



SOUTH AUSTRALIAN WINE INDUSTRY
ASSOCIATION INCORPORATED

16 August 2021

Department of Home Affairs

Via website upload: [Department of Home Affairs' website](#)

Re: Exposure Draft Migration Amendment (Protecting Migrant Workers) Bill 2021

Background and introduction

The South Australian Wine Industry Association (SAWIA) is the peak body for the wine industry in South Australia, representing the interests of wine grape growers and wine producers throughout the state of South Australia. SAWIA (as it is known today) was established in 1840 as the Society for the Introduction of Vines.

SAWIA is a not-for-profit incorporated association, funded by voluntary member subscriptions, grants and fee for service activities, whose mission is to provide leadership, advice and support to South Australian grape and wine businesses assisting them to prosper within a dynamic, diverse industry.

SAWIA membership represents approximately 96% of the grapes crushed in South Australia and about 36% of the land under viticulture. Each major wine region within South Australia is represented on the board governing our activities.

SAWIA has a strong track record as an industry leader and innovator in many areas. SAWIA proactively represents members and the greater wine industry with government and related agencies in all aspects of business in the wine sector.

What SAWIA does for members is covered in four key areas:

- Representation and Leadership;
- Advice and Information;
- Products and Services; and
- Promotion and Opportunities.

About the South Australian wine industry

South Australia is internationally recognised as a premium wine region, with 75% of Australia's premium wines produced in South Australia

South Australia is by far the single largest wine producing State or Territory, crushing 52% of the total national grape crush. In addition, 55% of the total area of wine grape plantings is located in South Australia. Measured in value, South Australian wine represents more than 70% of Australian wine exports.

South Australia has 711¹ wine producers, more than doubling since the year 2000. There are close to 3,000 grape growers in South Australia, managing 75,500 hectares of wine grapes.

At the last Census (2016) around 8,400 people stated that their primary industry of employment was either grape growing or in wine manufacturing in South Australia².

¹ WineTitles Media 2021, The Australian and New Zealand Wine Industry Directory 2021

² This excludes casual workers such as grape pickers and other seasonal workers not working in those industries in the week prior to the Census. It also excludes people who worked in the wine and grape production industry as a second job.

Invitation for public submissions

SAWIA appreciates the opportunity to make a submission to the Department of Home Affairs (the Department) in relation to the proposed changes to the *Migration Act 1958* as detailed in the draft *Migration Amendment (Protecting Migrant Workers) Bill 2021*.

Accessing sufficient labour in primary industries, particularly in regional locations, is a significant challenge for many industries including the wine industry.

The announcement of a new agriculture visa by the Australian Government³ is viewed positively by the industry and SAWIA is supportive of ensuring that adequate protections are in place to protect workers (whether they be Australian citizens, migrants or temporary visitors) and for Australia to maintain its strong reputation as an attractive place of work for working holidaymakers, students and skilled migrants.

SAWIA does have reservations though as to whether these proposed changes go too far, in light of the existing protections that already exist within both the *Migration Act 1958* and significantly the *Fair Work Act 2009*, which applies to all workers irrelevant of the status of their work rights.

Mandatory requirement to use the Visa Entitlement Verification Online (VEVO) system

SAWIA has significant concerns in relation to both the scope and reasonableness of the provisions referenced in Part 3 – Use of computer system to verify immigration status of the Bill.

The amendments in Part 3 establish civil penalty provisions that require a person to use VEVO to determine whether a non-citizen is lawful and has the necessary permission to work, either when starting to allow a non-citizen to work or referring a non-citizen for work.

To comply with the requirement to use VEVO, it is proposed that a person may:

- log in to VEVO directly to conduct the check, or
- rely on an arrangement with another person for that person to log into VEVO to conduct the check. Where this occurs the person would still be required to receive the source information that was ascertained by the check.
- **Scope of the proposed requirement**

The Bill is intended to provide more protection for migrant workers in part by requiring the use of the (VEVO system to ensure employers, labour hire companies and others involved in referring non-citizens for work⁴.

SAWIA's concern is that the scope of the affected section of the Act is broad and arguably captures far more situations than is intended.

Subdivision C – Offences and civil penalties in relation to work by non-citizens relies heavily on the terms 'work' and 'allows to work'.

Section 245AG of the Act defines the meaning of "work" and "allows to work".

"work" means any work, whether for reward or otherwise. "Allows a person to work if, and only if:

(a) the first person employs the second person under a contract of service; or

(b) the first person engages the second person, other than in a domestic context, under a contract for services; or

³ Minister for Agriculture and Northern Australia, Australian Government, Agriculture visa to secure labour force for farmers, 16 June 2021.

⁴ Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, Australian Government, New penalties proposed to protect migrant workers from coercive exploitation, 26 July 2021.

(ba) *the first person participates in an arrangement, or any arrangement included in a series of arrangements, for the performance of work by the second person for:*

- (i) *the first person; or*
- (ii) *another participant in the arrangement or any such arrangement; or*

(c) *the first person bails or licenses a chattel to the second person or another person with the intention that the second person will use the chattel to perform a transportation service; or*

(d) *the first person leases or licenses premises, or a space within premises, to the second person or another person with the intention that the second person will use the premises or space to perform sexual services within the meaning of the Criminal Code (see the Dictionary to the Criminal Code); or*

(e) *the prescribed circumstances exist.”*

The meaning of “work” and “allows to work” as referenced above is incredibly broad. In its current form it could be interpreted to cover work activities / arrangements that are outside of employment and labour hire arrangements.

By way of a very basic example, the Act arguably captures an arrangement where an electrician employed by ABC Electrical (be they a company or sole trader entity) performs some work at a winery.

It is common for businesses to contract the services of others to undertake work at a third-party site. In the wine industry, for example, the following services are commonly contracted:

- Contracted specialists to work on sites – e.g. engineers, electricians, mechanics, mechanical engineers (dealing with air conditioning in tractors), refrigeration experts, gardeners, handypersons, cleaning and catering services etc.
- Contracted vineyard management or vineyard services e.g. pruning, infrastructure repair/establishment, fungicide / weedicide, spraying, harvesting, shot thinning, bunch thinning and vine training etc.
- Commissioning of new plant and machinery e.g. bag presses, refrigeration, tanks, forklifts etc.
- Training providers e.g. working at heights, high risk work licence etc.
- Sales employees that set-up point-of-sale material in retail stores.
- Replenishment planners that are situated at national accounts.
- IT – service computers and provide IT services.
- Calibration of weighing scales.
- Tyre replacement conducted on-site.
- Security contractors who look after building security and effluent pump alarm.
- Waste disposal company who pumps effluent pits and septic tank.
- Painters – e.g. who come and repair epoxy paint on the winery floors.
- Annual inspections of fire extinguishers on-site.
- Irrigation repairs on site.
- Transport providers – e.g. move grapes, bulk wine, packaged wine and general courier services.
- Pest control services.
- Contract wine making services.

SAWIA contends that it should be made clear that the above sorts of arrangements where work is performed are not captured by this requirement.

- Practical impact of the proposed requirement

SAWIA is concerned with the following practical impacts of the proposed changes where employers and other parties:

- Will need to assess the work rights of every worker and require evidence to be provided of all Australian citizens, in addition to conducting a VEVO check for non-citizens.
- Will not be able to rely on contractual arrangements they have with the other parties within the chain/arrangement.

The Act currently includes protections for employers and other parties where they take reasonable steps at reasonable times to ascertain that people can legally work in Australia and are not in breach of any relevant visa conditions.

Division 5.3A—Offences and civil penalties in relation to work by non-citizens of the *Migration Regulations 1994* (the Regulations) states that the parties can enter into a contract under which a party to the contract performs either or both of the following functions:

- verifying that a person has the required permission to work in Australia (however that is described in the contract).
- supplying persons who have the required permission to work in Australia (however that is described in the contract).

The amendment would remove the ability to rely on terms in legal contracts of employment and contracts for services. Instead it would require a check or other evidence to be supplied when any worker is engaged either directly, through a third party, such as via a labour hire arrangement and even arguably when any external commercial services are engaged where their workers are involved.

SAWIA is concerned that this would place an unreasonable onus on all parties and invalid long-standing practices, such as by having an employee confirm that they have work rights in their contract of employment.

Furthermore, the proposed change is complicated by the fact that it is not easy to ascertain whose migration status needs to be checked.

Australia is a proud multicultural country, which has experienced waves of immigration throughout its history. This means that Australians' names and backgrounds vary greatly and situations can commonly occur where a worker with a traditional Anglo-Saxon name will be in Australia on a visa, whereas workers who have different sounding names or backgrounds will be Australian citizens.

The Regulations list the following evidence that could be inspected to assess someone's status:

- *“a document that appears to be the worker's Australian passport; or*
- *a document that appears to be the worker's New Zealand passport; or*
- *a document that appears to be the worker's Australian certificate of citizenship, accompanied by a form of identification featuring a photograph of the worker; or*
- *a document that appears to be a certificate of evidence of the worker's Australian citizenship, accompanied by a form of identification featuring a photograph of the worker; or*
- *a document that appears to be the worker's Australian birth certificate, accompanied by a form of identification featuring a photograph of the worker; or*
- *a document that appears to be a Certificate of Evidence of Resident Status for the worker, accompanied by a form of identification featuring a photograph of the worker; or*
- *a document that appears to be a Certificate of Status for New Zealand Citizens in Australia for the worker, accompanied by a form of identification featuring a photograph of the worker.*

Example: An example of a form of identification is a driver's licence.”

The problem in relation to determining citizenship is three-fold being:

- This is not a common step employers and other parties undertake currently.
- The above list would be removed based on the proposed changes.
- Even an Australian birth certificate may not prove citizenship, meaning that those without Australian passports or recent citizens with citizenship papers will struggle to demonstrate that they are a citizen.

For example, to ascertain an Australian passport, a person born in Australia on or after 20 August 1986 can prove their citizenship by showing:

- an Australian passport issued in their name on or after 1 January 2000 that was valid for at least two years, or
- documents that prove they are a citizen by descent, or
- an Australian citizenship certificate in their name.

SAWIA is not supportive of these changes as it places an unnecessary burden on businesses and workers for little benefit.

Increasing civil penalties for breaches of work-related provisions in the Migration Act

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The Bill increases pecuniary penalties from 90 to 240 penalty units (for individuals) and accompanying context paper notes that “for financial penalties to have a deterrent effect, they must be set at a level that actually deters people from contravening and offending”.

SAWIA understands that the basic argument is that by increasing penalties, compliance will increase, but we contend that evidence to support the proposed amendment has not been supplied.

SAWIA is not supportive of increasing penalties in the Act. The penalty increases should only be contemplated where there is clear evidence showing that increases in similar areas have led to significant improvement in compliance.

There is also a risk that businesses who are unsure of their compliance and that of other parties they deal with, will be less likely to reach out for assistance, particularly from Government agencies.

Our view is that if compliance is not high enough within a particular business, region or industry, then the more effective solution is to focus on enforcement, not to increase penalties.

Conclusion

For the reasons listed above SAWIA is not supportive of the Bill as it would:

- Remove reasonable steps that responsible businesses can take to help protect workers from exploitation.
- Adds onerous obligations that in practice would mean that the focus of businesses' checks would move to confirming the status of workers that are likely Australian citizens, rather than that of vulnerable migrant workers.
- Increase penalties that will not necessarily improve compliance.

Yours sincerely

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