



SOUTH AUSTRALIAN WINE INDUSTRY
ASSOCIATION INCORPORATED

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The Treasury
Langton Crescent
PARKES ACT 2600

Via email: supercompliance@treasury.gov.au

Re: Tax and Superannuation Laws Amendment (2015 Measures No. 4) Bill 2015: Choice of Fund Requirements

We refer to the announcement by the Federal Treasury on 1 April 2015 regarding the consultation process for the draft *Tax and Superannuation Laws Amendment (2015 Measures No. 4) Bill 2015* (the Bill).

The South Australian Wine Industry Association (SAWIA) is an industry association representing the interests of wine grape growers and wine producers throughout the state of South Australia. SAWIA membership represents approximately 96% of the grapes crushed in South Australia and about 36% of the land under viticulture.

SAWIA is a registered association of employers under the South Australian *Fair Work Act 1994* and is also a transitionally recognised association under the *Fair Work (Registered Organisations) Act 2009*.

SAWIA is pleased to be given the opportunity to make a submission on the draft bill and accompanying explanatory memorandum.

SAWIA supports the Federal Government's efforts to reduce red tape and the compliance burden for Australian businesses. The proposed amendments to the *Superannuation Guarantee (Administration Act) 1992* contained in the Bill are aimed at simplifying superannuation administration for businesses engaging employees who hold a "temporary visa".

The *Migration Act 1958* defines a "temporary visa as:

A visa to remain in Australia (whether also a visa to travel to and enter Australia) may be a visa, to be known as a temporary visa, to remain:

- a) during a specified period; or
- b) until a specified event happens; or
- c) while the holder has a specified status.

The Department of Immigration and Border Protection (DIBP)¹ in turn categorises the following visa classes as temporary:

¹ DIBP 2014, *Discussion Paper: Reviewing the Skilled Migration and 400 Series Visa Programmes, September 2014*; DIBP 2015a, "Temporary Work Visa", <https://www.immi.gov.au/visas/temporary-visa/>; DIBP 2015b, "Find a Visa", <http://www.immi.gov.au/Visas/Pages/Find-a-visa.aspx?Purpose=Work+in+Australia&Nationality=All&ApplyFrom=All&Age=All&Stay=Temporary&Length=All&Family=All&Sp>

- Temporary Work (Short Stay Activity) visa (subclass 400);
- Temporary Work (Long Stay Activity) visa (subclass 401);
- Training and Research visa (subclass 402);
- Temporary Work (International Relations) visa (subclass 403);
- Special Program visa (subclass 416);
- Working Holiday visa (subclass 417);
- Temporary Work (Entertainment) visa (subclass 420);
- Special Category visa (subclass 444);
- Temporary Work (Skilled) visa (subclass 457);
- New Zealand Citizen Family Relationship (Temporary) visa (subclass 461);
- Work and Holiday (Temporary) visa (subclass 462);
- Skilled — Recognised Graduate visa (subclass 476);
- Temporary Graduate visa (subclass 485); and
- Superyacht Crew visa (subclass 488).

In the wine industry some of the most common temporary visa holders are employees with a Working Holiday visa (subclass 417) and Work and Holiday (Temporary) visa (subclass 462). Employees with working holiday visas often are crucial to wine industry employers in regional areas, particularly during the vintage (harvest) period and other peak operational periods. However, to a lesser extent the following visa classes are also being utilised by employees in the industry; Temporary Work (Skilled) visa (subclass 457), Temporary Work (Long Stay Activity) visa (subclass 401); Temporary Graduate visa (subclass 485) and Special Category visa (subclass 444).

While it is commendable that the Federal Government seeks to reduce the compliance burden in relation to superannuation, SAWIA submits that in order to have any positive effect on businesses engaging employees who are temporary visa holders, it is essential that greater clarity is provided regarding the definition of “temporary visa”.

Most wine industry employers, particularly small businesses, would not be able to easily determine whether a particular visa is temporary or permanent or even know where to look for further information. Therefore, rather than reducing the compliance burden and simplifying superannuation administration, the lack of information and clarity around temporary visas could result in employers having to devote time and resources to determine whether the standard choice form requirements apply or not. This in turn could give rise to inadvertent contraventions, for example employers incorrectly determining that an employee holding a certain visa is a temporary visa holder and therefore not entitled to receive the standard choice form, when the opposite may be the case.

The difficulties and complexities involved in correctly determining the status of a particular visa is illustrated by the following two examples:

- The Skilled Regional (Provisional) visa (Subclass 489) allows skilled workers to live and work in specific regional areas, which include the whole of South Australia, for up to four years. While the visa is limited to four years and therefore could be viewed as being a temporary visa, according to the DIBP it is classified as a permanent visa².
- Conversely, while the Special Category visa (subclass 444) allows New Zealand citizens to live and work in Australia indefinitely, the visa is not a permanent visa but classified as a temporary visa³.

To ensure that employers able to take advantage of the reduction in compliance burden in relation to superannuation without having to seek costly expert migration advice, SAWIA propose the following:

- Additional information must be provided on what visas are deemed to be temporary. This could be done by enabling a regulation or determination to be done under the amended *Superannuation Guarantee (Administration) Act 1992* to specifically name the visa classes that the DIBP considers to be temporary. Whenever a new visa classes is introduced or existing classes are changed such information should be passed on to the relevant Department/Agency to enable the regulation or determination to be updated.

onsor=All; <http://www.immi.gov.au/Visas/Pages/Find-a-visa.aspx?Purpose=Visit+Australia&Nationality=All&ApplyFrom=All&Age=All&Stay=Temporary&Length=All&Family=All>

² DIBP 2015c; “Skilled Regional (Provisional) visa (subclass 489)”, <http://www.immi.gov.au/Visas/Pages/489.aspx>

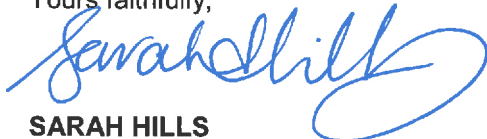
³ DIBP 2015d; “Special Category visa (subclass 444)”, <http://www.immi.gov.au/Visas/Pages/444.aspx>

- Alternatively, it should be considered whether a note could be inserted into the amended Act to provide greater information and assistance regarding the definition of temporary visas.
- The Australian Taxation Office (ATO) and the DIBP should develop clear and concise information to be available online on the ATO and DIBP websites on what visa classes are temporary for the purposes of the obligation to provide a standard choice form under the *Superannuation Guarantee (Administration) Act 1992*.
- The Standard Choice Form (NAT 13080-08.2014) should be amended to list the relevant temporary visa classes and be updated whenever a relevant visa class is changed or a new relevant visa class is introduced.

SAWIA submit that the above recommendations would ensure that the provisions contained in the Bill would operate more effectively and not negate any of the potential benefits and efficiencies created by the Bill.

In relation to the Bill's amendments regarding the provision of a standard choice form where an employee's superannuation benefits are transferred to a successor fund as a result of fund merger arrangement, SAWIA fully support those.

Yours faithfully,



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