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Asylum seeker detention times at record levels

The time asylum seekers spend in Australian detention centres has blown out to a record high under the Coalition Government, leaving men, women and children languishing behind wire

The latest information from the Department of Immigration Protection show that in December, people in onshore immigration detention had been there for an average 445 days. In November, the figure was 446 days.

The average detention period has increased steadily since May last year and is now the longest since the government took power. It is more than double the 200-day wait four years ago under the Labor government.

Of the 1792 people in detention, 91 were children and most were from Iran, New Zealand, Sri Lanka, China, Vietnam and Afghanistan.

The longer periods in detention come at a massive cost to taxpayers. The government's mid-year economic and fiscal outlook last month budgeted an extra \$588 million over four years, largely to cover "slower than forecast processing" of asylum seekers in Australia and offshore, leading to higher-than-expected detention centre populations.

This cost comes on top of the existing immigration detention budget, which runs into the billions, and forms part of a \$1 billion budget blowout announced last month.

The government has received domestic and international criticism for its tough regime of mandatory, indefinite detention, which it says deters the dangerous people-smuggling trade.

Australian Human Rights Commission president Gillian Triggs said it was "concerned" by the long-time people spend detained in Australia and at Nauru and Manus Island.

"We know from consistent medical evidence that holding people in detention for prolonged periods can do serious mental harm," she said.

"The commission is concerned about the harsh conditions of detention in the offshore processing centres and safety concerns, particularly for women and children."

Of about 600 people in community detention, 58 per cent had been waiting more than two years for their cases to be resolved.

There has been rising concern over the safety of asylum seekers in detention since detainees with criminal histories flooded the system. Under recent laws, people can have their visas cancelled if they have been sentenced to 12 months or more in prison.

A spokesman for the department said the figures were partly attributable to delays in Parliament approving the Safe Haven Enterprise Visa, which gives asylum seekers a five-year option to live and work in regional areas.

He said the time taken to process onshore asylum seekers depends on factors including "the complexity of the individual case as well as the need to undertake health, identity, character and security checks".

He said the figures were affected by the number of people held in immigration detention, which had declined since early 2013 as people were released into the community.

Sydney Morning Herald – 13/01/2016

Decision of the High Court of Australia.

PLAINTIFF M68/2015 v MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ORS

The High Court has held, by majority, that the plaintiff was not entitled to a declaration that the conduct of the first and second defendants in relation to the plaintiff's past detention at the Nauru Regional Processing Centre ("the Centre") was unlawful. The majority of the Court held that s 198AHA of the *Migration Act* 1958 (Cth) ("the Act") authorised the Commonwealth's participation, to the extent that the Commonwealth did participate, in the plaintiff's detention.

The plaintiff is a Bangladeshi national who was an "unauthorised maritime arrival" as defined by s 5AA of the Act upon entering Australia's migration zone. She was detained by officers of the second defendant and taken to Nauru pursuant to s 198AD(2) of the Act. Nauru is a country designated by the first defendant as a "regional processing country" under s 198AB(1) of the Act.

On 3 August 2013, the Commonwealth and Nauru entered into an arrangement relating to persons who have travelled irregularly by sea to Australia and who Australian law authorises to be transferred to Nauru ("the second MOU"). By the second MOU and administrative arrangements entered into in support of the second MOU (including arrangements for the establishment and operation of the Centre) ("the Administrative Arrangements"), Nauru undertook to allow transferees to remain on its territory whilst the transferees' claims to refugee status were processed. The Commonwealth was to bear the costs associated with the second MOU. Since March 2014, the third defendant has been a service provider at the Centre pursuant to a contract with the Commonwealth to provide "garrison and welfare services" ("the Transfield Contract").

Section 198AHA applies if the Commonwealth enters into an arrangement with a person or body in relation to the regional processing functions of a country. Sub-section (2) provides, in summary, that the Commonwealth may take any action, and make payments, in relation to the arrangement or the regional processing functions of the country, or do anything incidental or conducive to taking such actions or making such payments.

The plaintiff brought proceedings in the original jurisdiction of the High Court seeking, amongst other things, a declaration that the Commonwealth's conduct (summarised as the imposition, enforcement or procurement of constraints upon the plaintiff's liberty, including

her detention, or the Commonwealth's entry into contracts in connection with those constraints, or the Commonwealth having effective control over those constraints) was unlawful by reason that such conduct was not authorised by any valid law of the Commonwealth.

The Court held, by majority, that the plaintiff was not entitled to the declaration sought. The conduct of the Commonwealth in signing the second MOU with Nauru was authorised by s 61 of the Constitution. The Court further held that the conduct of the Commonwealth in giving effect to the second MOU (including by entry into the Administrative Arrangements and the Transfield Contract) was authorised by s 198AHA of the Act, which is a valid law of the Commonwealth

High Court of Australia – 3 February 2016

UK MIGRATION ADVISORY COMMITTEE REPORT RECOMMENDS WAYS TO RESTRICT TIER 2 MIGRATION

In light of its well – publicised objective to reduce net migration and its concern that employers have become over – reliant on migrant workers to fill shortages in the UK, the Government commissioned the Migration Advisory Committee (MAC) to carry out a review of the Tier 2 category in June 2015.

In particular the Government tasked the MAC to review five key areas:

- How to make Tier 2 more selective;
- The application of an immigration skills charge to businesses employing non – EEA migrants;
- How to tighten the Tier 2 (Intra Company Transfer (ICT)) sub-category;
- Whether jobs should be automatically removed from the shortage occupation list after a certain period;
- Whether to restrict Tier 2 dependants' automatic right to work in the UK.

The changes recommended in the MAC report. If implemented, shall cause the overall cost of sponsoring migrant workers to be prohibitive for many companies.

It is encouraging that the MAC has warned the Government that a reduction in Tier 2 migration would only 'make a marginal contribution' towards reducing net migration. We can only hope that the Government grasps that implementing the MAC's suggested changes to Tier 2 will not achieve its aim to reduce net migration to tens of thousands and may instead seriously hamstring UK businesses' productivity, innovation and competitiveness.

A summary of the main recommendations is below:

Tier 2 minimum salary thresholds

The MAC has recommended the Government increase some of the minimum earning thresholds under Tier 2 as an effective means of decreasing the number of migrants eligible under Tier 2:

- Tier 2 (General) threshold to increase from £20,800 to £30,000;

- Tier 2 (ICT) threshold to increase from £24,800 to £30,000 for short-term staff migrants;
- Tier 2 threshold for graduates to be £23,000 for 'new entrants' under Tier 2 (General) and Tier 2 (ICT – Graduate Trainee).

Immigration Skills Charge

The introduction of an Immigration Skills Charge (ISC) set at £1,000 per year for each Tier 2 migrant has been proposed. This would mean an exorbitant £ 3,000 for a migrant coming to the UK for three years, and £5,000 for five years in addition to the higher minimum salary thresholds and other relevant application fees

The MAC report highlighted significant use of the Tier 2 (ICT) route to serving third party contracts (particularly in the IT sector), which is permitted under the Immigration Rules but was not originally an intended use of the route. In light of this, the MAC has proposed that the Government creates a new category under Tier 2 specifically designed for third party contracting. The new route would require migrants to be paid a minimum salary of £41,500, which will no doubt act as a severe deterrent to using this new route, not least as the MAC has also recommended that consideration should be given as to whether the new route should be subject to the Resident Labour Market Test (RLMT) and even a cap to the number sponsored under this route in each sponsoring organisation.

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Danish Parliament adopts controversial Asylum Seeker reforms to seize valuables, delay family reunifications

Asylum seekers arriving in Denmark will have cash and valuables worth more than \$2,000 taken from them at the border under controversial new laws adopted by the country's parliament overnight.

The reforms, aimed at dissuading refugees and migrants from seeking asylum, also include provisions to delay family reunifications by up to three years, and have been likened by some to the Nazi-era policy of taking gold and other valuables from Jews.

The government insists the change is needed to stem the flow of asylum seekers, even though Denmark and Sweden recently tightened their borders, a move that prompted Germany and Austria to turn back new arrivals heading for Scandinavia.

But the United Nations Refugee Agency has hit out at the move, with spokesman William Spindler saying: "It's wrong to take away from people who have already lost so much and suffered so much the few belongings that they have managed to rescue, and also to discriminate against them by not allowing them to be reunited with their families".

The bill, presented by the right-wing minority government of Prime Minister Lars Lokke Rasmussen, was approved by a huge majority of 81 of the 109 MPs present, as members of the opposition Social Democrats backed the measures.

Asylum seekers will now have to hand over cash exceeding 10,000 kroner (\$2,000) and any individual items valued at more than that amount, up from the initial 3,000 kroner (\$600) proposed.

After negotiations with the other parties, Integration Minister Inger Stojberg agreed to make wedding rings and other items of sentimental value exempt.

The new laws passed with cross-party support, with Mr Rasmussen defending them as "the most misunderstood bill in Denmark's history."

"There's no simple answer for a single country, but until the world comes together on a joint solution [to the migrant crisis], Denmark needs to act," MP Jakob Ellemann-Jensen of Rasmussen's Venstre party said during the debate.

Copenhagen has often referred to neighbouring Sweden as a bad example, where 163,000 asylum applications were admitted last year — five times more than in Denmark relative to their population size.

The government has defended the move by arguing that Danes who want to qualify for social benefits may also have to sell their valuables.

However, they are not subjected to the kind of searches proposed in the new asylum law.

Once a champion of refugee rights, the Scandinavian country's goal is now to become "significantly less attractive for asylum-seekers", Ms Stojberg said.

<http://www.abc.net.au/news/2016-01-27/danish-parliament-adopts-controversial-reforms-on-asylum-seekers/7116164>

Australia, not UN, has final say on Syrian and Iraqi refugee intake-Peter Dutton says

Immigration Minister Peter Dutton says the Federal Government will have the final say on who is resettled in Australia as part of the intake of 12,000 additional refugees.

The former Abbott government agreed to the one-off intake of those displaced by conflict in Syria and Iraq, with the first people arriving late last year.

Mr Dutton said the resettlement program would focus on persecuted minorities, including Christians and families.

He told Macquarie Radio the department had been working with Syrian Christian leaders and the United Nations, but the latter could only make suggestions.

"Ultimately we want to make sure that we're bringing the right people," he said.

"People who can integrate into our community, that can get a job, can speak English, can give their kids the opportunity to go to school, that don't treat women appallingly."

Mr Dutton said "Australia will decide who we accept".

"The UN can make referrals and if we're not happy that person satisfies our criteria, they won't be settled in our country," he said.

"The Prime Minister has been as adamant about that being the case as Prime Minister Abbott was."

Mr Dutton said significant checks were being undertaken, including the searching of US databases.

Security concerns have been raised by some in the Federal Government, but fears have been downplayed by ministers and coordinators for the resettlement.

More than \$900 million has been allocated to resettling the refugees and the Department of Immigration and Border Protection last year doubled its staff numbers in the Middle East to enable quick processing.

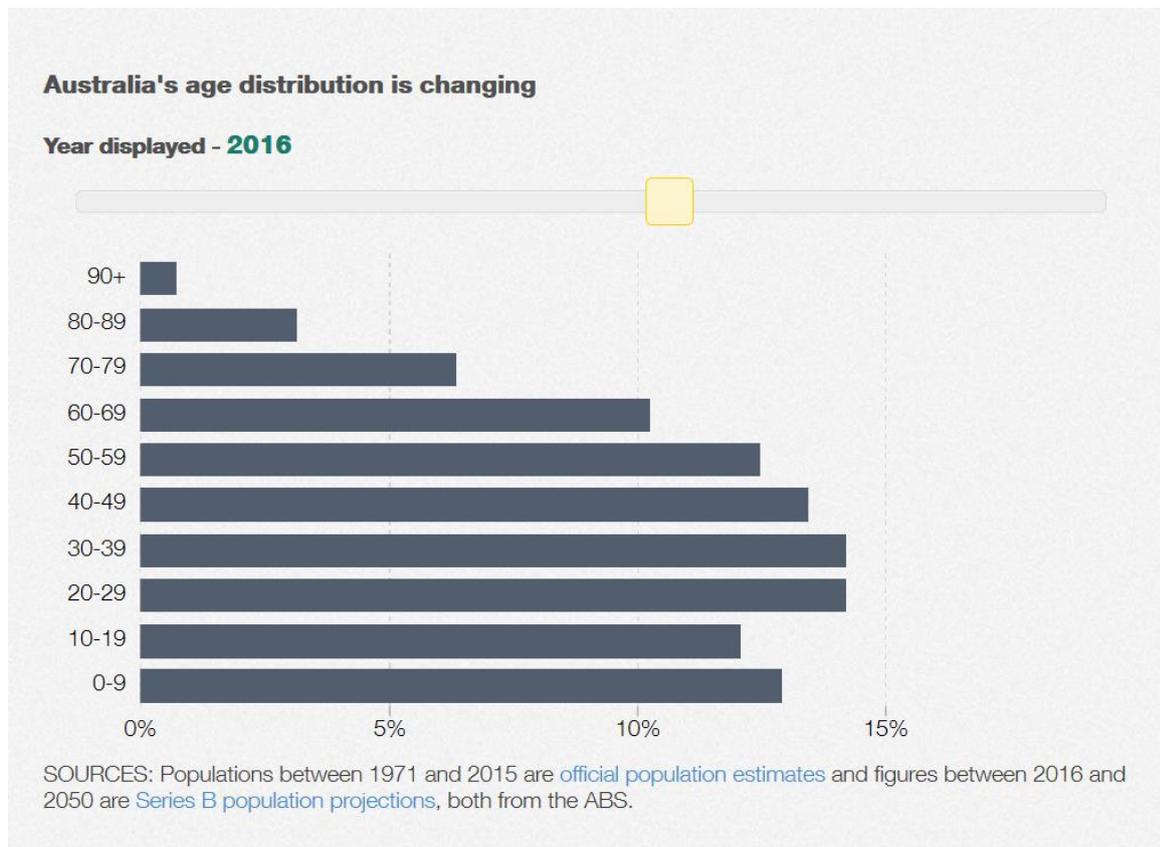
Syria has been embroiled in a vicious civil war since a popular uprising against dictator Bashar al-Assad in 2011, with increasing violence being inflicted at the hands of Islamic State militants.

Prime Minister Malcolm Turnbull spoke on Australia's role in the conflict earlier this week, telling a Washington think tank that an enduring victory against militant forces "must be won and owned by the people of Iraq and Syria".

"The destruction of ISIL requires military action including boots on the ground but they must be the right boots on the right ground," he said.

<http://www.abc.net.au/news/2016-01-21/australia-not-un-has-final-say-on-refugee-intake-dutton-says/7104160>

Interactive: what will Australia's population look like in 2050?



What will help Australia keep some of its youth?

Immigration helps to slow Australia's rate of ageing, Professor of Demography from ANU, Peter McDonald told SBS News.

That is because immigrants are more likely to be of working age than the average Australian.

The number of Australians who work is one of three factors that determines Real Gross Domestic Product (GDP) per capita, which is a key statistic for measuring economic growth.

As Australia's population gets older and more people leave the workforce, Australia's Real GDP per capita could fall if there is no improvement in labour productivity.

"You have to run harder with the productivity component," Prof McDonald said.

"Or make us a little bit younger. You do that through migration.

"Or, you can keep people working of course too."

What is behind the ageing of Australia?

The shift in Australia's population distribution is primarily due to rates.

"The Australian birth rate was high during the Baby Boomer years," Prof McDonald said.

"From the 1970s onwards, the birth rate went to a lower level."

Prof McDonald said the Baby Boomers – who made a large under-20s bulge during the 1970s – had now started to enter retirement. The Baby Boomers will continue retiring over the next decade.

On top of that, we are living longer, Prof McDonald said.

"We're much more likely to be living into the 80s and 90s than we have in the past."

He said the older generation today was healthier than older generations of times past, in part thanks to less heavy drinking and smoking throughout people's lifetimes.

Increased access to medical care and drugs, which has allowed society to control disease more effectively, has been an important development.

<http://www.sbs.com.au/news/article/2016/01/12/interactive-what-will-australias-population-look-2050>

UN finds Australia guilty in cases

Australia has been found guilty of almost 150 violations of international law over the indefinite detention of 46 refugees in one of the most damning assessments of human rights in this country by a United Nations committee.

The federal government has been ordered to release the refugees, who have been in detention for more than four years, "under individually appropriate conditions" and provide them with rehabilitation and compensation.

Consistent with Australia's treaty obligations, the government has been given 180 days to assure the committee that it has acted on the recommendations and taken steps to prevent "similar violations in future".

The UN's Human Rights Committee concluded that the continued detention of the asylum seekers, most of them Sri Lankan Tamils, was "cumulatively inflicting serious psychological harm" and in breach of the International Covenant on Civil and Political Rights.

The committee's investigation followed a complaint lodged on behalf of the refugees in August 2011 by Ben Saul, of the Sydney Centre for International Law, who said the finding proved the "grave lawlessness" of Australian refugee policies.

"It is a major embarrassment for Australia, which is a member of the Security Council and often criticises human rights in other countries. Australia should do the right thing by respecting its international obligations and treating the refugees decently," Professor Saul told Fairfax Media. Shadow Attorney-General Mark Dreyfus has undertaken to "carefully consider" the committee's views and respond within the six-month time frame.

"The government is actively exploring solutions for persons who are owed protection obligations and are the subject of an adverse security assessment," his office said.

The committee, made up of 18 human rights experts, found that, whatever justification there may have been for an initial detention, the government had not demonstrated on an individual basis that the continuous indefinite detention of the refugees was justified.

It also found that those held were "not informed of the specific risk attributed to each of them" and that meant they were unable to mount a legal challenge to their indefinite detention.

While the committee has consistently found fault with Australia's system of mandatory immigration detention, Professor Saul said, this finding went much further. "It is the largest complaint ever upheld against Australia," he said.

The UN body traditionally allowed government's wide discretion where national security was concerned, but found 46 cases of illegal detention, 46 cases of no effective judicial remedies for illegal detention and 46 cases of inhuman or degrading treatment in detention, he said.

It is believed that at least four of the 46 have since been granted visas after their cases were reviewed.

The UN committee is considering a similar complaint from another five refugees.

"For the committee to come out and make such stark findings is a pretty firm indication of just how seriously the committee regards these breaches," Professor Saul said.

A spokesman for the Tamil Refugee Council, Trevor Grant, said the UN committee had vindicated the strong belief that indefinite detention was intolerable in a just society.

<http://www.smh.com.au/federal-politics/federal-election-2013/un-finds-australia-guilty-in-150-cases-20130822-2sei6.html>

Unravelling the lies about Refugees after Save the Children cleared of any wrongdoing

Fifteen months after Transfield Services suggested in a confidential communique to the Immigration Department that workers from the Save the Children organisation were helping to foment protests by asylum seekers on Nauru, the charity and its staff have been indubitably exonerated.

The allegations that Save the Children staff were "coaching" asylum seekers about self-harm so that they might be medically evacuated to Australia, or that they were manufacturing evidence about Nauru's lack of competence in processing refugee claims, have been debunked.

What we want to know is why the federal government, and particularly Peter Dutton as Immigration and Border Control Minister and his predecessor Scott Morrison, did not admit this vindication a long time ago.

For seven months, the government sat on the findings of an independent report by lawyer Chris Doogan, a report it commissioned in May. A heavily redacted version was at last released late on Friday, without fanfare and when Parliament is effectively closed for business.

In late September 2014, terrible reports had emerged about women detainees being forced to strip naked in front of guards at the Nauru detention centre so that they could get more than their allocated two minutes in the shower. And children had been asked to perform sexual acts in front of guards

The report highlights the highly speculative nature of the flawed "intelligence" emanating from the Nauru facility at the time, and the unnecessarily heavy-handed and artless response by the Immigration Department that led to 10 Save the Children staff being deported from the island.

Whole pages of Mr Doogan's report have been blacked out, including almost everything about the information trail leading to the decision to expel. Still, it is clear that, in the highly-charged atmosphere around the Nauru detention centre, senior department officials leapt at what one of them called a "circuit-breaker".

They seized on Transfield Service's report that wrongly accused Save the Children staff of stirring up dissent (even Transfield suggested it was overly "emotive"), and used it to force the charity's workers out.

The Doogan report is deeply embarrassing for the government. The reputations of 10 innocent and diligent people were trashed by testy bureaucrats who jumped at shadows. And Save the Children, a venerable organisation that works in some of the world's most dangerous places, including Syria and Afghanistan, was maligned by the grandstanding of former minister Mr Morrison.

Mr Doogan has recommended the government begin discussions to compensate the workers. Has the government learnt anything from this debacle? A better question might be, does it want to?

The operations of Australia's facilities on Nauru and Manus Island remain opaque. And while the Abbott government took the dark art of information manipulation and secrecy to new levels, the Turnbull government – and Labor, too – remains resolutely fixed to the ignoble, demeaning and eternally shameful policy of detaining asylum seekers.

<http://www.theage.com.au/comment/the-age-editorial/unravelling-the-lies-about-refugees-after-save-the-children-cleared-of-any-wrongdoing-20160118-gm8f9z.html>

New South Wales welcomes talented new citizens on Australia day

A total of 3,387 new citizens around the state took part in 98 ceremonies, from Broken Hill to Byron Bay, from Lake Macquarie to Lismore, on what has become the most popular day of the year to become a new citizen.

Australia Day 2016 saw nation welcome more than 16,000 new citizens from around 150 countries, across almost 400 Citizenship ceremonies.

Korean pop singer, Elly Oh, who attracted widespread acclaim for her performance on the TV show, *The Voice*, says being an Australian means she won't have to forget her Korean origins and cultural identity.

Bollywood choreographer and director, Prafulla Prafida, first came to Australia on tour with the show, *The Merchant of Bollywood*, in 2008, when he met and fell in love with an Australian, now his wife Tanya.

Mr Prafida, who now runs his own dance studio and choreography company in Sydney, said, "It has been an incredible journey, as I am the first person in my family to leave my village. But there is growing demand for Bollywood movies and dancing here, just like in India."

Penrith Panthers rugby league star, James (Chicko) Segeyaro, says his dream is to one day represent Australia in international competition now that he is a Citizen. Another new citizen, Richie Tesarik from the Czech Republic, will represent Australia at the World Ice Hockey Championships in Mexico next April.

New Citizens from the States and Territories on Australia Day:

NSW	3870
Queensland	4300
South Australia	49
Tasmania	279
ACT	27
Northern Territory	186
Victoria	3774
Western Australia	3000

<http://newsroom.border.gov.au/releases/new-south-wales-welcomes> talented new citizens on Australia Day

Eight foreign property owners told to sell up by Australian Government

The Federal Government has ordered the sale of eight properties illegally bought by foreign investors, totalling \$8.3 million.

The owners in Canada, China, India, Malaysia and the United States have a year to sell or they will face criminal prosecution.

Since 2013, the Coalition Government has ordered the sale of 27 homes, a further 800 are being investigated.

Treasurer Scott Morrison said while foreign investment was vital to Australia, people had to abide by local rules.

He said investors targeted in the recent announcement had either bought established residential property without Foreign Investment Review Board approval, or had approval but their circumstances changed.

"The Government's transfer of responsibility to the ATO [Australian Tax Office] for compliance has enabled more active investigations and actions targeting illegitimate purchases," he said.

"Since this transfer in May, over 1,500 matters have been referred for investigation.

"Through information provided by the public, together with the ATO's own enquiries, over 800 cases remain under active investigation."

The figures represent a significant increase in the number of cases under investigation, effectively doubling in the past five months.

Mr Morrison said the property owners have 12 months to sell the properties and will not be referred for criminal prosecution, though criminal penalties of up to \$135,000 can apply in some cases.

<http://www.abc.net.au/news/2016-01-18/eight-foreign-property-owners-told-to-sell-up/7095148>

FNQ farmers facing labour shortage amid backpacker decline

DODGY labour hire companies ripping backpackers off are being partly blamed for a decline in working holidaymakers that could leave Far Northern farmers in the lurch.

Immigration figures obtained by industry group AUSVEG show the number of workers arriving on the 417 visa has fallen dramatically over the past two years, with 34,000 fewer visas granted in 2014-15 than in 2012-13.

Irish workers dropped nearly 60 per cent, while interest from Taiwan and South Korea slumped 26 per cent.

Far North Queensland farmers rely heavily on the backpacker workforce to harvest their crops and fear they could be facing a labour shortage.

Howe Farming at Walkamin is one of the biggest employers on the Tablelands with 350 staff, many of whom are working holiday-makers.

"We've noticed there has been a big drop off in backpackers looking for work," said Dennis Howe.

"We prefer to employ locals – most farms would give a local a job over a backpacker – but there are very few of them around.

"What really concerns me is if the Federal Government brings in the full tax rate for (working holiday-makers) ... I think that will make it worse."

Mr Howe believes the high cost of living could be deterring backpackers from seeking work in Australia as well as dodgy labour hire companies.

AUSVEG has proposed an accreditation system for labour hire companies to “clean up the rogue elements within the sector” and prevent further damage to Australian industry.

Atherton avocado grower and Avocado Australia chairman, Jim Kochi, said Far North Queensland was “very reliant” on seasonal workers.

“They’re willing to work, they turn up every day and most of them are quite educated, so they’re easy to train,” he said.

Mr Kochi was also concerned about the impact higher taxes will have.

“Our exchange rate falling means the return for backpackers is much less than what they would have earned last year, then to be taxed at a higher rate as well, that’s a double whammy,” he said.

“If you look around the Tablelands, there’s more intensive horticulture happening, so there’s going to be a greater requirement for backpackers and if we don’t get it we’re going to have problems.”

<http://www.cairnspost.com.au/business/fnq-farmers-facing-labour-shortage-amid-backpacker-decline/story-fnjpusdv-1227701107773>

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PLEASE NOTE:

We are planning to visit Dhaka, Gujarat and Kolkata in mid to late March to discuss business, sponsorship and skilled migration options, primarily. Specific details will be available soon however you are welcome to email your current Resume to ppmail@ppilaw.com.au – please include the words: Dhaka, Gujarat or Kolkata in the subject line of the email. We will review your resume and advise you on your likely prospects and you will also have the opportunity to make an appointment to see Mr. Jia Li, Partner, to discuss your options in detail.