



Harvest Work Visa

Visa Framework & Proposal

October 2020

About the Australian Fresh Produce Alliance

The Australian Fresh Produce Alliance (AFPA) is made up of Australia's key fresh produce growers and suppliers. The members include:

- Costa Group
- Perfection Fresh
- Montague
- One Harvest
- Pinata Farms
- Fresh Select
- Mackay's Banana Marketing
- Driscoll's
- 2PH Farms
- LaManna Premier Group
- Rugby Farming
- Freshmax
- Fresh Produce Group.

These businesses represent:

- half the industry turnover of the Australian fresh produce (fruit and vegetables) sector - \$4.5 billion of the \$9.1 billion total
- a quarter of the volume of fresh produce grown in Australia - 1 million of the 3.9 million tonne total
- more than a third of fresh produce exports - \$410 million of the \$1.2 billion export total
- more than 1,000 growers through commercial arrangements, and
- more than 15,000 direct employees through peak harvest, and up to 25,000 employees in the grower network.

The key issues the AFPA is focusing on include:

- packaging and the role it plays in product shelf life and reducing food waste landfill,
- labour and the need for both a permanent and temporary supply of workers,
- market access to key export markets for Australian produce,
- product integrity both within and outside of the supply chain,
- pollination and research into alternative sources, and
- water security, including clear direction as to the allocation and trading of water rights.

The AFPA's aim therefore is to become the first-choice fresh produce group that retailers and government go to for discussion and outcomes on issues involving the growing and supply of fresh produce.

Products grown by AFPA Member companies include:

Apples	Blueberries	Cherries	Nectarines	Raspberries
Apricots	Broccoli	Fioretto	Onions	Salad leaf
Asparagus	Broccolini	Green Beans	Oranges	Spinach
Avocado	Brussel Sprouts	Herbs	Peaches	Strawberries
Baby Broccoli	Butternut	Lemons	Pears	Sweet Corn
Baby Corn	Pumpkin	Lettuce	Pineapples	Table grapes
Bananas	Cabbage	Mandarins	Plums	Tomatoes
Beetroot	Cauliflower	Mango	Potatoes	Water Cress
Blackberries	Celery	Mushrooms	Cucumber	Wombok



Executive Summary

The horticulture sector is seeking a specific Harvest Work visa ('HWV') to meet time critical labour needs across Australia, especially during harvest time. The Australian Fresh Produce Alliance has engaged and worked with respected migration law specialists Hammond Taylor to develop recommendations and a specific visa framework for the HWV.

This visa proposal has been developed to address issues with existing programs, to provide benefits to employers and temporary visa holders, address integrity and compliance concerns, and fill a critical gap in the visa program, which has been amplified by the Covid-19 pandemic and is placing at the risk the capacity of farmers to harvest horticultural crops over the remainder of 2020 and into 2021.

It is well known that Australia's agriculture and horticulture sectors have struggled to meet peak demand for labour during harvest periods for several decades. Where these labour needs could not be properly met by local workers, farmers have been able to employ workers on temporary visas, with the most popular source coming from the Working Holiday Makers (WHM) program.

While many other developed countries operate agriculture specific visas, Australia has avoided a targeted visa for this sector, relying on programs which provide labour outside their core purpose (WHM) or in combination with a secondary purpose, such as regional development, namely the Seasonal Worker Program (SWP). Despite a number of proposals having been put forward to establish a stand-alone agricultural visa (i.e. harvest worker visa), in which the visa holder can only work in agriculture but is free to move between employers, this has not been supported by government.

The Covid-19 pandemic has brought into sharp focus the limitations of the current system. The closure of international borders, the challenges of inter-state quarantine, and the demonstrated shortage in workers available for this year's harvest have shown the fragility of current arrangements and demonstrated the need for a more targeted approach to meet peak harvest labour needs.

In particular, the horticulture sector's increasing reliance on the labour provided by WHM has not withstood the pressures imposed by the pandemic, with large numbers of WHM departing Australia.¹ The most recent data shows that up to 1,500 WHM per week have left the country since March. This has had and is continuing to have a serious impact on ability of farmers to secure sufficient labour to harvest crops.

The immediacy of the problem is highlighted by a recent EY report on the labour force needs of the horticultural sector. The report found the sector is facing a major workforce shortage of up to 26,000 people throughout the peak 2020/21 summer fruit season. There are farmers who have already had to pull out crops due to the lack of harvest workers. This shortage will also have a serious impact on Australian consumers, with price increases and likely shortages of fruit and vegetables on supermarket shelves.

At the same time, the pandemic has demonstrated that the current Seasonal Worker Program (SWP) is insufficient in size to meet peak labour demands during the horticultural harvest season. The SWP's focus on longer term agricultural work, with high return rates and year on year participation, provides approved employers with a stable and reliable labour force across the year but it is not designed to meet peak requirements. This has been compounded by Covid-19, with, only 6,600 of the usual 12,000 SWP workers being able to travel to Australia.

A standalone Harvest Work visa is intended to provide a highly mobile visa which can move easily both between employers and geographically, following shifting seasonal needs, in accordance with peak labour demand. In this respect the proposed HWV program complements, rather than replaces existing visa programs. The program will only service Australian horticulture producers and labour hire providers, that are able to demonstrate both a need for workers and reputable employment practices.

To achieve this, the program will focus on businesses which hold recognised accreditation status (GlobalGAP, Supplier Ethical Data Exchange (Sedex), SMETA, Fair Farms, StaffSure etc.). These organisations have the capacity to meet the

¹ 'Working Holiday Makers' refers collectively to visa holders on the Subclass 417 Working Holiday visa and the Subclass 462 Work and Holiday visa.

additional compliance requirements imposed by immigration law on the employers of temporary workers. Ensuring the ability to comply is critical for the program's longevity, positive public perception, and the integrity of Australia's immigration system.

It is recommended that the most streamlined process be used to commence the HWV, this could take the form of a pilot under the Special Class 408 Temporary Activity stream or preferably a pilot of a standalone HWV program.

Regardless of the path decided, the urgency of the situation and the very real possibility of shortages of fresh produce on supermarket shelves as farmers are left with little choice but to leave their crops to rot or take more drastic measures and remove plants and trees, necessitates prompt and decisive action.

Recommendations

The Federal government should introduce a stand-alone HWV program to address the industry's labour requirements, and if necessary this could be initially rolled out through a trial/pilot using a Special Class 408 model or a trial/pilot of a standalone HWV.

The below recommendations have been developed by Hammond Taylor. Hammond Taylor is a leading Australian immigration law firm. The business has been in operation since 2010 and assisted many thousands of visa holders and employers to manage Australian immigration processes. The business specialises in the employer sponsored visa space and niche verticals including Business Innovation & Investment, Global Talent, as well as immigration compliance and policy.

Recommendation 1: Establishing an appropriate standalone visa framework

Establish a standalone sponsorship framework (similar in nature of the Standard Business and Temporary Activity sponsorship) which provides access to employers with the capacity to understand and comply with key requirements such as meeting minimum requirements, completing labour market testing to provide Australians with the first opportunity for work, and reporting.

In recognition of the immediacy of the workforce shortages which are estimated at 26,000 workers over the coming summer harvest season, (highlighted by the EY Report - Seasonal horticulture labour demand and workforce study) the program could be rolled out through a trial/pilot using a Special Class 408 model or the piloting of a standalone HWV which then leads to the later introduction and establishment of a permanent HWV.

Recommendation 2: Nomination

Unlike existing nomination requirements for the 482 program the Nomination for the HWV program would not feature assessable criteria – rather it would provide a record of the relationship between visa sponsor and visa holder for compliance purposes.

As minimum terms will not vary (i.e., all employment must meet the Horticulture Award or relevant EBA) and all employment will fall within a pre-defined set of ANZSCO codes (i.e., 832113 Fruit and Vegetable Packer, 841211 Fruit or Nut Farm Worker, 841212 Fruit or Nut Picker, etc.) there should be no requirement for a substantive assessment.

This low barrier to Nomination will provide visa holders with a high degree of portability between approved employers. This is vital in order to address the need for visa holders to move rapidly between employers based on seasonal harvest demands. It also provides visa holders with the ability to quickly shift employers if dissatisfied with employment conditions.

Recommendation 3: Visa structure

The HWV would be limited to defined source countries on the basis of risk during the Covid-19 pandemic, high levels of visa compliance, and participation in existing WHM schemes.



The visa should be highly portable between employers to facilitate the necessary geographic movements which characterise harvest work have a short, fixed duration of 9 months, and only renewable from outside Australia.

Priority should be given to individuals who have previously shown compliance with past Australia visa requirements, such as returned WHMs. Therefore Taiwan, Hong Kong, and South Korea should have priority among potential countries. This recommendation is based on research showing the highest level of take up of agricultural work comes from these WHM countries².

Visa conditions will prevent work for non-registered HW sponsors and restrict labour to the defined ANZSCO codes.

By combining these elements, the visa seeks to prioritise a low risk cohort, with likely past experience of life in Australia, with a focus on work for a harvest season.

Recommendation 4: Compliance framework

Employer record keeping obligations should mirror those for the existing Business Sponsorship and Activity visa.

There is the potential for private sector IT providers to develop software systems which would facilitate record keeping and ensure improve transparency between employers and employees.

Introduction of a Harvest Work Visa

The proposed strategies for implementation have been developed in consultation with Hammond Taylor.

Depending on the scope of what is legislatively achievable there are two potential pathways for introducing the HWV:

- Use of the existing ‘Subclass 408 Temporary Activity’ visa in the Australian Government Endorsed Event (AGEE) ‘stream’ to create an event specifically to address the looming shortage of harvest workers
- Creation of a new HWV framework including Sponsorship, Nomination, Visa and compliance regulations

The following two pathways could be used to work toward a standalone program. The outcome of either pathway would be the establishment of a HWV.

1. Special Class 408 Activity AGEE – Harvest Shortage event

The Special Class 408 Activity AGEE has already been used to create a tailored program to meet workforce needs during the Covid-19 pandemic and provides a pathway for people to remain in Australia during this period. Given the immediacy of the problem (worker shortages) a similar approach could be adopted to create a new event to permit workers in countries with low Covid-19 rates to access a temporary HWV under a 408 pilot program.

An initial 18-month pilot could be run to include 15,000 places, with Home Affairs conducting periodic consultation with industry.

At the end of the Pilot Program, the Department would oversee a review of the program’s performance to identify the impact of the visa on local and temporary labour in the Horticulture sector, identify shortcomings in the program and develop policy reforms in consultation with industry, including need to develop custom framework and review of source countries.

This would then lead to the introduction of a standalone HWV program. The number of places would increase to circa 25,000 – 30,000. The program would be subject to review on a three-yearly basis.

² Alexander Reilly and Joanna Howe, ‘Australia’s Future Horticultural Workforce: Assessing the Agricultural Visa Concept’ 84 *Journal of Australian Political Economy*, 101.



2. Standalone HWV program

The establishment from the outset of a standalone HWV program is preferable to a 408 pilot program. This could also be initiated as an 18-month pilot program to include 15,000 places, with Home Affairs conducting periodic consultation with industry.

In order to address the immediate labour requirements, processing would be prioritised to ensure access to program to sponsors and visa applicants.

At the end of the Pilot Program, the Department would oversee a review of the programs' performance to identify the impact of the visa on local and temporary labour in the Horticulture sector, identify shortcomings in the program and develop policy reforms in consultation with industry. Review of source countries and identification of potential to expand to other countries. This would result in formalisation of the HWV program with learnings. Program increases to 25-30,000 places. The program would be subject to review on three yearly basis.

Protecting the integrity of the immigration system

The horticultural sector shares the Australian government's strong commitment to ensuring that temporary visa holders receive the same wages and terms and conditions of employment as Australians in order to prevent overseas labour undercutting Australian conditions and ensuring equality of opportunity for Australian residents.

Workers in the horticultural sector are often considered vulnerable on the basis of limited language skills and education, lower levels of geographic mobility, and limited savings. In addition, some visa programs contribute to this vulnerability by tying the visa holder to the employer through the immigration process.

The program proposes several actions to address these challenges and ensure the ongoing integrity of Australia's immigration system:

- **Visa Holder Education:** Providing visa holders with relevant information in their own language about their workplace rights, including external contacts such as the Fair Work Ombudsman.
- **Employer Education:** Ensuring that employers understand their obligations and the specific issues related to the employment of temporary visa holders
- **Portability:** Employee mobility is a key factor in ensuring fair and equitable treatment. The program proposes a model which requires employers to lodge a 'Nomination' to link the employee to the employer, but this process has no cost and minimal complexity.
- **Promoted Job Market:** Use government and open source resources to create a HWV specific marketplace for visa holders to identify further employment opportunities and maximise transferability of employment. This would leverage off existing government resources, including the Harvest Trail and Jobsearch.gov.au job board.



Visa Framework

The below Visa Framework, for both a Stand-Alone visa and/or a Subclass 408 Activity visa has been prepared by Hammond Taylor. Hammond Taylor is a leading Australian immigration law firm. The business has been in operation since 2010 and assisted many thousands of visa holders and employers to manage Australian immigration processes. The business specialises in the employer sponsored visa space and niche verticals including Business Innovation & Investment, Global Talent, as well as immigration compliance and policy.

Subclass 408 Activity visa - AGEE Stream - Harvest Shortage event

A framework using the 408 visa under the Australian Government Endorsed Event ('AGEE') stream could be implemented more quickly than a standalone sponsorship and visa framework, to respond to the present worker shortage, while a more durable scheme is developed. The risk in such a framework is that limitations within the existing legislation mean that not all safeguards necessary for worker protection and portability can be implemented.

Criterion detail	Comment
<p>1 Existing 408 visa criteria summary</p> <ul style="list-style-type: none"> a) NIL (if specified in instrument) or \$310 b) Onshore or offshore lodgement and grant. If onshore must hold substantive visa, or have held within last 28 days c) Must not be the holder of specified visas d) Offshore applicants must intend to stay for more than 3 months e) Activities proposed do not have adverse consequence for training or employment of Australian citizens f) Health insurance g) Genuine temporary entrant criteria: applicant must intend to come to Australia for purpose of activity and depart. h) Adequate means of support i) Health and character requirements 	<p>Fees are negotiable, but a \$310 fee may be appropriate</p> <p>Other criteria cannot be changed through a Legislative Instrument but are appropriate in the circumstances</p> <p>Offshore applicants do not have review rights to the Administrative Appeals Tribunal. Onshore applicants will.</p>
<p>New legislative instrument criteria (AGEE event under subclause 408.229)</p>	
<p>2 Accredited direct employer criteria</p> <p>If proposing to directly employ the visa holder, to be an accredited employer for the Harvest Shortage event, the employer must be one of the following:</p> <ul style="list-style-type: none"> a) Approved Employer under the SWP or PLS b) SEDEX member c) GlobalG.A.P certified d) Fair Farms certified 	<p>To establish a framework for accreditation and eligibility for direct employers to be able to participate in the Harvest Shortage event</p>



<p>e) An employer with a Horticultural Industry Labour Agreement which is in effect</p>	
<p>3 Accredited labour hire employer criteria</p> <p>If proposing to hire out visa holders to an unrelated business, to be an accredited Labour Hire employer for the Harvest Shortage event, the employer must be one of the following:</p> <ul style="list-style-type: none"> a) Approved employer under the SWP or PLS b) Staffsure certified <p>If operating in a location which requires Labour Hire employer to be licensed under a State / Territory labour hire licensing scheme, the employer must be licensed.</p>	<p>To establish a framework for accreditation and eligibility for labour hire employers to be able to participate in the Harvest Shortage event</p> <p>If labour hire licensing applies in the relevant location, it must be held</p>
<p>4 Harvest Shortage event letter</p> <p>The accredited employer must provide a Harvest Shortage event letter which states:</p> <ul style="list-style-type: none"> a) The basis and evidence of the accreditation such as a certificate or letter b) That they will be employed to only perform 'Harvest Work', and that at least 12 weeks of work is available c) The relevant industry agreement, Award, classification and payment rate specified under the agreement or Award d) That it has listed the 'Harvest Work' vacancy on Harvest Trail (JobActive) for a period of at least 2 weeks and was unable to recruit a sufficient number of Australian citizen or permanent residents e) Three accommodation options (including on site) within a reasonable distance of the work location including name of provider, phone number and email, minimum cost per night 	<p>The accredited employer must set out the basis for their accreditation and provide other information relevant to the proposed Harvest Work</p> <p>Include Labour Market Testing statement which includes Seasonal Workers and non-citizens with work rights so as to ensure employers exhaust all Australian labour sources before using the Harvest Shortage event visa stream</p> <p>The accredited employer will be aware that the letter is being presented to Immigration and that false declarations could lead to sanctions or penalties</p>



<p>5 Visa applicant criteria</p> <p>The applicant must:</p> <ul style="list-style-type: none"> a) If offshore, hold a passport of and reside in a listed country – Eg. Taiwan, Hong Kong and South Korea b) Provide a Harvest Shortage event letter from an accredited employer c) Certify that they will only perform Harvest Work for an accredited employer while in Australia d) Achieve functional English or have spent 9 months in Australia in the last 5 years holding a visa with work rights (see detail below in HW visa) e) There is no information to indicate that the applicant is unable to perform Harvest Work in Australia f) Must not be accompanied by secondary applicants g) Provide evidence of a fully paid and flexible return airfare to Australia h) Complete a certificate which covers cost of living in Australia, Australian agriculture/horticulture industry, Australian employment standards, complaints procedures, workplace safety regulations 	<p>To establish criteria for the visa applicant to satisfy to participate in the Harvest Shortage event</p>
<p>6 Visa Conditions</p> <p>8303 – Must not become involved in disruptive activities</p> <p>8106 - The holder must only undertake the work or activities specified in the visa application</p> <p>8501 – Must hold health insurance</p> <p>8503 – No further stay</p> <p>8516 – Must continue to be a person who satisfies the criteria for the visa</p>	<p>The below are a set of existing discretionary visa conditions which may be imposed on the 408 visa. Policy may specify in what circumstances discretionary visa conditions are imposed</p> <p>8106 and 8516 allow portability, and link to the work specified in the visa application, which is Harvest Work for an accredited employer. Undertaking work other than Harvest Work for an accredited employer is a breach of condition.</p> <p>A difficulty is the lack of a mechanism for reporting employment changes meaning that there would be lower levels of oversight of visa holders locations and employment status</p>
<p>7 Visa period 9 months</p>	<p>The visa period may be prescribed in policy, and can be up to 4 years</p>



Harvest Work Visa Program

Sponsorship Criteria

In this section:

- ‘the applicant’ refers to the business applying for sponsorship approval
- ‘HW’ refers to Harvest Work

The sponsorship criteria are more extensive than with other work sponsor approval processes and are similar to Labour Agreement approval criteria. The aim is to create a robust set of criteria to ensure only compliant employers participate in the program. This reduces the need for extensive nomination criteria, supporting the objective of ‘portability’ of the HW visa.

Criterion detail	Comment
1 Application fee: \$1500	The usual sponsorship approval fee is \$420. A higher fee may be necessary to minimise the nomination fee. A high nomination fee would detract from portability
2 Process: Online application. Formal manual assessment of applications. Simpler renewal process, with auto-approval	Subjective assessment criteria will likely require manual assessment
3 Validity: 12 months	Regular re-assessment supports the portability objective and ensures sponsors continue to be compliant
4 Review rights to Administrative Appeals Tribunal (AAT) – Available	The sponsorship approval is the key to the program and involves assessment of subjective criteria. Review rights are appropriate
5 Lawfully operating a business in Australia	Excludes overseas businesses and ‘shell companies’ from becoming sponsors
6 Declare in writing that the applicant will not engage in, or intend to engage in, activities that will have adverse consequences for employment or training opportunities, or conditions of employment, for Australian citizens or Australian permanent residents	To ensure that businesses engage in local recruitment and that no Australian resident is displaced by a visa holder for work or training opportunities
7 Declare in writing that the applicant will not engage in discriminatory recruitment practices	To ensure businesses only preference employees based on relevant employment attributes
8 Must not be adverse information about the applicant or a person associated with the applicant, unless it is reasonable to disregard that information	Adverse information defined in reg. 1.13A, includes contravention of Cth or State/Territory laws
9 If proposing to be a direct employer of HW visa holders, the applicant must be one of the following: a) SEDEX member b) Global G.A.P certified c) Fair Farms certified d) An Approved Employer under the SWP or PLS e) An employer with a Horticultural Industry Labour Agreement which is in effect	To ensure that sponsors for the program have independent certification of ethical and compliant labour sourcing and management practices. Option for Immigration to disregard this requirement if the applicant provides other evidence of ethical and compliant practices which are of an equivalent standard to the certifications/memberships of the specified organisations



<p>The above may be disregarded if reasonable in the circumstances to do so.</p>	
<p>10 If proposing to hire out workers to a business not related or associated to the applicant (i.e., Labour Hire companies), the applicant must have one of the following attributes specified for this purpose: a) An Approved Employer under the SWP or PLS b) StaffSure certified</p> <p>The above may be disregarded if reasonable in the circumstances to do so.</p>	<p>To allow Labour Hire companies with verifiable or certified work practices to participate in the programme as sponsors</p> <p>Option for Immigration to disregard this requirement if the applicant provides other evidence of ethical and compliant practices which are of an equivalent standard to the certifications/memberships of the specified organisations</p>
<p>11 If proposing to hire out workers to a business not related or associated to the applicant, the applicant must be licensed under a labour hire licensing scheme in the state or territory in which workers will be located, or under a national labour hire registration scheme</p>	<p>To ensure Labour Hire companies are appropriately licensed in the state they are operating in. Presently only Queensland, South Australia and Victoria have legislated schemes</p>
<p>12 The applicant must provide evidence of labour market testing and attempts to recruit Australian citizens, permanent residents and eligible NZ citizens which must include evidence of advertising at least 3 harvest work positions in the last 12 months on Harvest Trail (JobActive).</p>	<p>To ensure sponsors engage in labour market testing to attract Australian residents to the positions</p>
<p>13 The applicant specifies the harvest work occupations it intends to sponsor and demonstrates that it has a need to sponsor those occupations</p>	<p>To ensure sponsors can demonstrate that they have a need to participate in the program and the employ people in the occupations</p>
<p>14 The applicant provides a copy of the template employment contract or contracts under which workers will be engaged</p>	<p>To ensure sponsors use a Enterprise Bargaining Agreement, Award or other industry agreement compliant employment contract for all HW visa holders</p>
<p>15 The applicant provides a copy of its induction training program for HW visa holders and certifies that it suitable for the purpose</p>	<p>To ensure sponsors have an adequate training program in place for induction at each site for HW visa holders</p>
<p>16 The applicant has in place a suitable worker compensation scheme policy in the states or territories in which it operates</p>	<p>To ensure sponsors have adequate insurance to cover workplace injuries or other incidents</p>
<p>17 The applicant certifies that a reasonable standard of accommodation is available either on site or within a reasonable distance of the site for the peak workforce period</p>	<p>To ensure HW visa holders will have adequate access to accommodation and that the sponsor can provide information for this purpose</p>
<p>18 The applicant undertakes to comply with the sponsorship obligations for HW sponsors</p>	<p>To ensure sponsors acknowledge the obligations of employing HW visa holders</p>



Nomination & Visa Transfer Criteria

Criterion detail	Comment
1 Application fee: \$0	There should be minimal disincentive for employers to engage existing visa holders ensuring there are minimal barriers for workers to move between employers.
2 Process: Online application. Auto-approval of applications upon making necessary certifications and providing information	Due to limited timeframe of visa and immediate needs of sponsors, applications should be auto-approved for immediate commencement of work
3 Validity: 3 months	Initial nominations. Initial visa applications must be lodged within 3 months of nomination approval
4 Review rights to AAT – None	No need for review rights given simplicity of process and criteria
5 Only approved sponsors may make applications	Due to auto-approval process for nominations, there is no need for sponsors with pending applications to be able to nominate
6 The applicant must nominate a HW visa holder or prospective HW visa holder ('the nominee')	Defines the categories of person that may be nominated
7 If the nominee is not in Australia, the applicant must offer a minimum of 12 weeks work If the nominee is in Australia, the applicant must offer a minimum of 4 weeks work	Option to differentiate between length of employment necessary for initial visa compared to transferring between employers in Australia
8 A list of eligible occupations to be specified in a legislative instrument, and to include: <ul style="list-style-type: none"> • 832113 Fruit and Vegetable Packer • 841211 Fruit or Nut Farm Worker • 841212 Fruit or Nut Picker • 841213 Grain, Oilseed or Pasture Farm Worker (Aus) • 841214 Vegetable Farm Worker (Aus) • 841215 Vegetable Picker • 841217 Mushroom Picker • 841412 Horticultural Nursery Assistant 	To establish a definition of Harvest Work or 'specified work'. To support portability within organisations, HW visa holders should not be limited to one specified ANZSCO code but the whole group of specified Harvest Work occupation codes
9 The applicant must provide the following information: <ol style="list-style-type: none"> a) Legal name of organisation b) Sponsorship approval ID/TRN c) Name, passport number, date of birth, nationality of nominee d) Location/s of work e) Date of commencement f) Expected duration of work g) The industry agreement or Award and classification of employee 	Information to ensure Immigration can link and monitor sponsors and visa holders
10 The applicant must certify that: <ol style="list-style-type: none"> a) Nominee will only undertake 'specified work' 	Certifications to ensure sponsors and visa holders comply with obligations on an ongoing basis



<p>b) They have advertised the position for at least 2 weeks immediately before making the application on Harvest Trail.</p> <p>c) They have given the nominee 3 accommodation options including on site if applicable which are a reasonable distance from work location, phone & email of accommodation provider and minimum cost per night</p> <p>d) The nominated visa holder has not been unemployed for more than 30 days</p>	<p>Sponsors would need to be provided with evidence of visa holder's final date of employment with former employer to ensure no more than 30 days has passed. This may be a copy of the notification record, employment cessation letter or other written communication from previous employer</p>
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Visa Criteria – Initial Visa

- 'The applicant' below refers to the HW visa applicant

Criterion detail	Comment
1 Application fee: \$485	Same as Working Holiday visa. Fee should not be prohibitive given duration of the visa and should not add pressure on employee to accept sub-standard work conditions to earn fees back
2 Process: Online application. Formal manual assessment of applications. Simpler subsequent process, with potential for auto-approval	Subjective assessment criteria will likely require manual assessment for initial application
3 Visa period: 9 months	Recommend 9 months to align with SWP. A 9-month period with at least 3 months in the home country reinforces the temporary nature of visa
4 Visa type: Single entry	Applicants will be expected to leave Australia if they do not have sufficient work to ensure compliance with visa conditions. If applicants wish to return to Australia, they will need to be re-nominated and to apply for a new visa
5 Secondary applicants (e.g. Family members) – Family members will not be permitted to apply as secondary applicants on the HW visa.	If family members wish to visit Australia, they may use existing visa subclasses (e.g. Visitor, Working Holiday)
6 Review rights to AAT – None	Similar to most short-term offshore visas
Schedule 1 – Other validity criteria for visa	
7 The applicant is the subject of an approved nomination by an approved sponsor and that nomination has not expired	Due to auto-approval of nominations, visa application cannot be lodged until nomination is approved. Visa holders have up to 3 months to lodge visa application upon nomination approval
8 The applicant must not be in Australia at the time of lodgement	Supports the temporary nature of the visa and precludes applicants in Australia from applying Possible inclusion of onshore option for Bridging visa A and B holders with work rights (e.g. Visitor visa arrivals who have lodged Protection visas whose case is before



	Immigration, AAT or Courts conditional on withdrawal of those proceedings within 28 days of visa grant)
9 The applicant must be at least 21 and no more than 55 years old	Due to nature of work an age limit may be appropriate. Large age range allows employers to recruit from larger pool of potential workers
10 The applicant holds a passport of and resides in a country specified in a legislative instrument South Korea, Hong Kong and Taiwan to be specified	Permits Immigration to add or remove countries depending on risk factors including Covid-19
Schedule 2 – Criteria for grant of the visa	
11 The applicant has adequate arrangements for health insurance	The applicant to purchase month-to-month working visa insurance equivalent to Medicare and to continue to maintain insurance for duration of stay
12 The applicant provides evidence of a fully paid and flexible (e.g. Changeable without incurring a more than \$400 fee for the change) return airfare to Australia	The applicant must purchase a return airfare to ensure they can depart Australia when needed to avoid breaching their visa or relying on employers or Immigration to meet these costs
13 There is no information to indicate that the applicant is unable to perform specified work in Australia	Setting a low bar for skills/experience ensures skills criteria can be easily met by applicants. Employers therefore may use their own methods to determine whether applicants have adequate skills/experience
14 The applicant has completed a certificate in their native language specified in a legislative instrument Instrument to specify a certificate which includes education and examination on the following topics: <ul style="list-style-type: none"> • Cost of living • Australian agricultural industry • Australian employment standards • Complaints procedures • Workplace safety regulations 	To ensure that applicants have access to information and are educated and certified in various topics relevant to their work in Australia. The course may be delivered online using various biometrics tools to ensure applicant is the person who completes the course
15 a) The applicant has completed a language test in the 12 months before applying for the visa and achieved the scores specified in the instrument; or Instrument to specify: (i) IELTS – Overall band score 4.5 (ii) PTE Academic – Overall band score 30 (iii) TOEFL iBT – Total band score 32 (iv) CAE – Overall band score 147 b) The applicant has held a HW visa in the last 12 months;	The standard specified is the ‘functional English’ standard, however, testing is preferred to other forms of English language assessment such as proof of study in English due to subjectivity. Employers may request evidence of English testing before agreeing to nominate and be clear on eligibility. The need for English testing is likely to mean that only more highly educated and less vulnerable applicants are eligible



<p>c) The applicant has spent at least 9 months in Australia in the last 5 years holding a visa with work rights (eg. WHV, Student)</p>	
<p>16 The applicant intends to stay only temporarily in Australia for the purpose for which the visa is granted, having regard to:</p> <ul style="list-style-type: none"> (i) Compliance with conditions on visas previously held (ii) Intention to comply with conditions (iii) Any other relevant matter 	<p>Permits Immigration to consider range of different risk factors regarding applicants in deciding whether to grant the visa.</p> <p>E.g. Applicants for subsequent visas may be asked to provide proof of holding health insurance for duration of previous stay</p>
<p>17 The applicant satisfies standard Schedule 4 criteria (e.g. Health and character requirements)</p>	<p>Taiwanese, Hong Kong and South Korean applicants will be required to undergo a medical examination and x-ray (as with most Asian countries).</p> <p>Applicants from all countries will be required to provide a police clearance for each country in which they have resided for more than 12 months in the last 10 years</p>
Visa conditions	
<p>18 Existing visa conditions (mandatory conditions):</p> <ul style="list-style-type: none"> a) 8303 – not become involved in disruptive activities b) 8501 – must hold health insurance c) 8503 – no further stay d) 8578 - notify change of address, email, phone number, passport, place of work e) 	<p>Same as SWP</p>
<p>19 Existing visa conditions (discretionary conditions):</p> <ul style="list-style-type: none"> e) 8516 – must maintain eligibility for the visa 	<p>Standard discretionary visa condition</p>
<p>20 New conditions (mandatory):</p> <ul style="list-style-type: none"> a) 8107 (amendments required) – must not cease employment for more than 30 days unless they depart Australia within 60 days of cessation, undertake work other than specified work, work for a person or themselves other than the sponsor which last nominated them b) Must depart Australia within 60 days of ceasing work 	<p>Amendments to Condition 8107 required to support the intention that visa holder only work for the employer who last nominated them, and is not out of work for more than 30 days. Visa holders should be encouraged to arrange subsequent work as soon as practicable</p> <p>If visa holder remains out of work for 30 days, they effectively then have a further 30 days to depart Australia. Visa holders may have difficulty complying with this requirement presently. If HW visa holders stay in Australia for the full 60 days without working it may considered adverse in subsequent HW visa applications</p>



Compliance / Sponsorship Obligations

We propose that many of the standard obligations applying to sponsors under the Temporary Activities Sponsorship framework apply to Harvest Work sponsors. We propose publication of a list of approved sponsors as with the Seasonal Worker Program. We propose that the same monitoring and sanctions regime apply to Harvest Work sponsors, including publication of sanctions and penalties imposed on sponsors or former sponsors (reg. 2.87D).

Obligation detail	Comment
1 Obligation to cooperate with inspectors	Existing reg. 2.78
2 Obligation to pay costs incurred by the Commonwealth to locate and remove unlawful non-citizen (capped at \$10,000)	Existing reg. 2.81
3 Obligation to keep records	Existing reg. 2.82
4 Obligation to provide records and information to the Minister	Existing reg. 2.83
5 Obligation to provide information to Immigration when certain events occur. New obligations: a) Obligation to notify cessation of employment within 14 days b) Obligation to notify which HW visa holders are employed every 90 days commencing from approval of first nomination. Notification must be made within 7 days before or after 90 day period. Continues until sponsor reports no visa holders employed	Existing reg. 2.84 with amendments Notifications to be made through ImmiAccount. Sponsors to notify of all HW visa holders employed by them on a 90-day basis. Provides redundancy in the event of a visa holder ceasing employment and the employer failing to notify.
6 Obligation to ensure sponsored person works in nominated activity	Existing reg. 2.86, 2.86A
7 Obligation not to recover, transfer or take action that would result in another person paying for certain costs	Existing reg. 2.87
8 Obligation not to engage in discriminatory recruitment practices	Existing reg. 2.87C



Conclusion

A Harvest Work Visa (HWV) has the potential to complement existing visa programs by providing a flexible but well-regulated and targeted visa program to supply the Australian horticulture industry with sufficient skilled workers. As noted above, the current programs fill a number of key roles in the agricultural sector but do not address the critical issue of peak demand during the harvest period. This issue has been amplified due to the Covid -19 pandemic.

Overall, the introduction of the HWV has the potential to encourage better terms and conditions for harvest workers. The high degree of visa portability and non-assessable Nomination provides visa holders with the flexibility to transfer employment at short notice to seek better terms and conditions of employment. The HWV program is not intended to displace existing programs, but rather to complement the SWP and 482 HILA by providing the horticulture sector with additional labour supply through peak harvest periods.

Appropriately configuring the HWV proposal requires carefully balancing the needs of employers for flexibility with potential integrity issues, principally worker exploitation. To achieve this the HWV framework has included features of other Australian visa programs, including Sponsorship, Nomination, Labour Market Testing. Additional features including compulsory education, software systems for self-reporting and transparency between employer and employee, are intended to increase program integrity.

The program has been designed as a visa which promotes high portability, limited duration and focus on manual work. As with other employer sponsored visa, Labour Market Testing will ensure that Australians have first opportunity to access available work.

Compliance will be achieved by selective intake of competent sponsors with existing compliance frameworks established for industry specific accreditation, in addition to requirements to meet sponsorship obligations, maintain records, and limited flexibility in the scope of activity through the Nomination.

Two potential methods for advancing the HWV program are identified depending on the responsiveness of government to the proposal.

Creation of an 'event' for the AGEE stream of the Sc 408 Activity visa could provide the rapid turnaround required by industry to meet this years' labour shortage caused by Covid - 19 and if acted upon in a timely manner help to reduce and mitigate the losses growers will experience due to the lack of available workers. A standalone HWV could be introduced at a later time using a HW visa program described in this paper.

Alternatively, the establishment of a standalone visa has greater potential to provide a viable long-term visa program to support the horticultural sector in the face of changing demographics in the Australian population. The viability of this approach for the 2020-21 harvest season will depend on the ability of government to rapidly implement a functional program.

Significant labour shortages are already being experienced by farmers across the country, leading to the abandonment and destruction of crops. The very real risk is that this will lead to shortages of fresh fruit and vegetables at time when Australians need unfettered access to food which is nutritious and healthy. Such shortages will be seen firsthand by Australian consumers on supermarket shelves and result in higher prices at the checkout.

