



**GROWCOM SUBMISSION**

## **WORKING HOLIDAY MAKER VISA REVIEW**

**02 September 2016**

## **About Growcom**

Growcom is the peak representative body for the fruit and vegetable growing industry in Queensland, providing a range of advocacy, research and industry development services. We are the only organisation in Australia to deliver services across the entire horticulture industry to businesses and organisations of all commodities, sizes and regions, as well as to associated industries in the supply chain. We are constantly in contact with growers and other horticultural business operators. As a result, we are well aware of the outlook, expectations and practical needs of our industry.

The organisation was established in 1923 as a statutory body to represent and provide services to the fruit and vegetable growing industry. As a voluntary organisation since 2003, Growcom now has grower members throughout the state and works alongside other industry organisations, local producer associations and corporate members. To provide services and networks to growers, Growcom has about 30 staff located in Brisbane, Bundaberg, Townsville, Toowoomba and Tully. We are a member of a number of state and national industry organisations and use these networks to promote our members' interests and to work on issues of common interest.

## **About the Queensland Horticulture Industry**

Queensland's production horticulture industry delivers the fresh fruit and vegetables that grow healthy Australians. Our industry directly contributes more than \$2.5 billion to the Queensland economy, supports significant regional employment, and is the only agricultural sector to consistently achieve strong growth over the past five years. Horticulture is Queensland's second largest agricultural sector after beef.<sup>1</sup>

Queensland is Australia's leading state for fruit and vegetable production, growing one-third of the nation's produce and supplying most of Australia's bananas, pineapples, mandarins, avocados, mangoes, beetroot, fresh field tomatoes and capsicums. Queensland's 2500 production horticultural farms produce more than 120 types of fruit and vegetables and are located from Stanthorpe in the south to Cooktown in the far north.

## **Introduction**

Working holiday makers (or backpackers) are a significant part of the horticultural workforce and any measure that potentially reduces the available pool of backpackers will have a detrimental effect on our industry. It can be truthfully stated that growers see the proposed enforcement of the 32.5 per cent tax rate on backpackers as the biggest issue currently facing the horticulture industry.

Whilst Growcom is supportive of a detailed review of the workforce needs of agriculture and how to better facilitate employment of Australians in our sector, we contend that it is an immediate imperative to scrap the

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<sup>1</sup> (DAFF 2013, *Queensland AgTrends 2013-14* and DAFF 2014, *AgTrends Update April 2014*).

32.5 per cent tax rate in favour of an internationally competitive rate. In the short-term, there are no viable alternatives to backpackers.

Growcom has worked closely with other industry organisations in the preparation of this submission and we support the positions put forward by AUSVEG, the Queensland Farmers' Federation and the National Farmers' Federation. As an entity with direct grower members and strong relationships with regional horticulture bodies, our submission will focus on the on-ground impact of the so-called backpacker tax.

### **The contribution of backpackers to horticulture**

Working holiday makers (WHMs) are vital to the horticulture industry. The horticulture workforce is generally made up of family owners and operators, often multi-generational and a small (but growing) number of fulltime/permanent workers who function as managers, supervisors and technicians. This permanent workforce tends to be Australian. At certain times of the year such as planting and harvest, significant surge capacity is needed to undertake low-skilled tasks. Therefore, the majority of the horticulture workforce is, by necessity, made up of casual, transient harvest workers, with large numbers of Working Holiday Makers (mostly visa subclass 417). Some farms only employ three or four workers on a permanent basis but can employ hundreds of backpackers over a season. This is not a matter of choice – the seasonal nature of the horticulture industry means that growers often require large numbers of workers for short periods of time. Seasonal work can be impacted by weather and even with the best of intentions, no grower can guarantee ongoing work or even certain work for any particular period.

Since the introduction of the 2<sup>nd</sup> Working Holiday Maker visa for 417 visa holders who work in agriculture, our reliance on these workers is constant and necessary. While the industry is currently focussed on workforce planning and stabilising workforces as a matter of good practice (via the implementation of the Production Horticulture Workforce Development Program), the reality is that, as a highly seasonal industry which is subject to the vagaries of nature as well as market conditions, our reliance on this temporary flexible workforce continues to be high. Case study 1 sets out the importance of these workers to our industry and regional economies.

**Case study 1 – Bowen region:** A group of adjacent growers near Euri creek within the Bowen region produce 40% of Australia's winter field tomatoes and half of Australia's capsicums during September and October. These farms provide permanent employment to around 30 local people year round but employ close to 1000 backpackers as casuals over these months. These enterprises are major powerhouses of the local economy providing work for the transport sector and local businesses and collectively have an annual estimated turnover of \$50 million. It would be next to impossible to service these growers using the local workforce. The Queensland government has invested in a local workforce officer for the last three years and some gains have been made in terms of employing local workers but there is no way this could fill the shortfall from a reduction in backpacker numbers. It should be noted that Bowen is now the only major field tomato area in Queensland with the closure of two major enterprises in the Bundaberg region in recent years. The only other source of winter tomatoes comes from greenhouse production which would be unable to meet demand due to high establishment costs. In 2011, as a consequence of extreme wet weather resulting in a short term loss of supply from Bowen, tomato prices averaged \$21.52/box wholesale compared with the long term average of \$14.30/box<sup>2</sup>.

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<sup>2</sup> Queensland Department of Agriculture Fisheries and Forestry 2013 based on data provided by Brisbane Markets.

A recent survey undertaken of horticulture growers by the Voice of Horticulture indicates that 75% of surveyed horticulture producers utilise backpackers. We would contend that this number is reflective of the industry as a whole with some commodities more reliant on them than others.

### **The impact of the proposed tax rate on backpackers as a labour source**

It appears many WHMs have either wilfully or unknowingly misrepresented their status as residents for Australian taxation purposes. That said, the current rules are confusing and seem to discriminate against those WHMs who move from place to place to work compared with those who worked in a single location. Whilst it is tempting to view the changes as a mechanism for closing a loophole and reducing confusion, the reality is that for most WHMs working in agriculture the changes will drastically reduce the income they earn while in Australia. Based on feedback from our growers, commentary on social media and discussions with backpacker representative organisations there is a high level of awareness in the backpacker community about the proposed new arrangements. It has been a double edged sword for industry organisations as raising our concerns about this issue has raised the profile of the issue.

Anecdotal evidence from growers is that WHMs are indicating that they would not have chosen to work in Australia with a 32.5 per cent tax rate. In some instances they said they would still come to Australia for a shorter period to see some of the major sights and then relocate to New Zealand to work. Some growers are also reporting a significant drop-off in the number of workers approaching them to sign off on “days worked” to enable them to access a second year visa.

This anecdotal information is supported by the findings of a recent survey commissioned by the YHA and conducted by Monash University on the motivations of WHMs<sup>3</sup>. The survey found that 60% of the sample would not have come to Australia if the tax was 32.5 percent. A significant proportion (57%) of Working Holiday Makers also said that they would spend less time travelling in Australia if the tax changes were to take effect, with 69% saying they would spend less on tours. In addition, 70% said they would look for cash-in-hand jobs to avoid paying the tax.

According to the Monash University study, New Zealand and Canada were both identified as alternative destinations with 62% of those surveyed saying that they would have considered going to New Zealand for a working holiday if the tax rate in Australia was 32.5%. Significantly the proportion of working holiday makers who would recommend Australia as a destination to their friends has dropped from 75% to 22%.

At a 32.5% tax rate, the net hourly wage for a WHM in Australia falls below New Zealand (see table 1) and whilst it remains above Canada, the cost of living is considered to be higher in Australia.

**Table 1**

<b>Country</b>	<b>Australia (32.5%)</b>	<b>Australia (19%)</b>	<b>Canada</b>	<b>NZ</b>
Min. hourly wage	\$17.70	\$17.70	\$11.07	\$15.25
Tax rate	32.5%	19%	15%	10.5%

<sup>3</sup> This information was taken from a press release put out by the YHA

Net hourly wage	\$11.95	\$14.34	\$9.41	\$13.65
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The National Farmers’ Federation (NFF) submission provides a comprehensive overview of the wages, entitlements and conditions in Australia compared with other countries seeking to attract WHMs. Growcom supports the positions put forward by NFF.

### **Alternatives to backpackers**

Evidence suggests that it would be impossible for other sources of labour to quickly or effectively replace WHMs. Key alternative labour sources include Pacific Seasonal Workers and local labour but their numbers are too small and the lack of flexibility is a significant barrier.

Uptake of the seasonal workers program (SWP) is improving and feedback is that the returning nature of these workers is increasingly being valued by growers. Anecdotal feedback from the Mareeba area is that Pacific seasonal workers are now being used in supervisory roles as well as low-skilled roles, but that the majority of workers during peak times are still WHM due to the flexibility that they offer. The key attribute of WHM as a labour source is their flexibility. They are prepared to work odd hours, over the weekend and at short notice. They take whatever work is available at the time, and if there is no work on a particular farm, they will move onto other farms in search of work. Unpredictable weather can affect the growth of crops and therefore the need for harvesting labour both in terms of the number of workers needed and the duration. For that reason the seasonal workers program can be unsuitable. The high level of unpredictability in the horticulture industry also makes the work less appealing to local job seekers who prefer to have a defined period of employment in the one location.

**Case study 2 – the strawberry industry** : The sporadic nature of strawberry production means that a farmer may need anywhere between four and 100+ workers at any given time for picking and/or packing fruit, with some of the larger farm needing more than 300 workers during the peak harvest period. The demand for workers is governed by weather conditions and fruit production, which is why backpackers have worked so well for the industry to date. Under the Seasonal Worker Programme workers must be provided a minimum average of 30 hours per week for up to six months or up to nine months for seasonal workers from the microstates of Kiribati, Nauru and Tuvalu.

However, it is often difficult for strawberry growers to guarantee workers a minimum or consistent amount of work due to the unpredictable nature of the seasons. The Queensland strawberry industry alone employs upwards of 8000 “backpackers” in any given season.

To highlight the variability in labour needs in an annual period the following information has been collated on an “average” Queensland strawberry farm. See Figure 1.

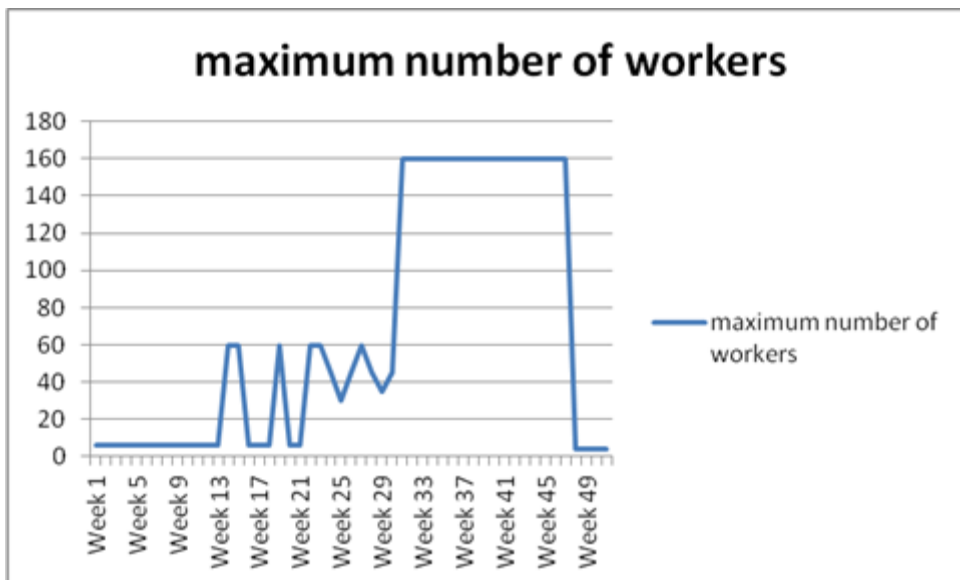


Figure 1

Jan-Feb - Preparation of the farm for the coming season requiring approximately 4 – 6 workers

March – Planting begins requiring approximately 60 workers for 10 days only

April – Pruning work is available in late April requiring approximately 60 workers

May – Ongoing pruning work and the beginning of harvest requiring approximately 60 workers for 10 days only

June-July – Variable weather and production levels mean anywhere from 10 to 60 workers are required for picking for four to five days a week

August –November – Full production requiring 160 workers seven days a week. The season can end abruptly depending on weather conditions or low prices.

A recent initiative undertaken by the strawberry industry in conjunction with Moreton Bay Shire Council, the Sunshine Coast Shire Council and Growcom directly targeted Australian jobseekers (<http://www.thesweetestjob.com.au/>). Ten growers nominated for the program and there were over 2000 initial registrations from job seekers. One thousand job seekers filled in an initial screening survey to determine suitability in terms of availability and capacity and 126 were interviewed. As a result of the program there were 52 direct placements and now, three months later, around half of those are still working on the farms. This is not necessarily a negative reflection on the job seekers as the variable nature of the work can be challenging for anyone with a family who cannot commit to working flexible hours / days, job seekers without transport or job seekers who want consistent part-time/full-time work. It does however highlight that it is problematic to assume that local job seekers can provide an alternative, reliable and sustainable labour source.

The Queensland Agriculture Workforce Network (QAWN) is an industry led rural jobs and skills initiative funded by the Queensland government. The two year program (2016-2018) delivers across agriculture and builds on the success of the previous horticulture workforce development project. Growcom is the project manager for the project which has officers in seven major growing regions in Queensland. Facilitating local employment and training is a key objective for the program. The project has facilitated more than 69 positive employment outcomes since February. Whilst undeniably successful in meeting its objectives, the disparity between the number of locals employed through this program and the number of WHMs employed in this time (estimated to be upwards of 15,000) highlights the difficulty in replacing WHMs with locals.

The QAWN program has highlighted a number of barriers to participation by locals in seasonal work and it would be useful to draw on this information when designing programs to increase workforce participation by Australians. The strawberry case study (case study 2) clearly demonstrates that replacing WHMs with locals is not

a feasible short term solution. Nevertheless, we are keen to work with the Australian government to investigate ways to increase the number of Australian working in horticulture.

We note with some concern the inclusion of unpaid workers as an option in the TOR. In the context of concerns around worker exploitation, it seems contradictory to even be presenting unpaid labour as an option. Most growers are conventional farmers and would not be attractive to the niche labour force represented by WWOOFers. We do not see unpaid or volunteer labour as being part of the workforce solution for conventional horticulture. If a reduced pay packet as a result of a higher tax rate is proving to be a disincentive for WHMs to work on farms, then a non-existent pay packet would seem even less attractive.

Most horticulture commodities are still highly reliant on manual labour both in the field and in packing sheds. Mechanisation can be very difficult due to the physical properties of some horticulture commodities. It is also not commercially viable for machinery companies to invest in specialised machines for most horticulture commodities due to the relatively small areas under production. Labour is the single biggest input cost for most horticulture growers so if there was a viable alternative to manual labour then it would already be in place. Technology is always improving and there is an increasing level of investment in mechanisation, however it will be some time before such technology can replace workers at a meaningful scale.

### **The Impact on Industry and the broader community**

As identified in the case studies above, the potential impact on the horticulture industry of a diminished supply of backpackers would be catastrophic. Crops will go unharvested, the cost of labour will sky-rocket and some growers will go to the wall.

Many regions in Queensland have a heavy reliance on horticulture and a reduction in WHMs would have a double impact on those communities. Horticulture is a significant contributor to the economies of Stanthorpe, the Scenic Rim, the Lockyer Valley, Bundaberg, Innisfail, Emerald, Tully and Bowen amongst others. A reduction in WHMs and associated reduction in horticultural output would impact directly on many of the small businesses in these communities who supply farm inputs such as seed and fertiliser. Already some growers in the Bundaberg and Lockyer Valley have indicated they won't plant until they know they will be able to access workers. A major grower in the Lockyer Valley says that any given time they usually have around \$1million worth of inputs in the ground. This investment is too risky if there is uncertainty around workforce availability so they are considering holding off on planting until a decision has been made in relation to the tax.

Many backpackers also only visit and stay in these areas because they can work on the surrounding farms. If they choose to only holiday in Australia then they are unlikely to visit towns off the tourist track. Even if they do continue to work, the consequence of the high tax rate will be that they have less money to spend whilst they are here. The symbiotic relationship between the tourism sector and the horticulture industry is a great example of a policy initiative delivering multiple benefits across the economy.

Growers access their workers from variety of sources including walk-ins, the harvest trail, the gumtree website and labour hire companies. Labour hire companies (LHC) play an important role in the horticulture industry, particularly in relation to accessing seasonal labour in a short timeframe. If a grower requires 200 workers to get the mango harvest in, there is a 4-6 week window to undertake that work but little hope of finding all those workers locally. This is a daily reality for growers. Turnover of backpacker employees is high and it becomes a daily challenge to find, induct and train workers who may decide to stay for a day or a week. The administration

and management of workers is governed by a raft of laws, regulations and guidelines and the expectations and requirements on employers grows every year. With labour consisting of up to 50% of input costs, and the industry a “price-taking” industry, it is imperative to contain costs.

Using a reputable LHC can cut down on administration time for growers and make businesses more efficient. That said, it is clear that many LHCs are not treating their workers properly and are placing individual growers and the industry as a whole at reputational risk. If it becomes more difficult to access workers due to a reduced pool of WHMs, then there might be more reliance on LHCs to facilitate access to those workers. Growcom is concerned that the proposed tax will drive more WHMs into the cash economy and make them even more vulnerable to dodgy LHCs and desperate growers.

### **Vulnerable workers**

Whilst we think that the exploitation of vulnerable workers in our sector warrants a longer and more detailed review, we recognise that it is a key theme government is seeking to address in this review.

Growcom does not support or condone any mistreatment of workers and we have been publicly vocal in our condemnation of any such practices. We work closely with the Fair Work Ombudsman to ensure our members are fully informed of their obligations to their workers. All of our members have direct access to our IR specialist and we regularly communicate with our members via our industry magazine and on-line newsletter as well as through dedicated workplace relations workshops, conferences and other field days. Whilst it would be naive to think that all growers were doing the right thing, we consider that a significant majority of the issues relating to worker mistreatment relate to labour hire companies.

Labour Hire operators are a vital component of the horticulture industry and while many are honest and ethical operators, the growing number of “fly by night” operators is a serious and growing concern. There is nothing new about hiring travelling harvest crews. These workers have traditionally serviced the horticulture harvest with groups of workers traversing the south and east coast of Australia following the seasons and the work. However it is the increasing numbers of largely unregulated and unscrupulous labour hire providers in our industry that has caused our industry the most grief in recent times.

Private sector employers throughout Queensland fall under the national workplace relations system and are covered by the Fair Work Act 2009. The labour hire services industry includes businesses that employ workers and provide a service to other organisations (host organisations) by assigning those workers to perform work for that host organisation. The host organisation pays the labour hire provider a fee for providing on-hire employees to work for them. These employees are employed by the labour hire business - they are **not** employees of the host organisation – in this case the grower. As the legal employing entity, the on-hire business is responsible for ensuring employees receive their minimum employment entitlements at all times (Fair Work Commission).

It is clear that labour hire providers (howsoever named) are the legal employers of these workers, they are governed by and subject to the provisions of the Fair Work Act, relevant state Work Health and Safety and WorkCover legislation, applicable awards and the National Employment Standards. Employees of labour hire providers are entitled to enjoy the same entitlements and provisions of direct hire employees, irrespective of how they are employed.



The ease with which anyone can register for an ABN and then set themselves up as a labour hire contractor is legendary. The simplicity of getting of an ABN means that within an hour operators can call themselves a labour hire company and begin to offer workers to farmers. Real problems arise when a grower takes the labour hire provider at 'face-value', believing they will operate legally and ethically, without undertaking proper due diligence on the business and its operations. While growers are time-poor and not necessarily well educated in complex employment and workplace relations laws and practice, as a necessary risk management strategy growers must take responsibility for their dealings with third party providers to ensure that they are legitimate businesses who will not put them at risk through their operations. With many LHCs operating across borders, some consideration of a national approach versus a state enforcement approach may be necessary.

Some of the worst offences against employees reported by FWO have been committed against international workers – not only working holiday makers, but those workers who come to Australia under the Seasonal Worker program. The seasonal worker program is highly regulated, but this has not prevented abuses from occurring. It is gratifying to see the Department of Employment has barred "Approved Employer" status for the purposes of accessing the Seasonal Work Program to labour hire operators who cannot demonstrate a clean bill of business health over a five year period. This should limit if not deny the "fly by night" and phoenix operators from accessing that program and those workers. However it is recommended that regulations around labour hire provider access and performance under this program be tightened and monitored over time.

One proposed solution is to develop a preferred supplier register of legitimate labour hire companies. An option could be to utilise the existing harvest labour service (HLS) to develop and maintain this register. The HLS has a long history of working closely with the LHC and it is in their best interests to ensure that the companies are reputable. The current situation whereby the HLS can no longer be accessed by LHCs has actually punished reputable companies.

Obviously it is desirable that the Fair Work Ombudsman have the necessary resources and staffing to pursue and prosecute these operators. Sadly this is not the case. With a handful of Fair Work Inspectors operating in Southern Queensland, the reality is that many of these operators escape scrutiny, only to appear again in some other region. While "naming and shaming" of those found guilty already occurs, this does little to stop their re-emergence in different regions under different names. A consideration of the benefits of labour hire provider registration or licensing is recommended and a review of penalties, especially for repeat offenders should be undertaken to ensure they meet community expectations.

In the absence of any meaningful regulation of these providers Growcom has worked with growers around the state to educate them on their 'due diligence' obligations to ensure that any third party workforce provider they work with does the right thing by the workers on the grower's property. Both parties hold joint responsibilities to these workers, under both Fair Work and Work Health and Safety legislation, and increasingly the Fair Work Ombudsman requires that growers (the "Host" Employer in these arrangements) take additional steps to protect these workers, despite not being the legal employer.

In an effort to provide a mechanism to growers around this vexing issue, Growcom has developed a tailored industry service agreement that is now available to growers as a basis for negotiation with labour hire providers. This document clearly establishes the roles, obligations and responsibilities that each party has to those workers. Vitaly, this includes ensuring that all workers provided by the labour hire operator are legally entitled to work in Australia. Some of the more unscrupulous operators intentionally hire those who are not legally entitled to work and then exploit and abuse these most vulnerable of people. Growers who do not do their homework, and

unknowingly work with these operators may be subject to heavy penalties and compensation payments to those workers. However this is a voluntary arrangement that allows growers to 'test' the bonafides of any given labour hire provider. There are many who are unaware of this approach and some who reject it in the mistaken belief that they do not carry liability for these workers. We would appreciate government support for the roll out of such agreements

### **Other considerations**

There has been strong feedback from growers about the need to review the current superannuation system for working holiday makers<sup>4</sup>. On a reading of the Superannuation Industry (Supervision) Act 1993, Sect 62, it would appear that these workers do not meet the "sole purpose test" of the Act as their working visa prohibits more than 12 months work in Australia and it is highly unlikely that any worker under this visa would meet any of the tests set out by Sect 62 (a) and (b) which would allow them to access superannuation as part of their "retirement". There is also an argument that as visa holders, working holiday makers are able to claim their superannuation contributions only on departing the country - perhaps superannuation payments could be withdrawn while the worker is still in Australia but no longer working so the monies can be spent in Australia rather than in their next onward destination. This potentially can go some way to offsetting the loss of income from a higher tax rate and we would be interested in exploring options around this issue.

The minimum threshold for receiving superannuation under the superannuation guarantee charge (SCG) needs to be lifted as the red-tape burden on growers for providing very short term workers with superannuation is significant. This threshold has not changed for many years and requires growers to provide superannuation and do the associated paperwork for employees who stay fewer than three days.

The second year visa extension program has been incredibly valuable to the horticulture industry and has provided a meaningful incentive to work in agriculture. Growers have raised concerns that the guidelines on calculating days under the 88 days requirement are confusing and do not reflect the reality of working in horticulture. The term "day" is not defined in migration legislation and the current approach excludes any part-time or casual work of less than 7-8 hours per day. Full time employees are entitled to count unpaid days attributable to weekends in the 88 day period, while part time and casual employees cannot. In our view, these changes unreasonably narrow the scope of the second year visa initiative.

We recommend calculating work on an hourly basis, so that all hours worked by working holiday makers count toward the 88 day requirement. This approach works for all industries, and ensures that working holiday makers are not unfairly disadvantaged by working on a part-time or casual basis, or on days when it rains, or is too hot, or when machinery breaks down (all common occurrences in the agriculture sector).

Growers are also deeply concerned about any moves to expand the second visa initiative beyond agriculture as they consider our industry to be less attractive to WHMs. We request that any moves to expand the program be supported by clear evidence of labour shortage and restricted to operators with truly seasonal requirements or remote locations.

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<sup>4</sup> SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993 - SECT 62 Sole Purpose Test:

[http://www.austlii.edu.au/au/legis/cth/consol\\_act/sia1993473/s62.html](http://www.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s62.html)

## **The way forward**

Growcom calls for an immediate end to the 32.5 per cent tax rate on backpackers from the first dollar they earn. Our growers support the idea that backpackers should pay some tax but the rate needs to be internationally competitive and not act as a disincentive to backpackers working in Australia.

In the longer term, Growcom would like to see an issues paper developed in response to these submissions with a clear timeline for a more detailed review of agricultural workforce issues. A research project conducted by the University of Adelaide has been commissioned by Horticulture Innovation Australia, funded using the National Vegetable Levy and funds from the Australian Government, to evaluate the labour needs of the Australian vegetable industry.

This project, which is expected to be completed by December 2016, will review the existing framework regarding the role of temporary migrants in the vegetable industry and identify potential solutions for addressing vegetable industry worker shortages. As this review was initiated to overcome a paucity of data in relation to these issues, it would be premature to pre-empt its recommendations. Any new policy initiatives in relation to increasing the supply of workers to the horticulture industry need to be thoroughly researched and evidence based rather than a reactionary response to the “backpacker tax” situation.

## **Contact details**

For further information in relation to this submission, please contact:

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