



SUBMISSION

Inquiry into the Working Holiday Maker program



Migration Institute of Australia

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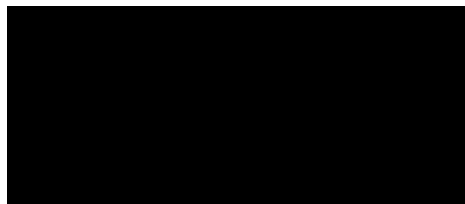
Joint Standing Committee on Migration

The Migration Institute of Australia (MIA) welcomes this opportunity to provide input into this *Inquiry into the Working Holiday Visa Program*.

The MIA and its members have extensive experience in advising government and business authorities, employers and the visa holders themselves, on issues associated with the use of the Working Holiday Maker program and the conditions attached to these visa subclasses.

The MIA recognises that the COVID-19 pandemic has impacted the original terms of reference of this Inquiry. However, it counsels that a long term perspective on the program must be maintained and recommends that changes to the program be delayed until the longer term impacts of the pandemic can be assessed. To this end, the MIA in this submission provides recommendations to this Inquiry on the means to address short and longer term issues with the program.

Please feel free to contact the MIA on 9249 9000 if further assistance is required in relation to this submission.



**John Hourigan FMIA
National President
Migration Institute of Australia**

3 August 2020

The MIA makes the following recommendations to the Working Holiday Maker Program parliamentary inquiry:

Recommendation 1

The MIA recommends that no changes be made to the structure and policy settings of the Working Holiday Maker program until after the COVID -19 pandemic has ended.

Recommendation 2

The MIA recommends that the Working Holiday (Subclass 417) and the Work and Holiday (Subclass 462) visas be maintained as separate entities within the Working Holiday Maker program.

Recommendation 3

The MIA recommends that the specified regional types of work and the specified areas for regional work be maintained separately for the Working Holiday and the Work and Holiday streams of the Working Holiday Maker program.

Recommendation 4

The MIA recommends that the Seasonal Worker program be maintained as a Pacific Island program in accordance with the objectives of this program.

Recommendation 5

The MIA recommends that seasonal workers with existing contracts who are currently onshore have their visas extended to assist in meeting the immediate shortfall in Working Holiday Makers for the current harvesting season.

Recommendation 6

The MIA recommends that an increased numbers of seasonal workers from approved countries be mobilised to replace the shortfall in Working Holiday Makers for the current harvesting season.

Recommendation 7

The MIA recommends that onshore Temporary Work (Skilled) Subclass 457 and Temporary Skilled Shortage Subclass 482 visa holders be permitted to undertake seasonal work where they have been displaced from their sponsored employment.

Recommendation 8

The MIA recommends that a twenty four hour Working Holiday Maker hotline be established to provide emergency safety and comprehensive employment advice to Working Holiday Maker visa holders.

Recommendation 9

The MIA recommends that contact details and information about the Working Holiday Maker hotline be provided to all Working Holiday Makers with their visa grant notification and in both English and relevant foreign languages.

Inquiry into the Working Holiday Maker visa program

The WHM program is designed to provide reciprocal opportunities for young people to experience other cultures, by allowing them to undertake short term work, while enjoying an extended holiday in other countries.¹

The Working Holiday Maker visa program is comprised of two visa subclasses, the Working Holiday Subclass 417 visa and the Work and Holiday Subclass (Sc) 462 visa. The size of the program has expanded considerably since its inception to now include partnerships with 44 countries. Citizens of 19 countries are eligible for the Sc 417 Working Holiday visa, while citizens of the remaining 25 countries are eligible for the Sc 462 Work and Holiday visa. Negotiations are currently underway with another 13 countries for inclusion in the Work and Holiday subclass.²

On 31 December 2019 there were almost 120,000 Working Holiday Sc 417 visa holders in Australia and just over 21,000 Work and Holiday Sc 462 visa holders.³ Since the COVID-19 pandemic emerged, the numbers of WHM visa holders in Australia have dropped and reportedly sit at around 85,000 visa holders over both subclasses.⁴

The numbers of visa that may be granted in the Work and Holiday Sc 462 stream are capped at an annual specified number of visas ranging between 100 and 5000 according to originating partner countries. Working Holiday Sc 417 visas numbers are not capped, allowing an unrestricted number of visas to be granted to those eligible under this subclass.

All Working Holiday Maker (WHM) program visa applicants are required to meet specific criteria, they must:

- hold a passport from an approved WHM country
- be between 18 -31 years old generally and up to 35 years old for specific countries
- meet health, financial and character requirements.

Additional requirements are imposed on Work and Holiday Sc 462 visa applicants, who must also demonstrate that they have:

- the Functional level of English language ability
- successful completion of at least two years of undergraduate university study (some exceptions apply)
- obtained a letter of approval to engage with the program from the government of their home country (some exceptions apply).⁵

¹ Department of Home Affairs, Legendcom <https://legend.online.immi.gov.au/migration/2017-2020/2020/01-07-2020/policy/Pages/document00003/level%20100169.aspx#AbouttheWorkingHolidayvisaprogram>

² Department of Home Affairs, Working Holiday Maker Visa Program Report, 31 Dec 2019, p 6. <https://www.homeaffairs.gov.au/research-and-stats/files/working-holiday-report-dec-19.pdf>

³ Ibid, p 8

⁴ ABC Rural, Farmers fear worker shortage due to COVID-19 restrictions despite rising unemployment, 32 July 2020. <https://www.abc.net.au/news/rural/2020-07-30/farm-labour-shortage-feared-due-to-coronavirus-controls/12504802>

⁵ Department of Home Affairs, Working Holiday Maker Visa Program Report, 31 Dec 2019, p 3. <https://www.homeaffairs.gov.au/research-and-stats/files/working-holiday-report-dec-19.pdf>

WHM visas are generally granted for 12 months. Second and third WHM visas may be approved where visa holders undertake a specified amount and type of work in regional areas of Australia, in the industry sectors of construction, fishing and pearling, plant and animal cultivation, mining,⁶ tree farming and felling, tourism and hospitality⁷ and bushfire recovery.⁸

To be granted a second WHM visa at least three months of this specified type of work must be undertaken during the validity of the first WHM visa and at least six months undertaken while on the second WHM visa to be eligible for the third WHM visa.⁹

WHM visa holders can work for the entire period of their visa validity, but are generally only permitted to remain with the one employer for 6 months. Exceptions exist for those working as au pairs, in eligible industries in northern Australia and in plant and animal cultivation anywhere in Australia.

Terms of Reference

The terms of reference of this Inquiry examine a broad range of issues associated with the WHM program. These can be divided into short term concerns, particularly those surrounding the current harvesting season, longer term issues related to the post COVID economic recovery and general issues around the program settings, economic impacts and benefits to the Australian economy. The MIA will largely confine this submission to those of the terms of reference related to the visa programs.

Working Holiday Maker visa program and alternatives

It is recognised that the WHM program is important to the Australian economy, providing a ready source of young, casual workers, who support and enjoy themselves with their earnings in this country and also thus contribute to this economy. The program is also a source of young, skilled workers who decide to stay in Australia, moving to other skilled employment visa programs and often onto permanent residency and Australian citizenship.

The MIA understands that there are currently serious concerns amongst growers that the reduction in the numbers of WHMs due to the COVID pandemic and the travel restrictions imposed on them, will seriously impact the harvesting of crops in this coming summer season. Employers in sectors such as tourism, hospitality and construction who have laid off their WHMs employees are also concerned that they will not be able to access sufficient WHM workers to rebuild their businesses in the post COVID economic recovery phase.

⁶ Working Holiday Subclass 417 holders only.

⁷ Work and Holiday Subclass 462 holders only.

⁸ ABC Rural, Farmers fear worker shortage due to COVID-19 restrictions despite rising unemployment, 32 July 2020. <https://www.abc.net.au/news/rural/2020-07-30/farm-labour-shortage-feared-due-to-coronavirus-controls/12504802>

⁹ Department of Home Affairs, Working Holiday Maker Visa Program Report, 31 Dec 2019, p 4. <https://www.homeaffairs.gov.au/research-and-stats/files/working-holiday-report-dec-19.pdf>

The MIA and its members have extensive experience in advising government and business authorities, employers and the visa holders themselves, on issues associated with the use of WHMs and the conditions attached to these visa subclasses. The remainder of this submission provides the MIA's recommendations on the following issues:

1. the viability and value of altering the WHM program settings during the current COVID pandemic situation,
2. response to suggestions for changes to the fundamental nature of the Seasonal Worker Program (SWP),
3. permitting Subclasses 457 and 482 visa holders displaced from current employment to undertake seasonal work
4. protection against exploitation for WHM visa holders.

1. The viability and value of altering the WHM program settings during the current COVID pandemic situation.

In the first round of public hearings to this Inquiry on 20 July 2020 and increasingly in the media, Australian growers are predicting major impacts on their ability to harvest summer crops in October, November and December of this year, due to the lack of numbers and mobility of the usual WHM labour force.¹⁰

While a lack of workers to harvest seasonal crops is not a new phenomena in Australia and the reason that specified regional work was introduced as an incentive for second and third WHM visas, the MIA does recognise that the COVID pandemic has exacerbated the situation for this harvesting season. However, the MIA contends that any changes made to the program during this current COVID impacted period would be a 'knee jerk' reaction that may have longer term unintended consequences for the program and may prove counter productive to the Australian economy, particularly once the recovery phase commences.

During the current economic situation, there is little value to be gained by changing either the number of WHM places or the number of countries eligible for WHM program visas, given the world wide travel restrictions and likely preference for many citizens to remain in their home country throughout the pandemic. Increasing the number of visa places or countries within the WHM program has the potential to negatively impact on the employment of Australians, while decreasing places could negatively impact business growth in the post COVID recovery period. As such, the MIA recommends that no changes should be made to the WHM program until Australia is well into the economic recovery phase.

The MIA also suggests that further investigation be undertaken into the sustainability of a workforce that relies on incentives for second and third WHM visa to supplement regional workforces. Current Departmental statistics demonstrate that in the last three years only 25% of first Working Holiday visa holders undertake sufficient regional work to be eligible for

¹⁰ ABC Rural, Farmers fear worker shortage due to COVID-19 restrictions despite rising unemployment, 32 July 2020. <https://www.abc.net.au/news/rural/2020-07-30/farm-labour-shortage-feared-due-to-coronavirus-controls/12504802>

a second Working Holiday visa and only 21% of Work and Holiday visa holders.¹¹ At this time there is insufficient data to determine yet what percentage of second WHM visa holders will lodge third visa applications.

The incentive of the second and third WHM visa for those who have undertaken work in regional Australia was initially introduced in an effort to alleviate the serious and persistent specific primary industry seasonal labour shortages across regional areas of Australia.¹² Later construction and mining were added and then tourism and hospitality. Each of the two subclasses has separate list of approved work that can be undertaken, with the list for the Work and Holiday Sc 462 visa holders further restricting the regional areas where this work can be undertaken.¹³

Specified regional work for Working Holiday Maker Programs	
Working Holiday Sc 417	Work and Holiday Sc 462
Construction	Construction
Fishing and pearling	Fishing and pearling*
Plant and animal cultivation	Plant and animal cultivation
Mining	
Tree framing and felling	Tree framing and felling*
Bushfire recovery	Bushfire recovery
	Tourism and hospitality*

*Only permitted in Northern Australia¹⁴

Source: Legislative Instruments LIN 20/103 and 20/104

During the public hearings before this Committee on 20 July 2020, it was suggest that increased flexibility could be gained for both employers and WHM visa holders by combining these lists and making the types of specified work and regional areas the same.¹⁵ The MIA can foresee negative impacts if this was to occur. While the Working Holiday Sc 417 visa is open to 19 eligible countries, as opposed to the Work and Holiday Sc 462's 25 countries, the former generates the largest proportion of visa holders within the program. In the last three reported years, the ratio of Working Holiday Sc 417 visa holders to Work and Holiday Sc 462 visa holders has been between 5:1 and 8:1.

To permit access to the much larger numbers of WHM Sc 417 visa holders to specified work within the tourism and hospitality industry, for example, would likely decimate the numbers who would be prepared to work in the other more strenuous and less desirable jobs. Similarly, these visa holders would overwhelm the available positions in the physically easier

¹¹ Department of Home Affairs, Working Holiday Maker Visa Program Report, 31 Dec 2019, p 11-14

<https://www.homeaffairs.gov.au/research-and-stats/files/working-holiday-report-dec-19.pdf>

¹² Department of Home Affairs, Legendcom https://legend.online.immi.gov.au/migration/2017-2020/2020/01-07-2020/policy/Pages/document00003/level%20100169.aspx#JD_417

¹³ Migration (LIN 20/103: Subclass 417 (Working Holiday) Visa—Regional Australia and Specified Work) Instrument 2020 <https://www.legislation.gov.au/Details/F2020L00224/Download>; Migration (LIN 20/104: Subclass 462 (Work and Holiday) Visa – Specified Areas of Australia and Kinds of Work) Instrument 2020, <https://www.legislation.gov.au/Details/F2020L00223/Download>

¹⁴ Some categories of specified regional work for Sc 462 holders is further restricted to work to be undertaken above the Tropic of Capricorn (Northern Australia).

¹⁵ Commonwealth Government, Proof Committee Hansard Joint Standing Committee on Migration, Working Holiday Maker program, 20 July 2020, Transcript of Public Hearing, pgs 14, 16, 19. https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Migration/WorkingHolidayMaker/Public_Hearings

jobs such as in tourism and hospitality, displacing opportunities for the Work and Holiday Sc 462 visa holders. In the same way, opening the larger number of regional areas to the tertiary educated Work and Holiday visa may lead to a decrease in the numbers of these visa holders willing to undertake the more remote regional work, such as that above the Tropic of Capricorn.

Recommendation 1

The MIA recommends that no changes be made to the structure and policy settings of the Working Holiday Maker program until after the COVID -19 pandemic has ended.

Recommendation 2

The MIA recommends that the Working Holiday (Subclass 417) and the Work and Holiday (Subclass 462) visas be maintained as separate entities within the Working Holiday Maker program.

Recommendation 3

The MIA recommends that the specified regional types of work and the specified areas for regional work be maintained separately for the Working Holiday and the Work and Holiday streams of the Working Holiday Maker program.

2. Suggested changes to the Seasonal Worker Program

The Seasonal Worker Program (SWP) was developed with the main objective of allowing seasonal workers to contribute to the economic development of their home country through skills transfers and remittances, while assisting Australian employers who face regular and chronic labour shortages, such as those in the horticultural sectors, access to a regular supply of workers.¹⁶

It was suggested during the public hearings before the Committee on 20 July 2020 that further countries, for example, the Philippines and Malaysia, be added to the approved Seasonal Worker Program (SWP) countries.¹⁷ The MIA argues that this would be a fundamental breach of the objectives of this program. The MIA contends that a speedier resolution to the immediate labour shortages for harvesting summer crops this year would be to simply bring more seasonal workers into the country. The inclusion of non Pacific Island countries in the SWP would be at odds with the regional development objectives of the program. It also generally takes two or more years to negotiate the intergovernmental Memorandum of Understandings required to include new countries in the SWP, which would not be of assistance during this short term crisis.

¹⁶ Department of Home Affairs, Legendcom https://legend.online.immi.gov.au/migration/2017-2020/2020/01-07-2020/policy/Pages/document00003/level%20100165.aspx#4_1_7

¹⁷ Commonwealth Government, Proof Committee Hansard Joint Standing Committee on Migration, Working Holiday Maker program, 20 July 2020, Transcript of Public Hearing, Mr Damian Drum MP, Pgs 5, 9, 19. https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Migration/WorkingHolidayMaker/Public_Hearings

The SWP is limited to workers from the Pacific Islands of Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu and Vanuatu,¹⁸ countries that in the main coincidentally have no reported cases of the COVID-19 infection.¹⁹ The countries that were suggested at the public hearing for inclusion in the SWP have comparatively high levels of COVID-19 infection.²⁰

Australia already has a ready source of accessible COVID free workers under the current approved SWP and should access these rather than looking at workers from other less safe sources. There are as well, seasonal workers already onshore under the program with existing contracts, whose visas could be extended to assist in meeting the immediate shortfall in WHM numbers for this harvesting season.

The SWP is operated under the lead agency of the Department of Education, Skills and Employment (DESE). The DESE requires SWP sponsors to meet a stringent set of guidelines to be approved to bring seasonal workers into the country. The sponsors are also vetted a second time for approval as temporary activities sponsors by the Department of Home Affairs. The sponsorship requirements under these approvals including providing reasonable accommodation, adherence to Australian conditions of employment and Australian health and safety legislation. The SWP is a doubly regulated program that provides a high level of protection to the seasonal workers who come to this country.

Smaller employers and those with short harvesting seasons reportedly don't use SWP workers as they cannot provide the longer term employment required to make sponsoring SWP workers viable.²¹ However, there are 42 labour hire companies approved under the SWP to bring seasonal workers into the country. These companies would have access to a ready source of Pacific Island seasonal workers who could be quickly mobilised to address the immediate shortages for this harvesting season. These labour hire companies also have the facility to place seasonal workers in different short term harvesting jobs across the season.

Similar multi-sponsor working arrangements are currently being piloted in the Seasonal Worker Programme – Worker Portability Pilot programme in the Wimmera Mallee (Victoria), Sunraysia (Victoria/NSW), Goulburn/Murray (Victoria) and Riverina (NSW) regions. This pilot commenced in January 2020 with explicit purpose of assisting smaller farmers and growers who require seasonal workers for shorter periods of time so that they can plan their harvest needs and use the same group of seasonal workers sequentially.²²

¹⁸Department of Home Affairs, Legendcom https://legend.online.immi.gov.au/migration/2017-2020/2020/01-07-2020/policy/Pages/document00003/level%20100165.aspx#4_1_7

¹⁹ Work Health Organisation Representative Office of the South Pacific <https://app.powerbi.com/view?r=eyJrJoiMTQwZmJmZictMjkwMC00MThkLWI5NDgtNmQ3OGUwNDc4ZWE3liwiZCI6IjBmOWUzNWRIU0NGYtNGY2MC1iZGNjLTlVYTQxNmU2ZGM3MCIsImMiOiJh9> accessed 2 August 2020

²⁰Worldometer Coronavirus <https://www.worldometers.info/coronavirus/#countries> accessed 2 August 2020

²¹ Commonwealth Government, Proof Committee Hansard Joint Standing Committee on Migration, Working Holiday Maker program, 20 July 2020, Transcript of Public Hearing, Pgs 14, 16, 19. https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Migration/WorkingHolidayMaker/Public_Hearings, Mr Joe Moro, Regional Development Australia Tropical North, P 1.

²² Seasonal Worker Programme – Worker Portability Pilot https://docs.employment.gov.au/system/files/doc/other/swp_worker_portability_pilot_information_sheet_final.pdf

It was intimated during the public hearings on 20 July 2020 that many employers have concerns over the dealings of some labour hire companies with either the employer or the workers.²³ The MIA acknowledges that unscrupulous behaviour does at times occur within the labour hire industry and welcomes the moves by various state government to regulate labour hire companies generally. However, the labour hire companies operating under the SWP are already regulated by two Australian government departments which should provide a sense of security to those employing their services.

The MIA contends that the immediate problem of this summer's harvest could be largely resolved by simply increasing the number of seasonal workers brought into Australia under the existing approved SWP. The MIA argues that this solution:

- accords with the Australian Government's foreign aid program,
- accords with the Australian Government's desire to contribute to the socio-economic capacity of Pacific Island countries,
- targets countries with low COVID-19 infection rates,
- supports the rationale of a travel bubble between Australia, New Zealand and the Pacific Island countries.

Recommendation 4

The MIA recommends that the Seasonal Worker program be maintained as a Pacific Island program in accordance with the objectives of this program.

Recommendation 5

The MIA recommends that seasonal workers with existing contracts who are currently onshore have their visas extended to assist in meeting the immediate shortfall in Working Holiday Makers for the current harvesting season.

Recommendation 6

The MIA recommends that an increased numbers of seasonal workers from approved countries be mobilised to replace the shortfall in Working Holiday Makers for the current harvesting season.

3. Seasonal work permission for Subclass 457 and Subclass 482 visa holders

The COVID pandemic has forced many temporary work visa holders to be stood down from their employment or to be laid off but are not able to return to their own countries. However, displaced workers holding Temporary Work (Skilled) Subclass 457 and Temporary Skill Shortage Subclass 482 visas are not permitted as a condition of their visa to work for any employer other than their visa sponsor. They are also not eligible for Australian government assistance or support.

²³ Commonwealth Government, Proof Committee Hansard Joint Standing Committee on Migration, Working Holiday Maker program, 20 July 2020, Transcript of Public Hearing, Pgs 14, 16, 19.
https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Migration/WorkingHolidayMaker/Public_Hearings, Mr Joe Moro, Regional Development Australia Tropical North, P 2.

Many of these employer sponsored workers are likely to be reinstated to their jobs in the post COVID recovery phase, but are suffering short term financial difficulties supporting themselves and families at this time. The MIA suggests these visa holders be permitted a temporary waiver of the visa condition to only work for their sponsor to allow them to undertake seasonal work until the economy improves.

This would also benefit their current sponsors who would be able to readily reinstate the visa holders once business conditions improve, rather than terminating their employment having to repeat the costly and slow process of sponsoring new overseas workers post COVID. Visa holders would benefit from the income and growers from the additional workforce to ameliorate the WHM shortfall.

Recommendation 7

The MIA recommends that onshore Temporary Work (Skilled) Subclass 457 and Temporary Skilled Shortage Subclass 482 visa holders be permitted to undertake seasonal work where they have been displaced from their sponsored employment.

3. Protection against exploitation for WHM visa holders.

The MIA shares the concerns of other witnesses to this inquiry over the exploitation of WHM visa holders which in many cases amount to modern slavery. Anecdotally, this is rife particularly amongst the cohort who are often desperate to secure the specified regional work to ensure they are eligible for second and third WHM visas.

The MIA supports the calls by other witnesses to this inquiry of a WHM 'hotline' that provides a comprehensive 24 hour advice and emergency safety service to these workers who are often vulnerable due to gender, English language proficiency and the remoteness of locations. The MIA also supports the idea that the hotline number and service be broadly advertised and contact details and information be provided with the grant of WHM visas in both English and the languages of the approved WHM countries.

Recommendation 8

The MIA recommends that a twenty four hour Working Holiday Maker hotline be established to provide emergency safety and comprehensive employment advice to Working Holiday Maker visa holders.

Recommendation 9

The MIA recommends that contact details and information about the Working Holiday Maker hotline be provided to all Working Holiday Makers with their visa grant notification and in both English and relevant foreign languages.