

# Inquiry into Working Holiday Maker Program

**Wednesday 5 August 2020**

**Contact:**

Nethmi Perera Policy Officer

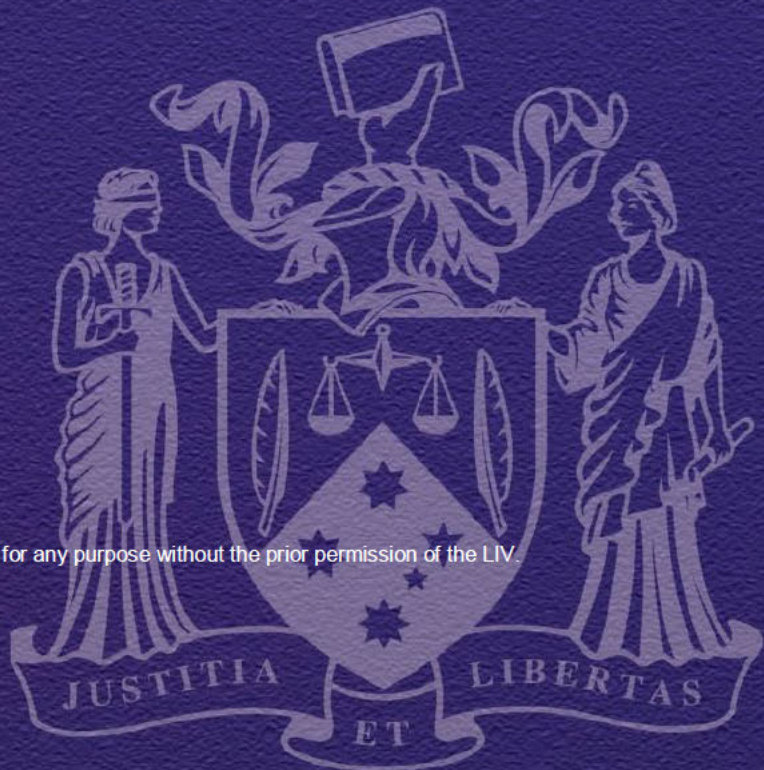
Tel: (03) 9607 9338

E: [nperera@liv.asn.au](mailto:nperera@liv.asn.au)

Web: [www.liv.asn.au](http://www.liv.asn.au)

© Law Institute of Victoria (LIV)

No part of this submission may be reproduced for any purpose without the prior permission of the LIV.



# TABLE OF CONTENTS

Introduction .....	3
Recommendations.....	4
Term of Reference 1:.....	6
Origin & purpose .....	6
Size and composition .....	7
Eligibility.....	7
Program Access.....	8
Term of Reference 2:.....	9
Term of reference 3: .....	11
Onshore WHM visa holders.....	11
Offshore WHM Visa Holders .....	11
Onshore program access .....	12
Potential future impact .....	12
Term of Reference 4:.....	13
Impact on regional communities .....	13
Capacity of Australians to meet demand .....	14
Exploitation .....	15
Issues in the Agricultural Sector .....	16
Improved reporting tools for WHM and employers .....	17
Term of Reference 5:.....	17
Recent policy changes to increase maximum work period in critical sectors in response to the COVID-19 pandemic.....	17
Cultural Exchange.....	18
Term of reference 6: .....	19
Using the WHM program to incentivise non-urban settlement .....	19
Term of Reference 7:.....	20
Conclusion .....	20

# INTRODUCTION

The Law Institute of Victoria ('**LIV**') is Victoria's peak body for lawyers and represents approximately 19,000 people working and studying in the legal sector in Victoria, interstate and overseas. The LIV welcomes the opportunity to provide feedback to the Joint Standing Committee on Migration's Inquiry into the Working Holiday Maker Program. This submission has been drafted with the assistance of the LIV's Migration Law Committee.

The Working Holiday Sc 417 visa and Work and Holiday Sc 462 visa are long standing temporary programs (collectively '**Working Holiday Maker**' or '**WHM**'). WHM programs have historically served to improve cross cultural connections and are a powerful soft power tool for diplomatic relations.

In the past two decades the program has increasingly been used to meet local labour market demand, as seen by changes to Condition 8547 to allow longer periods of work and the softening of policy guidelines on the work limitations. The programs have a significant role in the agriculture and tourism sectors, which typically feature high levels of variation in regional demand and are often based in locations which are geographically distant from major urban centres.

The size of the WHM program has already been impacted by the COVID-19 pandemic and it is likely the program will remain highly suppressed for the duration of border restrictions.<sup>1</sup> The LIV notes that the Federal Government is likely to prioritise places available during re-opening to more targeted skills sectors, sponsored workers, and international students. As a result of these restricted numbers, this paper makes submissions on how to maximise the economic benefit made by WHMs who have the opportunity to enter or remain in Australia.

WHM contribute economically to Australia through personal expenditure, meeting local labour needs and contributing to aggregate demand and related increases in employment. The downward pressure on WHM visa numbers is likely to have a direct impact on labour supply in some areas with major demand issues, in particular horticulture. Altering the criteria for the visa, location of applicants, visa duration, and creating explicit pathways into the broader migration program have the potential to improve program outcomes in a Net Overseas Migration ('**NOM**') suppressed environment.

---

<sup>1</sup> Working Holiday Maker visas granted pivot table: 2019-20 to 30 June 2020 - comparison with previous years, Commonwealth of Australia 2020, <https://data.gov.au/data/dataset/visa-working-holiday-maker>.

Creating better opportunities for onshore WHMs to contribute, through programs to direct visa holders into regional areas and incentivise living, working, and building relationships in these locations, has the potential to deliver positive long-term outcomes for regional Australia. Determining the appropriate policy tools to achieve these goals is challenging, however, Australia has a wealth of past policy experience to assess and make these determinations.

To achieve these goals, the LIV sets out a number of recommendations which would ensure the programs continue to operate as an effective means of improving cultural connections between Australia and reciprocal partners, improve the Australian economy, in particular regional economies, mitigate the impact of the pandemic, and improve the operation of the program.

## RECOMMENDATIONS

1. In order to increase the positive economic impact of temporary visa holders, the WHM program settings should be altered to extend the initial visa period to 2 years, with a further renewal for 2 years.
2. Maximise the potential contribution of WHM in the Australian economy by increasing the 2<sup>nd</sup> visa period to 2 years.
3. Implement policy incentives for WHM to remain longer term in regional communities with a view to building community connectedness and increasing the chances of longer-term residency.
4. For WHM holders who are currently onshore, waive the specified work requirement for renewal of a 2<sup>nd</sup> or 3<sup>rd</sup> year visa.
5. Grant a universal 12-month extension for offshore WHM who have been unable to enter Australia during the relevant period due to the pandemic.
6. Create a pathway for onshore WHM applicants, to enable onshore students and other temporary visa holders to transition to a longer-term visa with the potential to contribute to the economy.
7. Leverage off cross border arrangements to maximise the potential number of WHM entrants during the pandemic period. This could be achieved by limiting 2-year visa extension to countries with reciprocal travel arrangements (i.e. travel bubble).
8. Ensure that the Department of Home Affairs, Fair Work Ombudsman, and other investigative authorities are appropriately resourced. Consider resourcing mechanisms such as empowering the investigators to seize assets from misconduct to meet costs. Secondly, address issues of alleged exploitation and abuse at the employer / contractor level, not with individual visa holders.

9. Continue to link existing government software services to identify and address misconduct in employment. Identify opportunities for new software tools to track employment terms and conditions to prevent exploitation and abuse.
10. Extend existing arrangements for critical work indefinitely and list critical work as 'specified work' for the purposes of the program to promote participation.
11. Focus on reducing fraud through detection and prosecution of both employers and visa holders engaged in misconduct.
12. Revisit WHM program requirements to encourage those who wish to participate in cultural and community activities in regional communities, such as volunteering, by allowing a broader range of activities to be recognised beyond paid work.
13. Review the SWR 491 and SESR 494 to create pathways to permanent residency for long term regional residents on WHM visas.



## TERM OF REFERENCE 1:

**The purpose of the program including history, size, composition, eligibility, and reciprocal access for Australians and recent changes.**

### Origin & purpose

The Working Holiday Visa ('WHV') program was created in 1975 and was intended to promote cultural exchange between Australian, Irish, British, and Canadian youth to strengthen ties between nations.<sup>2</sup> The visa was established as the Subclass 417 Working Holiday visa in the *Migration Regulations 1994*. The program has increased in size and has been expanded to 19 nations.<sup>3</sup>

A distinct visa program, the Subclass 462 Work and Holiday ('W+HV') was introduced in 2003.<sup>4</sup> Currently nationals of 25 countries are listed as eligible for the 462 visa.<sup>5</sup> The W+HV 462 visa differs from the 417 in that it has been offered to countries which (a) do not offer Australia a reciprocal program of the same nature as the 417 or (b) to countries which pose greater concerns on the basis of comparative living standard and related potential for overstay.

W+HV reciprocal agreements typically limit the number of foreign nationals eligible for the program per year and may stipulate additional requirements (education, statement of support from foreign government, etc.) that are not imposed on the 417 program.

While the purpose of the visa was originally the improvement of cultural ties, the program has become a de facto labour program. It has been long noted that the large number of WHMs provide critical services in a number of Australian labour sectors, including agriculture, horticulture, and tourism.

Furthermore, the W+HV program also operates as an informal entry point into other temporary and permanent visa programs. Rather than seeking to discourage transition between these programs, government has identified and maximised the opportunity to have WHMs contribute to regional development during, and rebuilding after, the pandemic.

---

<sup>2</sup> This submission refers to these programs collectively as the 'Working Holiday Maker' programs using the acronym 'WHM'.

<sup>3</sup> Migration (LIN 19/183: Arrangements for Working Holiday Visa Applications) Instrument 2019 <https://www.legislation.gov.au/Details/F2019L00903>.

<sup>4</sup> Janet Phillips, 'Australia's Working Holiday Maker Program: A Quick Guide' [2016] *Parliamentary Library, Parliament of Australia* 6.

<sup>5</sup> Migration (LIN 19/184: Arrangements for Work and Holiday Visa Applications) Instrument 2019, <https://www.legislation.gov.au/Details/F2019L00918>.

## Size and composition

The WHM programs have grown substantially over time, however the overall volumes peaked during the 2012-13 financial year. The demand driven nature of many of the reciprocal agreements mean that there is no 'cap' on the numbers who may apply and be granted the visa.

Program volumes are influenced by a variety of factors. For example, during the Global Financial Crisis (2008-2012), while many overseas nations were experiencing extreme economic challenges, Australia was relatively unaffected. As a result, large volumes of WHMs sought to enter Australia during this period with primary 417 grants peaking at 210,369 in 2012-13.<sup>6</sup>

Subclass 462 visa grants represent a small but growing percentage of the total 417 visa grants per year. The introduction of a second year for 462 visa holders has seen a growing number of renewals since 2016-17.

First year 417 visa grants averaged 150,000 per year from 2015-16 to 2018-19. The 2019-20 financial year saw a reduction to 92,282 grants, likely a direct result of border closures related to the Covid-19 pandemic. This is the lowest level since 2003-2004.<sup>7</sup>

It is likely that border closures will maintain downward pressure on new WHM visa grants for the duration of the pandemic.

## Eligibility

Eligibility to the WHM programs varies between the Subclasses. For most 417 applicants, it is sufficient to have funds to meet costs, meet health and character requirements, and have no intention to bring dependent children. A higher threshold applies to many 462 visa applicants. This includes the requirement for Functional English, a letter of support from government and/or a tertiary qualification. The LIV does not recommend changes to the current eligibility requirements.

---

<sup>6</sup> Working Holiday Maker visas granted pivot table: 2019-20 to 30 June 2020 - comparison with previous years, Commonwealth of Australia 2020, <https://data.gov.au/data/dataset/visa-working-holiday-maker>

<sup>7</sup> Phillips (n 4).

## Program Access

Both programs have continued to expand access to a range of foreign nationals in recent years. However, the LIV notes that there is real potential for an extended pandemic period to see a major reduction in offshore WHM grants and travel. This would have major impacts on Australia's many regional areas which rely on labour supplied by WHMs for seasonal work.

In addition, the reduction in cross border travel during the pandemic period will result in a reduction in NOM with the lower levels of WHM contributing to this accordingly. Given the use of NOM to optimise local growth, there is potential for the reduction in WHMs to result in decreased aggregate demand in the economy and cause critical shortfalls in horticulture.

As access to the program is suppressed due to lower levels of entry, the economy would benefit from maximising the economic participation of temporary migrants. In the case of WHMs this could be achieved by extending the visa period to 2 years.

Increasing the initial visa period to 2 years will provide applicants with greater certainty of their ability to stay in Australia and establish longer term connections. It would likely increase workforce participation of those WHMs in Australia as lower levels of WHM holders enter the country over time, and provide employers to access to workers able to meet local labour demand.

As discussed below, the LIV submits that incentives could be implemented to encourage WHMs to work, live and study in regional Australia to develop build ties with communities and encourage longer term regional settlement.

**Recommendation 1:** In order to increase the positive economic impact of temporary visa holders, the WHM program settings should be altered to extend the initial visa period to 2 years, with a further renewal for 2 years.

**Recommendation 2:** Maximise the potential contribution of WHM in the Australian economy by increasing the 2<sup>nd</sup> visa period to 2 years.



## TERM OF REFERENCE 2:

### **The value of the program to Australia's economy, including tourism, health care and agriculture sectors**

WHM have increasingly provided a critical source of labour in the agriculture sector, in particular horticulture, as well as tourism and aged care. The flexibility of WHM labour is considered highly desirable in many of these sectors, where demand and supply fluctuate significantly with seasonal and other factors. The benefits WHMs bring to the economy is well documented, both in terms of expenditure across different sectors during their time in Australia and fulfilling gaps in the labour market.

WHMs fulfil a valuable role in the Australian economy and community. The WHM visa acts as a 'soft' entry point to Australia with many WHM holders moving to employer sponsored visas, in particular the Temporary Skill Shortage Subclass 482 visa. Many former WHM visa holders remain as temporary residents for several years with a large number seeking a pathway to permanent residency. This de facto pathway should not be ignored.

Many WHMs are skilled professionals and tradespeople who bring sought after skills to the Australian economy. Of these, a large portion wish to remain long term or permanently in Australia due to its perceived high standard of lifestyle. These individuals often have pathways to permanent migration through the employer sponsored and skilled visas.

WHMs may fill roles in the local economy that Australians are unwilling to perform, such as manual labour in agriculture, horticulture, and other sectors. There is significant demand in regional Australia for population growth, with many communities relying on migration to survive.<sup>8</sup> Creating pathways to permanent residency for WHMs who show a commitment to remaining in regional communities has the potential to greatly benefit the economy and regional communities.

The LIV submits that the government should consider how those WHMs who are interested in living in regional communities can be directed toward term regional settlement through incentives to build relationships and a sense of connectedness in these communities. Encouraging extended periods of stay in regional communities is likely to increase the likelihood of temporary migrants staying in these environments.

The LIV proposes that incentives could include the ability to renew a visa based on extended periods of volunteering, work, study, etc. If applicants held a 2 year visa it would not be

---

<sup>8</sup> Australia et al, *Regions at the Ready: Investing in Australia's Future* (2018) 55–57 ('*Regions at the Ready*').

unreasonable to require them to remain in a regional area for 12 months. Rather than restricting the requirement to employment, the policy would remove any incentive for employment related fraud and reduce the power of potentially exploitative employers.

**Recommendation 3:** Implement policy incentives for WHM to remain longer term in regional communities with a view to building community connectedness and increasing the chances of longer-term residency.

## TERM OF REFERENCE 3:

**The ongoing impact of COVID-19 nationally and internationally on the program**

### Onshore WHM Visa Holders

There are likely to be a large number of onshore WHMs who will be unable to complete the required period of specified work. State government lockdowns and border closures will prevent these visa holders from finding suitable regional work. As a result, these individuals will not be able to meet the requirement to renew their current visa. This is likely to result in a reduction of temporary visa holders in the community. With highly limited numbers of temporary migrants entering Australia, this will impact regional labour markets by reducing availability of labour and reducing spending in these communities.

Some of those WHMs unable to complete temporary work may seek alternative visa options to remain in Australia in particular student visas. These individuals are likely to have their work capacity reduced to 20 hours per fortnight while their courses are in session. This trend is likely to see WHMs shift from regional areas to urban centres and reduce the overall available work hours. Our members note that this is likely to have a negative impact on regional communities.

To address this issue, the WHM regulations should be amended to waive the 3 month work requirement for WHM holders who are onshore. This will prevent loss of a number of WHMs in critical sectors.

**Recommendation 4:** For WHM holders who are currently onshore, waive the specified work requirement for renewal of a 2<sup>nd</sup> or 3<sup>rd</sup> year visa.

### Offshore WHM Visa Holders

Another impact of the pandemic is the inability of many offshore WHM visa holders to enter the country. WHM visas are typically granted with the right to enter Australia within 12 months of grant date.

The LIV is aware from anecdotal experience that some offshore WHM apply for the visa months in advance of their anticipated entry date and the pandemic has prevented their entry. Many more who applied will be unable to enter as the border restriction period continues. Granting a universal 12-month extension for any overseas WHM visa holders would increase

the pipeline of WHMs seeking to enter Australia when border restrictions are lifted. As noted already, the economic contribution of this class of visitor has been shown to be a major positive contribution to the community.

**Recommendation 5:** Grant a universal 12-month extension for offshore WHM who have been unable to enter Australia during the relevant period due to the pandemic

## Onshore Program Access

The complexities of international border crossings and desirability to retain temporary residents in Australia for a longer period suggest a strong case for the expansion of the WHM programs to onshore applicants.

**Recommendation 6:** Create a pathway for onshore WHM applicants, to enable onshore students and other temporary visa holders to transition to a longer-term visa with the potential to contribute to the economy.

## Potential Future Impact

Should the current pandemic extend for a period of years then the limited ability for individuals to enter Australia is likely to result in a large reduction in the WHM program. As noted at Recommendation 1, one way to address this issue is to increase the visa period to encourage longer term contribution to the economy.

Where it is possible to establish travel bubbles with existing WHM nations (South Korea, Taiwan, Japan, HK, Singapore, etc.), the government would be well advised to increase the desirability of the WHM program to nationals of these countries. This could be achieved by:

- Extending the visa period (as noted in TOR 1)
- Providing more clearly defined entry points to the broader migration program
- Focusing incentives on participation (living, working, volunteering) in regional communities with a view to longer term migration into these areas

**Recommendation 7:** Leverage off cross border arrangements to maximise the potential number of WHM entrants during the pandemic period. This could be achieved by limiting 2 - year visa extensions to countries with reciprocal travel arrangements (i.e. travel bubble)

## TERM OF REFERENCE 4:

**The potential economic impacts on regional economies due to the disruptions of access to Working Holiday Makers relied upon especially for the agricultural and tourism sectors and the capacity, if any, for Australians made unemployed by COVID-19 to fill the labour shortage**

### Impact on Regional Communities

The extent of the impact of disruptions to the program volumes are likely to be commensurate with regional usage of the program. Australian regions are very diverse and local economic conditions range from near zero unemployment to high levels of local unemployment.

The likely reduction in WHM visa grants will impact those sectors most reliant on these visa holders, agriculture (in particular horticulture), tourism, and hospitality. However, the nature of the pandemic means that tourism and hospitality themselves have experienced suppressed levels of activity, meaning a lower level of demand for labour.

In areas of labour shortage, WHMs have historically filled labour market gaps that locals have been unwilling or unable to perform. In the horticulture sector, there are a number of reasons WHMs are more likely to perform work that is unappealing to locals:

- Physical and social mobility
- Willingness to perform seasonal or temporary work
- Incentives built into the WHM visa programs
- Age profile (performing the types of physical labour required, in particular in the horticulture sector is likely to be less demanding on this age group than the median Australian worker who is 39 years old)
- Prevailing remuneration methodology of horticultural work (i.e., piece rates)
- Perception of poor work conditions in target sectors (OHS, reports of mistreatment, etc.)
- Lack of infrastructure in regional areas (transportation, accommodation, etc.)

Given the large number of factors which suppress local labour supply, ensuring sufficient number of WHV holders are available to perform work is critical.

Secondly, while some of these factors cannot be influenced (such as the physical nature of the work or geographic spread), factors such as remuneration, working conditions, and OHS, need to be addressed outside the migration sector to make the work more palatable to a local workforce.

## Capacity of Australians to meet demand

Historically, many migrant groups have contributed to unskilled, regional labour supply. However, there is a clear demographic trend for various ethnic communities to participate less and less in these sectors over time.

Further, it should be noted that the Australian population has limited levels of regional or interstate mobility. The current pandemic is unlikely to fundamentally alter established mobility patterns in the members of the community.

In agricultural work in particular, there are numerous other barriers to greater local participation in the horticulture sector including:

- Lack of regional infrastructure (poor transport links and limited accommodation options)
- Issues with irregular and seasonal employment
- Geographic spread and localised demand
- Underpayments and non-compliance
- The perception that horticultural work is physically taxing
- Prevailing remuneration strategies (i.e. piecework)

Regional Australia lacks significant transport and accommodation options for people who are not settled in the local community. Owning a vehicle is often a necessity in areas outside capital cities. The lack of population and tourism in many areas means accommodation is a scarce resource.

The nature of employment in agriculture and tourism make employment often undesirable. Both sectors are perceived as low wage employers and this is exacerbated by the lack of stability. Being forced to move between locations to seek employment means that already low levels of remuneration provide less support as workers spend a significant period between jobs.

The 'tyranny of distance' adds to this challenge with seasonal work demands requiring workers to move large distances, often between states - another challenge of the current pandemic.



Finally, the horticulture sector in particular has a reputation of having poor work conditions involving challenging physical labour, low levels of OHS, and problematic remuneration.

The existence of 'piece work' arrangements in the Horticulture Award mean that there is effectively no minimum wage for horticulture workers. There are numerous factors which contribute to downward pressure on remuneration, however it is highly likely that Australians will largely remain unwilling to work in the sector until the issue of remuneration is addressed.<sup>9</sup>

## Exploitation

The WHM program has been criticised for failing to address worker exploitation. Examples of exploitation have circulated widely and for many years. The introduction of the Register of W+HV employers was one effort to address this issue, as have been State Labour Hire laws.<sup>10</sup> However, these measures have not been sufficient to prevent exploitation.

The agriculture and horticulture sectors are perceived to be the source of a number of worker exploitation issues related to unlawful employment arrangements, underpayments, exploitation by primary producers and labour contractors, and unemployment. The requirement to complete 3 months regional work has also been criticised as a nexus for misconduct – both by employers and WHMs seeking to avoid completing the work.

Government must recognise that the vulnerability of WHM is likely to vary based on a number of factors, but predominantly on national origin. WHM cohorts from countries with a high level of income and social welfare arrangements are likely to be less vulnerable (owing to their ability to return to a home country with high living standard) than those from less developed countries.

To address this, the government needs to ensure that relevant regulatory authorities are well resourced, including the Department of Home Affairs, the Fair Work Ombudsman and other employment regulators.

---

<sup>9</sup> Joanna Howe, Stephen Clibborn and Alexander Reilly, 'Towards a Durable Future: Tackling Labour Challenges in the Australian Horticulture Industry' *University of Adelaide* 133.

<sup>10</sup> *Labour Hire Licensing Act 2018* (Vic); *Labour Hire Licensing Act 2017* (SA); *Labour Hire Licensing Act 2017* (Qld).

## Issues in the Agricultural Sector

Any policy changes to address the role of the WHM programs in the agriculture sector need to take into consideration the increase in unlawful non-citizens and Temporary Residents working without visa rights (collectively ‘undocumented’ workers) in this sector. In the most comprehensive review to date, Howe et al. assess the undocumented population to be between 50-90,000.<sup>11</sup>

The use of undocumented workers results in illegal work conditions with low levels of remuneration and poor conditions. Farmers seeking to compete using lawful labour practices find themselves unable to compete as a result of the lower cost base of exploitative employers.<sup>12</sup>

Without addressing the conditions which have enabled the growth of undocumented workers the issues in the agricultural sector cannot be addressed and WHM will remain vulnerable to exploitation and Australians who would work in the sector will be disincentivised.

WHMs are by nature young and often at risk of exploitation. Further steps need to be taken to ensure that they are protected from employer misconduct and exploitation. In particular, the trend of taking action against visa holders rather than exploitative employers or labour contractors, needs to be reversed.<sup>13</sup>

### Recommendation 9:

Ensure that the Department of Home Affairs, Fair Work Ombudsman, and other investigative authorities are appropriately resourced. Consider resourcing mechanisms such as empowering the investigators to seize assets from misconduct to meet costs. Secondly, address issues of alleged exploitation and abuse at the employer / contractor level, not with individual visa holders.

---

<sup>11</sup> Op Cit 9

<sup>12</sup> AUSVEG, Visa extensions for critical farm workers a sensible, practical solution for growers, 4 April 2020 <https://ausveg.com.au/media-releases/visa-extensions-for-critical-farm-workers-a-sensible-practical-solution-for-growers/>

<sup>13</sup> ‘In 2017, for instance, some 396 illegal worker penalty notices were issued to employers, while in the same period, 6948 unlawful non-citizens were removed from the country.’ Sanmati Verma, ‘Undocumented Workers on Australian Farms and their Rights’ Paper presented at Law Council of Australia 2020 National Conference, 7 March 2020.

## Improved reporting tools for WHM and employers

One of the key issues with worker exploitation and abuse has been the inability of exploited parties to take action. The creation of a WHM employer register was a positive initial step. Further work could be done to provide relevant tools to monitor work conditions and payments. Examples include connecting the one touch payroll system and visa reporting systems. Other potential measures include providing information to employers who engage WHM visa holders through the VEVO system could be another way of educating Australian employers of their rights and obligations when engaging WHM visa holders.

**Recommendation 10:** Continue to link existing government software systems to identify and address misconduct in employment. Identify opportunities for new software tools to track employment terms and conditions to prevent exploitation and abuse.

## TERM OF REFERENCE 5:

**The extent to which existing visa criteria and conditions related to Working Holiday Makers are still adequate and appropriate to address the purpose of this program, including cultural exchange and creating job opportunities for Australians**

## Recent policy changes to increase maximum work period in critical sectors in response to the COVID-19 pandemic

The government has recently announced greater flexibility for WHM employed in critical sectors to work beyond 6 months for their employer. Critical sectors have been defined to date as food production, child, aged, and health care.<sup>14</sup>

The LIV recommends that these arrangements should be extended indefinitely for the duration of the pandemic to provide greater stability for employers. To support greater certainty, these concessions should be embedded in the program and included as 'specified work' for the purposes of visa extensions.

---

<sup>14</sup> Department of Home Affairs, 'Covid-19 and the Border: Frequently Asked Questions' (Web Page) <https://covid19.homeaffairs.gov.au/frequently-asked-questions>.

**Recommendation 11:** Extend existing arrangements for critical work indefinitely and list critical work as 'specified work' for the purposes of the program to promote participation.

Given the potential for the pandemic to reduce the volume of international border crossings for an extended period, these measures have the potential to retain a number of WHMs onshore to contribute to the local economy.

These measures could be further strengthened through use of existing government and non for profit ('NFP') agencies to link WHMs with programs to connect them with employers, volunteering, living arrangements, and broader community engagement opportunities.

Finally, ensure that appropriate levels of scrutiny are directed to assessing documentation to support applications for 2<sup>nd</sup> and subsequent WHVs to reduce the risk of fraud within the sector.

**Recommendation 12:** Focus on reducing fraud through detection and prosecution of both employers and visa holders engaged in misconduct.

## Cultural Exchange

The original purpose of the WHM programs was the advancement of international ties between countries through a youth exchange program. Opening the program to enable WHM holders to renew their visas on the basis of engaging in cultural or community activities would potentially re-invigorate the program. This could be achieved through the creation another 'visa stream' which explicitly focuses on cultural or community activities, or alternatively by replacing the 'specified work' definition with a broader set of 'specified activities'.

Such arrangements could operate through a variety of mechanisms, for example, enabling well established community organisations to certify participation in volunteering and community activities. This has the potential to create a high level of community involvement if such arrangements are appropriately publicised and potential applicants are made aware of the opportunity.

Limiting the cultural stream to regional communities has the potential to encourage WHM to forge strong bonds with local communities and encourage longer term settlement. It is now a well-established understanding in settlement services that community ties are a major factor in longer term settlement. Combining a cultural / community stream with a longer-term pathway to permanent residency in regional areas has the potential to achieve the goal of regional development.

**Recommendation 13:** Revisit WHM program requirements to encourage those who wish to participate in cultural and community activities in regional communities, such as volunteering, by allowing a broader range of activities to be recognised beyond paid work.

## TERM OF REFERENCE 6:

### **The extent to which the program can support economic recovery in regional Australia**

As noted above, the WHM program has the potential to meet local labour demands, contribute financially to regional communities, and, through the correct incentive structure, encourage regional settlement. By creating greater incentives for regional work and engagement, the WHM has the potential to add significant value to regional recovery. Such steps would require appropriate links be made between WHM visa holders and local service providers, including community groups, charities, government service providers.

## Using the WHM program to incentivise non-urban settlement

Some academics suggest that one of the major issues in regional communities is not industry specific labour demands but broader need for population growth and general labour. In this respect, creating incentives for WHMs to live, reside and work in regional communities, forming relationships and building both community and personal connections should be encouraged.

Furthermore, the government should seek to incentivise individuals who wish to remain regionally to establish residency in these areas and provide an explicit pathway to permanent residency.

The LIV recommends that one option is to review the Subclass 491 Skilled Work Regional (Provisional) visa and Subclass 494 Skilled Employer Sponsored Regional (Provisional) visas to create a privileged pathway for WHMs who choose to live and reside in non-urban locations onto these visas.

**Recommendation 14:** Review the SWR 491 and SESR 494 to create pathways to permanent residency for long term regional residents on WHM visas.

## TERM OF REFERENCE 7:

### **Any other related matters**

The LIV encourages the government to ensure there is consistency between the 417 and 462 regulations wherever possible. Our members inform that greater alignment and consistency are likely to result in fewer visa refusals. Additionally, we encourage the government to require WHM applicants to disclose personal relationships, such as marriage and de facto status, for greater clarity in subsequent application. Furthermore, the LIV submits that the government to continue to take steps to better educate visa holders about Australian employment conditions and work rights.

## CONCLUSION

The Working Holiday Maker program has a major impact in regional areas, in particular areas with large scale horticultural need. It is well established that WHMs do make a positive contribution to the economy and, therefore, efforts should be made to ensure current WHMs have the possibility to remain.

The COVID-19 pandemic is likely to result in suppressed offshore access and potentially place downward pressure on onshore renewals for a significant period. Steps should therefore be taken to increase the potential contribution of WHMs to the current economic efforts and the recovery. This can be achieved by enabling longer term work in critical sectors.

Given the likelihood of reduced offshore entry, future WHMs should be provided with the opportunity to remain longer to make a greater economic contribution. Creating more significant incentives to remain in regional areas, in particular by contemplating an explicit pathway to residency in regional areas for long term WHM residents has significant potential to attract people to regional areas.

Broadening the potential contribution of WHMs by acknowledging the importance and relevance of cultural and community activities has the potential to benefit temporary visa holders.

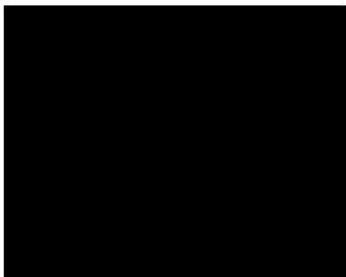
It is well known that there are several issues with irregular employment in the agricultural and horticultural sectors. Well established features of horticultural work in particular mean that it is unlikely that many locals will participate in this sector despite the economic downturn and local unemployment.



Efforts should be made to eliminate or at least reduce exploitation of WHMs through application of a wide array of policy tools including better resourced regulatory authorities, increased prosecutions and penalties, focus on employers / agents engaged in wrongdoing rather than visa holders, and the creation of effective tools to monitor employment issues. Government should continue to take steps to educate WHMs through multilingual online information sources.

The LIV welcomes further opportunities to provide feedback and be consulted on any proposed changes in the migration law jurisdiction. Please contact the Policy Officer to the LIV's Administrative Law and Human Rights Section, [REDACTED] at [REDACTED] or on [REDACTED] should you have any queries regarding this submission.

Yours sincerely



**Sam Pandya**

President

Law Institute of Victoria