

# Chapter 1

## Introduction

1.1 This chapter provides the context in which the discussion and debate about temporary labour schemes takes place. Proponents of a harvest contract labour scheme for the horticultural industry have in mind a new category of visa to enable groups of workers, currently regarded as unskilled, to enter Australia for periods up to nine months. There have been occasional and localised suggestions of this kind raised in various quarters, but the idea saw its first formal proposal in the National Farmers' Federation's (NFF) Labour Shortage Action Plan, announced in September 2005. This plan recommends a joint industry-government feasibility study on the introduction of a guest worker visa program, and sets out many of the specific details which would need to be addressed.<sup>1</sup> A number of these details are covered in this report.

1.2 The reaction to this proposal was not overwhelmingly favourable. Growers, on the whole, gave strong support. The ACTU, reportedly not unsympathetic at the time,<sup>2</sup> has since declared itself to be 'absolutely opposed' to such a scheme,<sup>3</sup> as is the union covering most rural workers, the Australian Workers Union (AWU). The government was plainly opposed to the idea, as later statements from the Prime Minister, the Treasurer, the Agriculture Minister and the Foreign Minister indicated. There has been strong support for a harvest labour scheme from academics specialising in Pacific island affairs. Some of them have been commissioned by industry organisations to conduct research in support of the proposal, which has been referred to in some of the submissions to this inquiry.

1.3 The committee is not aware of any subsequent informal meetings between the NFF and the government on this issue. In the absence of any known government investigation of the issue, it has been taken up by this committee.

1.4 The first part of this chapter describes the place of agriculture in the economy. The second part summarises the current migration laws applying to temporary workers who currently enter Australia for the purposes of work, and describes the operation of the Working Holiday Maker Scheme (WHMS). The remainder of the chapter examines the current debate surrounding temporary foreign labour, and briefly touches on a World Trade Organisation matter.

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1 National Farmers' Federation, *Submission 35*, Appendix D

2 *Australian Financial Review*, 21 November 2005, p.8

3 Australian Council of Trade Unions, *Submission 55*, p.1

## The horticulture industry

1.5 In terms of value, horticulture is the third largest agricultural industry in Australia, behind beef and wheat. It has been growing steadily at an annual rate of 6.6 per cent over the past ten years. In 2003-04, horticulture's gross value of production totalled over \$6.5 billion. The following table illustrates the rate of growth over time:

Annual Contribution of the Horticulture Economy to GDP (\$ million)<sup>4</sup>

	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04
Total Horticulture Sector	3,167	3,227	3,997	4,852	3,483	4,346
Total Horticulture-Input Sector	926	942	1,155	1,395	1,018	1,264
Total Horticulture-Output Sector	1,951	2,033	2,263	2,710	2,337	2,745
<b>Total Horticulture</b>	<b>6,044</b>	<b>6,202</b>	<b>7,415</b>	<b>8,957</b>	<b>6,838</b>	<b>8,355</b>

1.6 The sector is growing, in both production and value, and predictions are that this will continue. Production occurs across the country, but is concentrated in the Goulburn Valley, the Murrumbidgee Irrigation Area, the Sunraysia, and South Australia's Riverland. Significant areas of production also include southwest Western Australia, northern Tasmania, and coastal New South Wales and Queensland.

1.7 Banana, pineapple, mandarin, avocado and tomato production is concentrated in Queensland. Stone fruit, oranges and grapes are frequently grown in New South Wales, Victoria and South Australia, while vegetables, including potatoes, and grapes and stone fruit are farmed in Tasmania. Victoria typically produces pears, stone fruit and tomatoes. Apples and fresh vegetables are grown across all states. The Ord River region of Western Australia and the Burdekin River region in Queensland are centres for vegetable and tropical fruit growing.

1.8 While agriculture's share of total employment has steadily declined since the 1960s, output has almost tripled in the same period, reflecting an average productivity increase of around 3 per cent in recent decades, and the fact that Australia's agriculture sector has one of the highest shares of output of any OECD country.

1.9 Rural and related industries employ over 370 000 workers, contribute 3.2 per cent of Gross Domestic Product, and earn 24 per cent of export revenue. The value of agricultural exports has been growing by an average of 3.5 per cent since 1974-75. The horticulture sector also supports many rural and regional communities through production and processing, and the associated investment and employment in businesses supplying inputs and marketing, packaging and transport.<sup>5</sup>

4 Horticulture Australia Limited, *Submission 11*, p.7

5 Department of Agriculture, Fisheries and Forestry, *Submission 51*, pp.1-10; *Trends in Australian Agriculture*, Productivity Commission, June 2005, pp.xvii-xli

1.10 As a growing sector, but one which requires largely unskilled labour to work in rural and regional areas for short but intense periods of time each year, it is no surprise that some producers find workers hard to find. This has led to calls for the introduction of a special short-stay unskilled visa class and the development of a seasonal contract labour scheme. Proponents of such a scheme point to an opportunity for mutual benefit of both horticultural producers and Australia's Pacific neighbours, who have abundant need of foreign markets for the export of human capital. A successful scheme may also benefit industries associated with horticulture, such as suppliers of fertilisers and manufacturers of tinned fruit. However, there are a number of concerns about how a scheme would operate, possible overstay issues, and whether such a scheme would be viable. A fundamental question is whether a labour shortage exists to the extent that it justifies such a scheme. This is examined in Chapter 2.

### **Current arrangements in relation to foreign labour**

1.11 Different visa classes operate to regulate the entry of foreign labour to Australia. Options for entering Australia for the primary purpose of work are limited to those who hold skills, as determined by the Australian Standard Classification of Occupations (ASCO), which orders jobs according to their level of skill into ten categories. Appendix 4 summarises the kind of occupations covered by each ASCO category. It should be noted from the start that fruit picking and other orchard or plantation work is at the extreme end of the ASCO scale and is regarded as unskilled.

1.12 The visa most commonly used to enter for work is the Temporary Business (Long Stay) Visa, commonly known as a '457', the sub-class under which it is granted. This visa enables employers to sponsor skilled workers for up to four years. Requirements include sponsorship by an employer of good standing, that the position is skilled and pays above \$41 850, and that the applicant has the skills and experience necessary for the position. Only those positions which fall into ASCO categories 1 to 4, the four categories reflecting most skill, are eligible to apply for a 457 visa.

1.13 However, concessions exist for employers seeking to fill positions in regional areas, where vacant positions often fall outside the requirements of the primary 457 visa. Under the concessionary arrangements, employees may be engaged to fill positions falling between ASCO 5 and 7, and award wages may be offered. The employer must demonstrate that the position is one which is genuine, full-time, and cannot be filled locally. This concession requires an employer to obtain endorsement of their application by a regional certifying body.<sup>6</sup>

1.14 Employers may also apply to enter a labour agreement with the Commonwealth, through the Department of Immigration and Multicultural Affairs (DIMA), under which formal arrangements are negotiated to meet special

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6 Certifying bodies differ between jurisdictions, but frequently take the form of economic development boards, state and territory government authorities and departments or chambers of commerce

circumstances not covered by standard sponsorship arrangements. Such agreements enable employers to recruit a specified number of workers from abroad in response to an identified or emerging shortage in the domestic market. These are valid for two to three years. Employers must demonstrate that a domestic shortage exists and that steps have been taken to recruit locally. Employers must make a comprehensive submission describing all the details of the proposed employment relationship.

1.15 The issue of 457 visas has increased rapidly in recent years. In 1996-97, just 9 600 such visas were issued, while in 2003-04, the number had increased to 40 124. Part of the explanation for the growth is the diversification of employment. Whereas previously this visa sub-class was taken up predominantly by professionals, employers needing skilled tradespeople are now taking advantage of its availability. It was submitted that such growth reflects an international trend towards niche migration schemes intended to overcome labour shortages in particular industries at particular times.<sup>7</sup>

1.16 Occupational trainee visas, or OTVs, are available under sub-class 442, and allow foreign nationals to undertake supervised, workplace-based training for up to two years with a view to increasing their level of skill in an occupation. The program should contain a workplace component of at least 70 per cent as well as a theory component. Practical experience amounting to full-time work is not considered occupational training for the purposes of the OTV. Perhaps the best known examples of this type of visa holder are the now departed Fijian tobacco farm workers, who have worked and trained in Victoria over recent years.

1.17 In November 2005, a trades skill training visa was introduced under sub-class 471, allowing those undertaking a new apprenticeship to work and train in regional areas for up to five years, depending on the length of the apprenticeship. Each of these training visas allow applicants to bring with them family members for the duration of their stay.

1.18 Of the category of unskilled or semi-skilled foreign visitors currently working, undoubtedly the most significant group are the working holiday makers (WHMs), entering the country under visa sub-class 417, usually known as backpackers. There are 18 signatory countries to the WHM scheme, and visa holders must be aged between 18 and 30 years, and have no dependent children. Visa holders may work for up to 6 months with any one employer, but must not work for the whole of their visit, and may also study for up to 4 months.<sup>8</sup> Visas are generally issued only once in a lifetime, for a twelve month term, but recent changes enable applicants to

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7 Nic Maclellan and Peter Mares, *Remittances and Labour Mobility in the Pacific: A working paper on seasonal work programs in Australia for Pacific Islanders*, Swinburne University Institute of Technology, Institute for Social Research, p. 27

8 According to the DIMA website, visa holders have a condition limiting work with each employer to 3 months. However, it then states that all visa holders have been granted permission to work for up to 6 months with each employer

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extend their visas having undertaken seasonal harvest work for at least 3 months during their initial stay.<sup>9</sup> The Department submitted that about 15 per cent of WHM visitors undertake seasonal harvest work during their stay. The work need not be consecutive, nor with a single employer, but must be full time. Health and character checks are also applicable, and the committee heard some evidence that health checks, in particular, are onerous and time consuming for those seeking a visa extension.<sup>10</sup>

1.19 Since 2000-01, the number of WHM visas granted has increased steadily, by over 36 per cent. Over 104 000 visas were issued in 2004-05, of which about 30 000 were granted to British nationals, and nearly 18 000 to South Korean nationals.<sup>11</sup>

1.20 While the WHM visa undoubtedly provides a critical source of labour for many growers, this is not its primary purpose. The program exists mainly for the purpose of promoting international cultural exchange by allowing young people to travel and explore other countries and cultures. This accounts for the restrictions on the amount of work which is permitted to WHM visa holders. However, tacit acknowledgement has been made of the importance of backpacker labour by the changes to the program outlined above. As is made clear in Chapter 2, backpacker labour is, in many cases, the single largest source of labour for seasonal producers. The question relevant to this inquiry is whether it provides a reliable and efficient employment base for the industry, in a regulatory context which precludes any other class of unskilled labour from entering the market.

### **Current debate in regard to temporary foreign labour**

1.21 The joint submission from the Department of Foreign Affairs and Trade and AusAID (the DFAT submission) sets out the policy on guest labour schemes. It points out that Australia has not had seasonal worker schemes in the past and is not attracted to them. The submission goes on to say that:

Australia has a global non-discriminatory migration program under which Pacific Islanders have the same opportunities as all others seeking to work in Australia. The present focus of Australia's migration program is on dealing with particular skill shortages. There are currently no mechanisms allowing for the entry of non-skilled workers to Australia. There are, however, opportunities for Pacific Islanders to work in Australia under existing visas for occupational training and for long-term work attachments. We (in conjunction with other relevant Government departments) have encouraged Australian businesses with an interest in the region, through their business councils, to consider how they can use these visa categories

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9 Seasonal work is defined as being any type of work that is seasonal in nature or that is undertaken as the employee of a primary producer, including plant and animal cultivation, fishing and pearling, or tree farming and felling. This work need not be paid work. Seasonal work must be undertaken in a prescribed postcode, and thus identified as regional by the Department

10 See, for example, Mr Tom Martin, *Committee Hansard*, 22 March 2006, p.42

11 Department of Immigration and Multicultural Affairs, *Submission 43*, p.9

to provide greater employment and training opportunities for Pacific Islanders in Australia.<sup>12</sup>

1.22 The DFAT submission argues that Australia's membership of the World Trade Organisation limits its ability to implement 'discriminatory' policies which would advantage any one or more of the 149 member countries over another. The department points out that granting special access to those from a particular area, such as the South Pacific, may provoke challenges from other member countries for similar treatment. This issue is more fully covered in Chapter 3, but some immediate comment is relevant here.

1.23 In their working paper, Mares and Maclellan take issue with the DFAT argument. First, they observe that programs already exist within Pacific Forum countries in regard to temporary labour, for instance New Zealand's Pacific Access program. Second, with the exception of Papua New Guinea and West Papua, the entire population of the Pacific Islands is less than 2 million, so that the pool of temporary workers would be small. Third, it is argued that Australia has itself set precedents for discriminating between countries in regard to access to its labour market, most notably in the case of the Working Holiday Maker (WHM). Any argument that the WHM scheme was never intended to be a labour scheme loses validity when it is observed that growers have become increasingly reliant on backpacker labour, and that the Government has relaxed entry conditions for the purpose of allowing backpackers who choose to work in agriculture to apply for an additional visa in order that they may do so.<sup>13</sup>

### ***The threat to local jobs***

1.24 Other arguments centre on more domestic concerns. Current labour migration policy focuses exclusively on skilled migrants and/or those who have significant capital to invest. Maclellan and Mares call this the 'high skill orthodoxy', and trace its origins to the Fitzgerald Report in 1988.<sup>14</sup>

1.25 Some hold a view that the entry into the labour market of workers from abroad may pose a threat to jobs currently held by Australian nationals. While a simple application of the laws of supply and demand may suggest that this would occur, a closer analysis is required, not least into whether sufficient supply of local labour exists to meet demand.

1.26 Analysis of temporary migrant labour schemes operating elsewhere suggests that far from being a threat to jobs, the introduction of migrant labour actually creates additional positions. Examination of the Canadian Seasonal Agricultural Workers Program (CSAWP), of which a description can be found at Appendix 3, found that

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12 Department of Foreign Affairs and Trade, *Submission 42*, p.3

13 Maclellan and Mares, *op cit*, pp.27-30

14 *ibid*, p.29

each temporary worker engaged in horticulture supports 2.6 jobs in the supply and processing sectors, not to mention the added economic activity that migrant spending creates.<sup>15</sup> The Foreign Agricultural Management Service (FARMS) in Canada estimates that 15 000 foreign seasonal workers coming to Ontario each year generate 84 000 direct jobs and 63 000 indirect jobs within the province. Thus, as Mares concludes, a scheme to bring seasonal migrant workers to Australia could contribute to economic expansion and increase regional employment opportunities, particularly in industries like transport, construction and food processing.

Research on the Canadian scheme suggests that country towns benefit from the multiplier effect of spending by seasonal workers on goods and services, particularly food, entertainment, hardware products and telecommunications (phone cards). A shop owner in the Canadian town of Simcoe says the effect of local spending by seasonal workers is 'literally like Christmas [i]n September'. Seasonal workers are intensive users of banks and post offices (particularly to transfer money), thus assisting local communities to maintain and even expand services which might otherwise be at risk of closure or centralisation in urban areas. The presence of seasonal workers can even have a revitalising effect on local church congregations.<sup>16</sup>

1.27 Preibisch put a similarly positive view, reporting that:

Many of the sales generated by migrant workers stay in the communities: the limited mobility of migrant workers constitutes them as a captive market. A recent study estimated that migrant workers spend \$82 million in rural communities on goods and services to meet their daily consumption needs but also on purchases they take home.<sup>17</sup>

1.28 The other key potential benefit, and one that was put to the committee more than once, is that a secure supply of labour would allow the expansion of the horticultural industry, as confidence among producers is boosted.

1.29 Again, Mares points to the Canadian experience to illustrate the point. In Ontario, where 85 percent of Canada's offshore seasonal workers are employed, horticultural output expanded by 90 percent between 1994 and 2000. Industry groups say that without the offshore labour scheme 'there would be no labour force on the farm, there would be no horticulture industry in Canada.'<sup>18</sup>

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15 Tanya Basok, *Tortillas and Tomatoes: transmigrant Mexican harvesters in Canada*, McGill-Queens Press, 2003, p.146, quoted in Maclellan and Mares *op cit* p.27

16 Peter Mares, *Submission 19*, p.19

17 Dr Kerry Preibisch, *Social Relations Practices between Seasonal Agricultural Workers, their Employers, and the Residents of Rural Ontario*, Executive Summary, The North-South Institute, p.8. The study referred to was conducted by Stevens Associates in 2003.

18 Peter Mares, *Submission 19*, p.19, drawing on personal interviews conducted with representatives from the Ontario Fruit and Vegetable Growers Association

### *The roots of scepticism*

1.30 The Canadian experience is well documented and known to policy makers in this country, but foreign models, however successful, provide unconvincing evidence to opponents of such a scheme in Australia. The committee notes that opposition to a seasonal foreign worker scheme using Pacific workers has roots which extend back before federation. Opposition is in line with traditional union sentiment. The Australian Council of Trade Unions (ACTU) is wary of labour migration, particularly when it is temporary and involves workers travelling repeatedly between their home and host countries to work. On the other hand, the ACTU has seen merit in exploring a migrant labour scheme in circumstances where workers are able to take up permanent residency. To this end, discussions have been held about piloting such a scheme in central Victoria.<sup>19</sup>

1.31 Nor is opposition based on a partisan political divide. This sentiment in favour of permanent migration over temporary or seasonal labour flows is reflected in government statements. The Prime Minister, the Hon. John Howard MP, has been quoted as saying that Australia has always had a 'preference for permanent settlement or permanent migration [and that] there are some fundamental issues as far as seasonal workers are concerned'<sup>20</sup>. Similarly, the Treasurer reinforced these sentiments as recently as July 2006 when he was quoted as saying 'We will take immigrants that can make a valuable contribution and fill shortages that Australians can't, but I don't believe it would be in the interests of the Pacific Island nations and I don't believe it would be acceptable to Australia to ship workers in and out on a short-term basis'<sup>21</sup>

1.32 The basis for this sentiment is not based on the principles which underlie other government policy. A study on labour migration conducted by the Asian Development Bank examined the likely effect on welfare, real GDP and wages in Australia and New Zealand should quotas on skilled and unskilled labour from Pacific islands increase by 1 per cent of total workforce. The paper concludes that Australia would 'gain considerably' from such an increase, as would the Pacific source countries, and that particular benefits could be derived from the migration of unskilled labour. The paper reported that:

In the case of unskilled labour the gains to the Pacific Islanders living in the Pacific Islands increases as the quota is further increased to 2 and 3 per cent respectively. Similarly the gains to Australia and New Zealand also increase as more unskilled labour is obtained from the Pacific Islands.<sup>22</sup>

1.33 Proponents of access to the labour market point out that current economic orthodoxy embraces globalising principles across the board in regard to productivity

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19 Maclellan and Mares, *op cit*, p.28

20 The Australian, *Howard, Clark shut out seasonal workers*, 26 October 2005, p.6

21 The Age, *Costello rules out importing islanders*, 5 July 2006, p.6

22 Terrie Walmsley, Amer Ahmed and Christopher Parsons, *op cit*, p.21

components and the free movement of resources. All advanced economies embrace principles of the free market, even when these are honoured more in the breach than the observance. Australia is not alone in balking at the free movement of labour even though it would result in economic gain. The committee understands and acknowledges that economic principles have to be set against political sentiment which, in the short term at least, will prevail.

### *Overstayers*

1.34 One of the more common objections to the adoption of a temporary labour scheme is that workers will fail to fulfil their obligation to return home at the conclusion of their placement, and will instead 'disappear' into the pool of undocumented migrants. Much was made of this fact in the submission of the Department of Immigration and Multiculturalism (DIMA). The committee does not see the relevance of this information to any entry and exit compliance procedures that would be instituted if a harvest labour scheme ever came into operation. The committee would be confident, in that event, of DIMA producing a workable compliance process.

1.35 Currently held fears about contract harvest workers absconding to Darlinghurst and St Kilda are unfounded because the rationale for entry would be entirely different. Maclellan and Mares draw on a Canadian Foreign Agricultural Managements Service report in which only 221 of 15 123 workers who entered Ontario<sup>23</sup> as seasonal agricultural workers in 2004 went absent without leave. Of this 1.5 per cent, some would almost certainly have returned home early, rather than remain illegally in Canada. Like other similar schemes, the prevalence of overstaying is reduced through the manipulation of the entry guidelines. Male workers who are married with children are deemed to be least likely demographic to overstay, and in some cases, are the only class of persons eligible to apply.<sup>24</sup>

1.36 Selective enlistment is perhaps not the single most important factor in reducing overstay rates. A number of commentators argue that workers are more likely to return home confident in their eligibility to return to work the following year's harvest. As noted by the United Nations in its World Economic and Social Survey 2004:

The programme is strictly seasonal and allows for a stay in Canada of a maximum of eight months. It does not open any right of access to more permanent status but allows for the possibility of recirculation or re-entry through the programme if the workers demonstrate good behaviour, in other words, if they comply with the requirements. This partly explains the lower

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23 Between 85 per cent and 90 per cent of Canada's foreign labourers work in Ontario

24 Foreign Agricultural Management Services (FARMS) Regional Report, *Caribbean/Mexican Seasonal Agricultural Workers Programs as of 31 December 2004*, referred to in Maclellan and Mares, *op cit*, p.30

number of overstayers compared with those in other similar programmes. While in Canada, workers cannot seek alternative or additional employment or transfer to another farm without government approval.<sup>25</sup>

1.37 Maclellan and Mares draw a comparison with a scheme which ran in Britain to offer final year university students from non-EU countries the opportunity to work in agriculture, and which had an overstay rate of 10 per cent. In this case, it is argued, the 'one off' nature of the opportunity elevated the temptation to overstay.<sup>26</sup> The issue of overstaying is further discussed in Chapter 4.

1.38 The committee makes the obvious point, however, that any seasonal contract labour scheme may include entry and exit formalities with a degree of stringency which does not exist for current visa categories. This issue is also dealt with in Chapter 4, though it needs to be stated that objections to the scheme in principle cannot be justified on the basis of current compliance rates.

1.39 Finally, the recent World Bank report gives an added perspective to this issue, drawing on experience elsewhere in the world:

The paradox of tough border controls is that they induce undocumented migrants to stay in the host country much longer than they might otherwise have chosen to do by raising the financial cost and personal risk of movement. In the 1980's the estimated length of stay of undocumented Mexican migrants in the United States was three years; but by the late 1990's, after the major fortification of the border, it had blown out to nine years. Migrants fear that if they leave, then retuning may be impossible.<sup>27</sup>

1.40 The committee makes the point that it is likely that the combination of select recruitment, rigorous compliance rules, and the financial incentives will ensure compliance, and of these three, the last is likely to be the most persuasive.

### **More than a labour market issue**

1.41 As stated elsewhere in the report, the committee does not believe that the current labour supply is failing to meet the needs of most growers. Nonetheless, it has set out its view on how a future scheme should operate, should future circumstances prompt a change in policy.

1.42 Both the proponents and opponents of a foreign harvest labour scheme view likely policy developments through the prism of the current 457 visa scheme, including the Commonwealth departments. The main assumption was that the organisation of a scheme would be a matter for growers, probably through grower organisations like the state branches of the NFF, working with labour hire companies,

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25 United Nations, Department of Economic and Social Affairs, 2004, p.130

26 United Kingdom Home Office, *Review of the Seasonal Agricultural Workers' Scheme 2002*, cited in Maclellan and Mares, *op cit*, p.31

27 The World Bank, *at Home and Away*, 2006, p.133

presumably with some direction from DIMA on gate-keeping and compliance issues. Academics, with some knowledge of practice in other countries, and probably having reflected for longer on such details, saw the process as more challenging.

1.43 In Chapter 4 the report sets out some principles under which any future harvest labour scheme should operate if circumstances required it. These underlie both mutual benefit and mutual obligation. They would need to be grounded in bilateral agreements between Australia and participating Pacific Forum nations. Embarking on such a scheme would be a foreign relations initiative as much as a labour market initiative. It follows that the contract arrangements would follow from negotiations between governments, and that the practical management of the scheme by growers and labour contactors would need to be subject to a higher degree of regulation than most of them may currently envisage. That is more reason to act in good time rather than in haste.

