are changes made to one, and not the other.

The Home Affairs website states:

"To meet the three months' specified work requirement you (the visa holder) must complete the equivalent to the number of normal work days or shifts as a full-time employee in that role and industry would normally work in a three month (88 calendar day) period. You can do this in a variety of ways, for example:

- working five days a week for a continuous period of three calendar months, including on a piecework rate agreement; or
- working less than five days a week over a period taking longer than three calendar months, including on a piecework rate agreement;
- working multiple short periods of work in any combination of full time, part time or on a piecework rate, which add up to the equivalent of five days a week over three calendar months."

Some other points to be aware of:

- Workers cannot complete their three-month work requirement for a second visa in a total period of less than three calendar months.
- Workers can work for three months continuously, or choose to break the work up across the year, or choose to work for different employers.
- Workers should commence their work early enough in their stay to account for delays, i.e. if a worker starts on your farm three months from their visa expiry, and it rains for a week and delays picking, it is not your fault that the worker will not have completed their 88 days before their visa expires. The government will make no exception for this.
- Workers should understand the average number of working hours in a day, before commencing work on your farm and regardless of if this is five hours, or ten hours, it still counts as one day.
- Workers cannot count a long day of work as more than one day.
- Depending on industry standard, a normal working week doesn't have to be Monday to Friday.

#### EXAMPLE

While on her first visa, Maria works on a dairy farm milking and other duties. Maria makes an agreement with her employer to work five days a week (Wednesday to Sunday) from 4.00am – 7.00am, and 1.00pm – 4.00pm each working day (a total of six working hours per day) for three months. These hours are considered normal for this role and Maria is paid the correct legal wage. Maria can count every day of work towards the three-month specified work requirement, which she meets.

• Australian public holidays and sick days can be counted as a day of specified work if workers are paid for that day. Days which are unpaid cannot be included.



• Workers cannot include unpaid days where they did not work due to severe or seasonal weather. However, if the worker started working (e.g. for one hour), was prevented from finishing the 'normal day' because of bad weather, and was paid for the amount of work completed that day, this could be counted as one day of specified work.

#### MEETING SALARY REQUIREMENTS FOR SKILLED MIGRANTS

Employers who wish to nominate workers for certain visas, such as the 482, 186 and 187 must meet certain salary and employment condition requirements, to ensure that these visa programs are not being used to undercut the Australian labour market.

Overseas workers must be paid no less than an Australian worker would doing the same work in the same location. This is called the 'annual market salary rate' (AMSR).

The AMSR is determined by considering:

- What you would pay equivalent Australian workers
- Enterprise agreements or industrial awards
- Job outlook information
- Advertisements for the last 6 months in the same location
- Remuneration surveys
- Advice from unions or employer associations

Once the AMSR is determined, you must ensure it is no less than the Temporary Skilled Migration Income Threshold (TSMIT). This is the minimum that sponsored workers must be paid. The TSMIT for all occupations is currently AU\$53,900 and is set by the Australian Federal Government.

You can read about how to determine the AMSR for occupations you would like to sponsor, by having a look through <u>this page</u>.

Some points worth noting:

- An Australian worker who is more or less experienced than the nominee and does similar work at a different pay grade is not considered equivalent to the nominee.
- If the nominated overseas worker will be paid less than the equivalent Australian worker, the nomination will be refused.
- If you provide <u>only</u> generic market salary data or salary surveys, the nomination will be refused. The information must be accurate and specific.



### HOW DO I ENSURE I AM GIVING THE APPROPRIATE LEVEL OF CARE TO WORKERS?

In Australia, the law says that businesses must do all they can to make sure the jobs done by workers do not hurt them or make them sick. This law is called Work Health and Safety (WHS), or Occupational Health and Safety (OHS).

You can get a general idea of things to look out for in the workplace on the <u>Workplace Health and</u> <u>Safety page</u> of the Horticulture Showcase website.

#### FAIR WORK SYSTEM

The national workplace relations system in Australia started on 1 July 2009, and is called the <u>Fair Work</u> <u>system</u>. It is a collection of legislation containing the minimum employment laws and agency bodies in Australia, and provides a safety net to employees. It includes the <u>Fair Work Act 2009</u>, the National Employment Standards, as well as registered agreements and awards.

Most people in the country are employed under the Fair Work Act, except for the following business types in Western Australia, which are covered by the state system:

- Sole traders
- Partnerships
- Other unincorporated entities
- Non-trading corporations

#### National Employment Standards

The <u>National Employment Standards</u> (NES) outline ten minimum employment entitlements that must be provided to all permanent employees.

Casual workers receive access to five of the ten entitlements.

#### Entitlements

In addition to the above, workers have access to other <u>employee entitlements</u>, such as suitable rest breaks, flexible working arrangements, opportunity for performance management, union membership, and redundancy options to name few. Make sure you are familiar with what employee entitlements are.

#### Fair Work Information Statement

It is your responsibility to give every new employee a copy of the <u>Fair Work Information Statement</u> before, or as soon as possible after, they start working for you. This was updated in March 2020 to make it easier to understand minimum workplace entitlements.

The Statement includes information on a number of employee rights, including the NES, modern awards, termination of employment, and the role of the Fair Work Ombudsman and the Fair Work Commission.



#### Fair Work Commission

The <u>Fair Work Commission</u> (FWC) is Australia's national workplace relations tribunal, and is responsible for administering the provisions of the Fair Work Act. Its functions include such things as:

- Unfair dismissal claims
- General protections and unlawful termination claims
- Setting the national minimum wage and minimum wages in modern awards
- Dispute resolution
- Promoting cooperative and productive workplace relations and preventing disputes

#### Ending employment

Employment can end for many different reasons, and it's important to follow the rules about dismissal, notice and final pay. You can read up about how much notice to give, what should be included in the final pay, what happens to entitlements, and where to get help <u>here</u>.

You can also test your knowledge on ending employment with a short quiz.

#### SAFE WORK AUSTRALIA

<u>Safe Work Australia</u> (SWA) is an Australian government statutory body established in 2008 to develop national policy relating to work health and safety, and workers' compensation.

The SWA website has a section on agriculture and provides lots of helpful information and links on a range of topics including bullying, fatigue, hazardous chemicals, manual handling, quad bikes, working outside, and working with heavy machinery and equipment.

For queries around compliance and regulation, you should contact your state authority.

SafeWork NSW	SafeWork SA
Workplace Health and Safety Queensland	WorkSafe WA
WorkSafe Victoria	NT WorkSafe

#### **OTHER SAFETY ORGANISATIONS**

There are a number of non-profit grassroots organisations that have grown and amalgamated over the decades. These provide a lot of helpful information that may be more specific to your region, however some require you to become a member.

<u>AgHealth Australia</u>, (previously known as the Australian Centre for Agricultural Health and Safety or ACAHS) is a leading academic unit of the University of Sydney within the School of Rural Health, and has been investigating non-intentional fatal and non-fatal incidents occurring on farms across Australia for over 30 years.

AgHealth Australia provides on-farm health and safety auditing services to identify gaps and assist in working towards meeting health and safety requirements. This research is used by **Farmsafe** 



Australia to design practical programs to assist farmers. You can see lots of useful checklists and templates for WHS plans <u>here</u>.

The Farmsafe Australia website has some links to Farmsafe websites per state. It also has a lot of content about how to keep kids safe on farms.

Victoria – VFF Be Farm Safe

Queensland – Farmsafe Queensland

New South Wales – <u>NSW Farmers</u>

**<u>SafeFarmsWA</u>** offers chemical safety training, and you can download a <u>free WA WorkSafe checklist</u> to help you plan for OHS auditing.

Farm staff with OHS responsibilities, or who would like to be OHS certified, may consider becoming a member of a farm safe organisation to stay on top of best practices. The <u>Australian Institute of</u> <u>Health and Safety</u> offers a general membership for \$200 per year and includes networking events, training and advocacy.

#### TRAINING

Ensure your workers are properly trained in all facets of their work, and that posters and signage are hung around the workplace where necessary. Ensure adequate tools and PPE is provided, or assistance on where to buy these, if workers are required to purchase this themselves.

Some examples include:

#### Chemical training

As an employer, you have a duty to ensure that workers are safe around the use of chemicals, as per the <u>WHS Regulations</u>. Even if workers are not certified to use the chemicals directly, if they are being sprayed or mixed in the working environment, workers should be aware of the risks, as well as what they should do if there is a spill, and how to understand safety labels. <u>This page</u> has access to instructions on how to label chemicals, safety information, and carcinogens to be aware of.

#### Quad bikes

In the past two years, 20 people have died in Australia whilst riding a quad bike, aged from 7 to 82 years. Workers should have <u>training</u> on safe speeds and terrain on which to ride quad bikes, and should be provided with a helmet.

#### Licences

Employees should not be operating vehicles unless they are licenced to. This includes light and medium rigid vehicles, specialist machinery, and forklifts.

#### Weather

Severe weather may mean it's not a good time to pick your fruit, but if your pickers are out in this at any point, you should ensure they know how to be safe about it. Access to sunscreen, water, regular breaks and shade during the extreme heat of the Australian summer is something that might be obvious to us, but not so for backpackers or other seasonal workers who could be more susceptible to this.



Use the <u>BOM</u> to determine your weather forecasts, and check out more useful information for preparing workers <u>here</u>.

#### Supervision on tools

Training and supervision over use of your tools ensures that workers are:

- Using them most efficiently and productively
- Using them safely so as not to harm themselves or others
- Using them correctly so as not to damage the tools

#### Training in different languages

Where possible, provide necessary training in the language of your workers so that they have a full understanding. They will be very appreciative of your efforts, and feel more comfortable. This could be done by:

- Contacting your local council or migrant services to assist with translation of documents
- Hiring a translator for a training session
- Using more diagrams, videos and pictorial training manuals to assist with understanding

<u>Google Translate</u> may help sometimes, or other staff that are more proficient in English may be able to translate for you. The <u>Horticulture Showcase</u> website is available in 37 languages.

The <u>NSW Department of Primary Industries</u> provides many useful documents on citrus, including a template for recording training in the workplace under the 'Business' tab.

#### Farm Ready Card

FarmReady is a linking, advisory and training service – a 'Hub'.

FarmReady's focus is on legislation, safety, wellbeing, regional living, tourism, education, employment, accommodation, transport and social activities etc. It is similar to a white card for workers in the construction industry.

Growers in Queensland can link potential workers to the website three months before they decide to travel to regional Australia, and they can do all of their training online.

#### There are four steps:

Step 1 - laying the foundations for arriving on farm for induction – workplace law, FWO, pay, biosecurity, food safety, being a good employee, WHS, employment terms (contractor, labour hire, direct employment, Harvest Trail etc.)

Step 2 - compiling employment details such as passport and visa numbers, TFN, super, bank account. This step teaches workers about the requirements needed to have a job in Australia.

Step 3 - personal requirements such as footwear, clothing, PPE, hygiene, food and how to pack it for the day, water, being sunsafe etc.

Step 4 – what's needed before starting work such as quality accommodation, transport, shops and services in the community, social support, checklist for the first day of work, and having digital paperwork ready for employer.



Once completed, the worker will be issued with a FarmReady Card. If they do not have 100% of questions answered, the card will not be issued. Note, this training does not replace a farm induction.

The card is \$49, payable by the jobseeker.

Whilst there is lots of competition on the market in terms of industry training and online platforms, there is nothing like this that links everything together and is broad across all industry. It stops people having to take multiple steps, and puts it all into one process. There is also nothing like this that that can be carried around on your phone.

FarmReady is currently applying for funding to expand, with the potential to be available outside of Queensland on a national scale.

Visit the website here: <a href="https://farmreadyhub.com/">https://farmreadyhub.com/</a>

#### LABOUR HIRE LICENCING SCHEMES

Labour hire licensing schemes have been introduced in a number of Australian jurisdictions to regulate the labour hire sector. Three Australian states now have <u>labour hire licensing laws</u> – Queensland, Victoria and South Australia. Read a 'no fuss' article from MADEC about these <u>here</u>.

Contractors who provide a labour workforce to growers must apply for and obtain a labour hire licence. Contractors must pay an application fee, and an annual fee to maintain the licence.

Growers must only use licenced contractors, otherwise they can face fines of over \$500,000 (Victoria), or three years in prison (Queensland).

There has been no announcement about labour hire licencing laws in New South Wales or the Northern Territory, however the NSW Labor Party has declared <u>that it will support the scheme</u> if elected, and Labor state governments have called for a federal scheme.

Western Australia has produced a <u>fact sheet</u> from the Office of State Revenue Western Australia, about how to recognise rogue labour hire firms.

The Federal Government announced the development of a <u>National Labour Hire Registration Scheme</u> in response to recommendations from the Taskforce Report on 2 April 2019. There has been talk of a federal scheme, however there doesn't appear to be any movement on this.

Queensland - All contractors must be licenced as of August 2018.

Victoria - All contractors must be licenced as of October 2019.

South Australia - All contractors must be licenced as of November 2019.

If you are suspicious of illegal workers or contractors in your area, it's your responsibility to report it to <u>Australian Border Force</u>.

Citrus Australia promotes a uniform and efficient national labour hire contractor <u>registration process</u> and system, including no under payment or misuse of piece work agreements.



#### SEDEX VS FAIR FARMS <sup>3</sup>

Sedex and Fair Farms are ethical schemes adopted by buyers (such as Coles and Woolworths) that advocate fair and responsible employment practices in the supply chain.

#### Sedex

The <u>Supplier Ethical Data Exchange</u> (Sedex) is a large membership based platform with headquarters in the UK, used by lead firms in over 150 countries to share data about the practices of suppliers in their supply chains.

Sedex has been favoured by many retailers internationally for eradicating modern slavery practices, minimising supply chain risks and improving labour standards. The sharing of data helps lead firms' monitoring efforts; ensuring they only source from suppliers who comply with established minimum standards.

The Sedex process for horticulture involves an audit that requires employers to guarantee that workers, including those employed by contractors, are being paid and treated in accordance with legal minimum standards, and have the right to work in Australia. While these measures indicate that the process is focused on ensuring legal compliance and minimising the risks of non-compliance, there is a view among some growers and industry representatives that Sedex is too general for the purposes of monitoring standards in Australian horticulture.

A drawback of Sedex is that it only requires audits of growers who have undertaken a self-assessment questionnaire that has resulted in medium to high risk. This means that growers can be Sedex accredited without going through an audit.

<u>Coles</u> require all fresh produce and meat direct suppliers to be registered with Sedex.

#### Fair Farms

Lead firms and growers in Australia have turned towards the <u>Fair Farms</u> initiative to monitor labour standards. <u>Growcom</u> has developed Fair Farms as a certification scheme more tailored to the specific features of Australian horticulture than Sedex.

Growcom has the support of the Federal Government who, in October 2018, announced a funding package of \$1.5 million for the Fair Farms scheme.

The main objectives of Fair Farms:

- An industry owned and developed standard, benchmarked against Australian workplace law
- A coordinated system of quality training to support growers to understand their obligations
- A pathway to certification, if required, including a mechanism to enable cost effective, third-party audits by competent auditors
- A credible certification that provides certainty and transparency in the supply chain and that enables businesses committed to fair employment to differentiate themselves from less reputable operators
- Data capture to enable industry and customer reporting in relation to compliance

<sup>3.</sup> Tackling labour challenges in the Australian Horticulture Industry, University of Adelaide & University of Sydney, page 20 <u>https://sydney.edu.au/content/dam/corporate/documents/business-school/research/work-and-organisational-studies/towards-a-durable-future-report.pdf</u>



The Fair Farms approach is for the horticulture industry to work with lead firms, particularly supermarkets and the Fair Work Ombudsman, to eradicate non-compliant practices by excluding unscrupulous operators from the supply chain.

<u>Woolworths</u> recognise that suppliers are already part of social compliance programs, and accept meat and produce from suppliers registered with seven different third-party schemes, including both Sedex and Fair Farms.

Growers registered with Fair Farms will receive support and guidance to maintain compliance and thereby meet the program's requirements.

<u>Check out</u> how the Fair Farms Training and Certification Program works, and take a look at an easy comparison of the two programs <u>here</u>.

#### **STAKEHOLDER PERSPECTIVE ON SEDEX**

"[Sedex] use the same process as they do for making t-shirts in Sri Lanka as they do for growing potatoes here. It just doesn't make a lot of sense having things that are not relevant to Australia. The reason why is because the supermarkets are looking for some type of system to check, to have some type of auditing system to say: 'yes, our suppliers, our growers, are above board, environmentally, ethically [and] when you buy from us, you know you're buying from a reputable company'... [But] it's so non-tailored and they're asking for things that just don't make any sense."

- Horticulture industry association official

#### **WORKERS UNIONS**

It pays to be aware of what changes unions are pushing for, that could have an effect on your business.

Activists have pressured both Coles and Woolworths into partnering with unions to further monitor potential for worker exploitation.

<u>In 2019, Coles partnered</u> with the Shop, Distributive and Allied Employees Association (SDA), the Transport Workers Union (TWU) and the Australian Workers Union (AWU) to strike a new deal promoting ethical practices across the company's supply chain.

Coles and the unions planned to meet regularly to collaborate on new initiatives and investigate complaints against the company's suppliers. Frequent town hall meetings were also to be held to field concerns from workers.

Following a push from the Australasian Centre for Corporate Responsibility (ACCR) in 2017, <u>Woolworths also agreed</u> to enter a memorandum of understanding with the National Union of Workers (NUW) to meet regularly to discuss workers' rights.



#### **INDUSTRIAL MANSLAUGHTER LAWS**

Two high profile incidents in Queensland in 2016 were the catalyst for a work health and safety reform in Queensland, and since then, industrial manslaughter has become a matter of national interest.

Below you can see a map from 2019 of where industrial manslaughter is in force, and where it is being discussed.



<u>This update</u> from July 2019 gives a good account of where discussions were at in each state and territory. Note that the <u>Northern Territory laws</u> are now in effect, as of 1 February 2020. Businesses all face the same level of penalty, regardless of size.

Queensland laws only apply to workers, however Victorian offences will apply to deaths of workers and also members of the public, and is therefore much broader in its potential application. It also includes fatalities relating to mental illness. Proceedings could be brought forward at any time, meaning employers could be charged many years after a fatality occurs. Victoria's bill passed in Parliament in November 2019 and is expected to come into effect in July 2020.

Queensland had its first prosecution in 2019.

Industrial manslaughter laws enforce significant penalties:

- In Queensland, the maximum penalties are 20 years' imprisonment for an individual or a \$10 million fine for a body corporate.
- In Victoria, employers will face fines of over \$16 million and individuals responsible for negligently causing death will face up to 20 years in jail.
- In the Northern Territory, the maximum penalty will be life imprisonment for an individual or a fine of over \$10 million for a body corporate.



You should consider whether your work health and safety systems are up to scratch, meaning that equipment is tested and maintained, and adequate training is provided to all staff. Have a look at the <u>Safe Work Australia</u> section above.

Citrus Australia opposes industrial manslaughter laws. See Citrus Australia's full labour policy <u>here</u>.

#### COMPLIANCE

If you're seeking advice and support in ensuring that you are acting lawfully when it comes to managing staff, you can hire agencies to assist with this.

Employsure provide services nationwide in matters including:

- Fair Work compliance
- Grievance management
- WHS compliance
- Legal representation
- Auditing
- Best management practice, templates for policy development

They will travel to your workplace to assess your current practices and provide ongoing assistance to remedy any problems identified.

Call 1300 207 182 for free initial advice.

#### **MENTAL HEALTH**

Providing a safe environment for workers doesn't just refer to their physical safety, but to their mental wellbeing also.

Psychological injuries have become a major concern in Australian workplaces due to the negative impact on workers, and costs associated with long periods away from work. Approximately 7,200 Australians are compensated for work-related mental health conditions each year, and \$543 million is paid in workers' compensation.

<u>Safe Work Australia</u> provides a <u>national guide</u> to ensure you are meeting your duties as an employer in regards to caring for the mental wellbeing of workers.

<u>The Black Dog Institute</u> has put together a useful <u>Workplace Mental Health Toolkit</u> for the workplace including information about mental illnesses, your rights and responsibilities as an employer, how to promote good mental health to your team, and online resources. They also have a consultancy service and can assist your business in training, reviewing policies, and audit preparation.

<u>Beyond Blue</u> has developed <u>Heads Up</u> to assist with creating healthier workplaces, providing information and resources for employers, employees, managers, small businesses and so on. Their website has an interactive tool to help you develop an action plan that's tailored to your business.



#### SOCIAL MEDIA

Thanks to the internet and social media, today's world is a lot more connected, and everyone has a voice. This can work for you, or against you.

As a free and easy way for Working Holiday Makers to communicate, Facebook, Twitter and Instagram are three social media platforms that are used daily by backpackers searching for work, and sharing their stories.

The hashtag <u>#88daysaslave</u> has thousands of photos and stories connected to it, most light hearted, but some sharing horrific details of how WHMs have been treated by employers and hostel owners, whilst trying to complete their 88 days of farm work to obtain their second year visa.

There is currently a <u>documentary being produced</u> to show the exploitation of backpackers in Australia when doing farm work, with the aim of pushing a political response to crack down harder.

Backpacker Jobs in Australia Public group	Our end goal is to create a popper website with all the data from Farmers who not or badly pay and more , include the Working hostels with 18 Bed in one room for \$ 200 A WEEK . Hostels There tell you on the phone "yes we got Work" and after you spend all the money and time to get there, there is no work for 14 days and more, but you must pay the Rent endown week	
About Discussion	8 hrs I Created this Page because enough is enough .To many Friends and Backpackers getting abused and exploit during there Time as FORCED	
Members	LABOR on the farm. Many-times there are far far under paid getting verbal and physical sexual	
Events	abused . Farm work can be a good thing and lots of Experience in a job you	
Videos	don't know . But the reality is , The Farmer know that YOU don't KNOW the Australian workers law and there use this to gain advantage for there own	
Photos	Interest.	







Caring for workers and treating them fairly can only do more to promote the industry and increase the opportunity to find good workers, resulting in <3 rather than X.



#### **HELP US HELP YOU**

This is a working document that Citrus Australia will continue to expand upon with new information, and answers to new questions. Feel free to comment on other information that you would like to see in this document, or on experiences that you might have had that were different to what is printed here, by contacting Kerry Thompson, Membership and Policy Officer, Citrus Australia, 03 5023 6333 or kerry.thompson@citrusaustralia.com.au