

# ECONOMIC AND SOCIAL CONSEQUENCES OF CHANGING TAXATION ARRANGEMENTS TO WORKING HOLIDAY MAKERS

Adam Steen\* & Victoria Peel#

*The Australian Government's Working Holiday Maker program currently enables persons 18 to 30 years of age from selected countries to visit Australia for a working holiday. Empirical evidence suggests these visitors make a significant positive economic contribution to the economy. Recent changes in government policy involving Working Holiday Maker visa arrangements, including changes to taxation of Working Holiday Maker earnings, have the potential to change the attractiveness of Australia as a destination of these tourists. This paper addresses these changes and explores the possible implications for Working Holiday Makers, employers and the economy in general.*

## 1. INTRODUCTION

Since the mid-1990s, Australian governments at all levels have recognised the need for a balanced migration program that contributes to the economic, social and demographic development of regional Australia.<sup>1</sup> The Australian Government's Working Holiday Maker (WHM) programs comprising visa subclass 417 (Working Holiday Maker) and visa

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\* Professor, Charles Sturt University, Bathurst.

# Researcher, Monash University, Caulfield.

<sup>1</sup> Chandra Shah et al, 'Skilled Migration: Australia' (2005) *Centre for the Economics of Education and Training, Monash University Working Paper No. 63.*

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subclass 462 (Work and Holiday) currently enable persons 18 to 30 years of age to visit Australia for a working holiday from nineteen and twelve countries respectively.<sup>2</sup> WHMs differ from ‘backpackers’ although the terms are often used interchangeably.<sup>3</sup> The original ethos of the WHM and Work and Holiday visas primarily addressed demand for tourism and cultural exchange supplemented by incidental short-term work.<sup>4</sup> This focus on employment to support extended periods of travel differentiates WHMs from other leisure oriented youth travellers whose visits are typically shorter in duration and who do not work during that time.

As shown in Table 1, overall the number of Working Holiday Maker visas granted has grown considerably since the program’s inception. In 2014-15, a total of 214,830 working holiday 417 visas were granted to young people from overseas (along with a further 11,982 subclass 462 Work and Holiday visas). Although the total number of visas granted peaked in 2012-13 the number still remains substantial. Major source countries include the UK, Germany, France, Taiwan and South Korea with the number of visas granted from these countries remaining relatively constant. The exception is Canada which has shown a considerable decline in numbers over the last four years. It should be noted that the number of visa applications granted is well over 90 per cent for all source countries with very little variation between countries.

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<sup>2</sup> Working Holiday subclass 417 partner countries as at 1 January 2016: Belgium, Canada, Cyprus, Denmark, Estonia, Finland, France, Germany, Hong Kong, Ireland, Italy, Japan, Korea (Republic of), Malta, the Netherlands, Norway, Sweden, Taiwan, United Kingdom. Work and Holiday subclass 462 partner countries as at 1 January 2016: Argentina, Bangladesh, Chile, Indonesia, Malaysia, Poland, Portugal, Spain, Thailand, Turkey, USA, Uruguay.

<sup>3</sup> Fiona Allon et al, ‘Mutant mobilities: backpacker tourism in ‘global’ Sydney’ (2008) 3 *Mobilities* 73.

<sup>4</sup> Tourism Australia. (2016) <<http://www.australia.com/en/planning/working-holiday-visa-faq.html>>.

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This highlights the fact there are no caps or quotas imposed on 417 visa numbers.

Country of Origin	2010/11	2011/12	2012/13	2013/14	2014/15
United Kingdom	38,974	41,712	46,131	45,208	44,730
Germany	13,809	22,393	35,761	29,366	26,648
France	21,146	22,499	26,184	26,819	26,327
Taiwan	30,527	32,591	35,220	26,893	25,589
South Korea	18,530	20,086	24,788	25,734	23,375
Italy	6,429	9,600	15,973	16,045	14,138
Japan	7,746	9,162	9,957	10,579	11,481
HKSAR	4,545	7,512	11,454	11,667	9,720
Canada	21,753	25,827	19,117	11,996	7,793
Ireland	7,899	7,929	7,489	7,174	7,705
Sweden	4,121	4,772	5,364	5,464	4,995
Netherlands	3,821	3,879	4,306	4,293	4,518
Belgium	1,230	1,456	1,785	2,012	2,188
Estonia	1,453	1,813	2,185	2,206	1,736
Finland	1,066	1,181	1,278	1,510	1,624
Denmark	1,260	1,484	1,516	1,672	1,576
Norway	836	617	504	530	503
Malta	88	99	89	98	103
Cyprus	18	32	128	110	78
Not Specified	229	-	<5	<5	<5
Total	185,480	214,644	249,231	229,378	214,830

Table 1: Number of working holiday visas granted in Australia financial years  
 Source: Department of Immigration and Boarder Protection, (Cth) *Working Holiday Maker visa program report* 30 June (2015) 19.

Significant changes to the WHM visa 417 regulations since 2005 have increasingly acknowledged the scheme's positive

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contribution to short-term labour shortages in Australia. From April 2005 WHMs were entitled to apply for an extension of a further year on the original one year visa if able to demonstrate having undertaken a minimum 88 days work with one employer in specified jobs in rural Australia. This change was specifically designed to address labour demand in the horticultural industry in the areas of picking and processing of fruit and vegetables but was soon extended to cover other areas of labour shortfall. In 2007, mining, tree felling and farming, pearling and fishing, and regional construction work were added to the list of prescribed industries. In each case, visa holders were permitted to remain only six months with a single employer.

Volunteer work such as re-building communities affected by flood or fire damage, while originally recognised industries for second visa applications, was revoked in mid-2015. However, two recent initiatives designed to supplement the mobile workforce specifically in Northern Australia have been released. From the close of 2015 both 417 and 462 visa holders are permitted to apply for an extension of the 6 month rule to enable work for 12 months with one employer if conducted in Northern Australia. The specified industries comprise aged and disability care, mining, tourism and hospitality, construction, agriculture, forestry and fishing. In 2016, 462 visa holders will also be granted a second visa if they fulfil the requirements of working 88 days in the areas of tourism and hospitality and agriculture in Northern Australia.

Applications for the second year visa have increased rapidly since the extension was offered. In 2005-2006, second year visa grants numbered 2,962 which increased to 41,339 grants in 2014-15.<sup>5</sup> By June 2015 second visa applicants constituted over 19 per

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<sup>5</sup> Department of Immigration and Border Protection (Cth), *Working Holiday Maker Visa Program Report*, (2015) June  
<<http://www.border.gov.au/ReportsandPublications/Documents/statistics/working-holiday-report-june15.pdf>>.

cent of the overall working holiday program. Growth in the number of second year applications illustrates the strong desire by WHMs to gain ongoing work and prolong their stay in Australia. Concurrently, WHMs as a casual labour force also stimulate the Australian current account surplus through general living expenditure and more specifically their engagement in tourism.<sup>6</sup> Their contribution to international tourist expenditure in Australia is a key factor which differentiates the economic contribution of WHMs from other short term working visa holders such as those on the Temporary Work (skilled) visa (subclass 457).

Recent changes to the work arrangements of WHMs however, including taxation of WHM earnings, amid other concerns about labour exploitation have the potential to change the attractiveness of the WHM visa. This paper addresses these changes and explores the possible implications for WHMs, employers and the Australian economy in general. We examine the importance of the WHM visa scheme to the Australian tourism industry and broader economy.

## 2. WORKING HOLIDAY MAKERS IN AUSTRALIA

Traditionally WHM have been portrayed as young people from English-speaking countries who are better educated than the average member of the Australian workforce but are prepared to undertake jobs that are disproportionately low skilled. Harding and Webster<sup>7</sup> note of international WHMs in Australia more than a decade ago, about a third of WHMs had completed a bachelor degree, and an additional 27 per cent had only completed secondary school. About one sixth were part way through a

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<sup>6</sup> Yan Tan et al, 'Evaluation of Australia's Working Holiday Maker (WHM) Program' Flinders University (2009).

<sup>7</sup> Glenys Harding et al, 'The working holiday maker scheme and the Australian labour market' Workplace Relations and Small Business and the Department of Immigration and Multicultural Affairs (Cth) (2002).

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postsecondary qualification. There were a few differences between countries. WHMs' level of post school qualifications compared very favourably with the educational profile of Australian residents working in typical low skill casual jobs. Two thirds of the WHMs who came to Australia had been working in the two years prior to arrival. One third had been studying. The main type of prior work was professional work (43 per cent) followed by trade or craft work and clerical work (both 14 per cent). While in Australia 85 per cent of WHMs engaged in some paid employment during their visit. Of those who engaged in employment, about 50 per cent held two jobs and nearly one third held one job during their visit to Australia. The main occupations were fruit picking, hospitality, clerical and builder's labourer.

Harding and Webster<sup>8</sup> found few differences in the work patterns of WHMs between countries, although Canadians were more likely to be employed as waiters and those from the Netherlands were more likely to be employed as fruit pickers. Irish WHMs were found more frequently in labouring jobs or professional occupations (other professional and tradesperson). Employment occurred mainly in the eastern states as well as Western Australia, with the highest proportion being employed in New South Wales. In all states except Queensland, the majority of jobs were in the capital cities. In Queensland, the jobs were more evenly spread throughout the state.

Close analysis of the WHM, their activities and motivations, such as that by Harding and Webster<sup>9</sup>, is notably limited. Extant academic research addressing WHMs typically falls into three fields. Firstly, research in relation to 'working conditions, worker recruitment difficulties and labour shortages'.<sup>10</sup> WHMs are also

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<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Jayde Hanson et al, 'Harvest trails in Australia: Patterns of seasonal migration in the fruit and vegetable industry' (2007) 23 *Journal of Rural Studies* 101.

scrutinised in the related fields of temporary migration and labour patterns<sup>11</sup> and associated government policy initiatives.<sup>12</sup> A second stream of research addresses WHMs in the context of their tourism impacts on host destinations.<sup>13</sup> WHMs feature in an expanding literature on the contemporary age of hyper-mobility and transnationalism and the opportunities for regional development through tourism which it affords.<sup>14</sup> Thirdly, a significantly smaller quantity of research has addressed the cultural elements of WHMs experience in Australia.<sup>15</sup>

## 2.1 Economic significance of WHMs

The importance of WHMs as a combined tourism market and labour force has been widely acknowledged by both the tourism industry and labour economists. A 2009 Department of Immigration and Citizenship study<sup>16</sup> identified each WHM as spending AUD 13,218 in Australia over an average 8 month stay with a combined total value estimated at AUD 1.8 billion.

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<sup>11</sup> Harding et al, above n 7; Graeme Hugo, 'Temporary migration and the labour market in Australia' (2006) 37 *Australian Geographer* 211.

<sup>12</sup> Harding et al, above n 7; Yan Tan et al, above n 6.

<sup>13</sup> Lisa Ruhanen, 'Working while travelling: Tourism development opportunities for agricultural regions' (2010) 58 *Tourism* 173; Jeff Jarvis et al, 'Tourists for hire: International working holidaymakers in a work based destination in regional Australia' (2013) 37 *Tourism Management* 114; Hayato Nagai et al, 'Exploring travel risk perceptions among Asian working holiday makers in Australia: A qualitative approach' (2014) Council of Australasian Tourism and Hospitality Educators Conference, Brisbane, Queensland, 429.

<sup>14</sup> Erik Cohen 'Backpacking: Diversity and change' in Greg Richards and Julie Wilson (eds), *The Global Nomad: Backpacker Travel in Theory and Practice* UK: Channelview Publications 3; Nick Clarke, *Mobility, Fixity, Agency: Australia's Working Holiday Programme*. (2004) 10 *Population, Space and Place* 411.

<sup>15</sup> Trevor Wilson, 'A leap into the Future: the Australia – Japan Working Holiday Agreement and Immigration Policy' (2008) 28 *Japanese Studies* 365; Jude Wilson et al, 'The OE goes 'home': Cultural aspects of a working holiday experience' (2009) 9 *Tourist studies* 3.

<sup>16</sup> Yan Tan et al. above n 6.

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Harding and Webster<sup>17</sup> found that while 0.511 Australians were displaced in employment by each WHM, on average, 0.613 Australians gain a job through their total spending. Most jobs are created in the same tourism and hospitality industries where WHMs work. The net impact of each WHM accordingly is an additional 0.102 full year jobs. This means that for an annual intake of 80,000 WHMs, about 41,000 effective full-year jobs will be taken by WHMs, but about 49,000 effective full year jobs will be created through the WHM expenditure. This indicates that about 8,000 effective full year jobs are created by an intake of 80,000 WHM.

Using data from two large surveys in 2008, one of WHMs and one of firms that employed WHMs, Tan and Lester<sup>18</sup> evaluated the labour market and the economic impacts of WHMs by the application of descriptive analysis and econometric modelling. The analysis demonstrates that the net impact of WHMs is positive for the Australian economy and for employment by increasing the demand for Australian workers because WHMs spend more than they earn while in Australia. Tan and Lester estimated that every 100 WHM arrivals created about five net full-time equivalent jobs in Australia. More than half of WHM jobs in Australia were in two industries: 'accommodation' and 'agriculture'.<sup>19</sup> Nonetheless, the majority of jobs in which WHMs work are low skilled, low paid, and in urban areas. In these jobs, WHMs compete with the local low-skilled labour force and with local youth who seek similar types of jobs.

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<sup>17</sup> Harding et al, above n 7.

<sup>18</sup> Yan Tan and Laurence Lester, 'Labour market and economic impacts of international working holiday temporary migrants to Australia' (2012) 18 *Population, Space and Place* 359.

<sup>19</sup> Ibid.



The importance of WHMs to the regional economy particularly in providing seasonal labour has been noted.<sup>20</sup> About 40 per cent of WHMs in 2008 found work in regional areas.<sup>21</sup> Traditionally many rural jobs such as fruit picking have been filled by permanent itinerants but in recent years as the number of permanent itinerants has fallen there has been a sharp rise in the number of Retirees and Working Holiday Makers from Overseas to compensate, each with distinctive spatial circuits.<sup>22</sup>

In terms of employment WHMs are at a disadvantage compared with local youth as they cannot work for any single employer for longer than three months. It might therefore be assumed that employers would prefer local youth for all non-seasonal and temporary jobs unless WHMs possess additional advantages over local youth such as skills or personal qualities. Results from the survey reported in Harding and Webster<sup>23</sup> suggest that only a minority of WHMs have advantages over local youth. Some employers, for example, believed that WHMs were more motivated than local youth while 14 per cent of employers surveyed needed workers who could speak a foreign language. Generally, employers surveyed did not regard WHMs as more skilled despite being more qualified on average. Neither did they believe the WHMs to be more honest, better spoken or harder working.

Harding and Webster<sup>24</sup> found that employers generally hire WHMs because of their ready availability. Local unemployed youth do not hold a strong interest in these jobs and were not

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<sup>20</sup> Jayde Hanson et al, 'Harvest trails in Australia: Patterns of seasonal migration in the fruit and vegetable industry' (2007) 23 *Journal of Rural Studies* 101.

<sup>21</sup> Mark Cully, *The contribution of migrants to regional Australia* (2011) Department of Immigration and Citizenship, Canberra.

<sup>22</sup> Hanson et al, above n 18; Yan Tan et al, 'Labour market and economic impacts of international working holiday temporary migrants to Australia' (2012) 18 *Population, space and place* 359.

<sup>23</sup> Harding et al, above n 7.

<sup>24</sup> *Ibid.*

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found to be as prepared to relocate for employment as the WHMs. They found that if the WHM scheme did not exist, only a fraction of these jobs would be likely to be taken by long-term unemployed Australian youth. Further WHMs were described as so effectively 'embedded' in Australia's short-term labour market as to cause drastic disruption to the harvesting of seasonal agricultural produce should their labour be withdrawn.<sup>25</sup> Harding and Webster<sup>26</sup> estimated that if the Working Holiday visas did not exist and the supply of WHM labour was withdrawn (assumed to be 80,000), there would be 40,909 more casual full year jobs, but only an estimated 10,100 of these jobs would be taken by unemployed youth.

The opportunities presented by WHMs as a significant element in the lucrative international backpacker market are also widely acknowledged by the Australian tourism industry. Tourism Victoria observed of WHMs in their *Backpacker Tourism Action Plan, 2009-2013*:

WHMs have been identified as the priority backpacker sub-segment for Victoria. WHMs can stay in Australia for up to two years, participating in the local economy and potentially alleviating labour shortages in the State. Anecdotal evidence suggests that backpackers in temporary employment in Melbourne or regional Victoria stay for longer periods of time resulting in increased yield. The

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<sup>25</sup> Malcolm Cooper et al, 'Harvest trails: Nomads join the mainstream?' (2004) in Greg Richards and Julie Wilson (eds), *The Global Nomad: Backpacker travel in theory and practice* 180–195; Channelview Publications: UK: Victoria Peel et al, 'Victims, hooligans and cash-cows: media representations of the international backpacker in Australia' (2007) 28.4 *Tourism Management* 1057.

<sup>26</sup> Harding et al, above n 7.

WHM segment is also less sensitive to seasonality issues.<sup>27</sup>

Since 1975, WHMs have sought work along conventional backpacker leisure routes in the capital cities and north-eastern coastal destinations where they are traditionally found in short-term hospitality and service roles. The visa extension of a further year on the original one year visa has significantly diversified this pattern by encouraging WHMs to move to regional areas traditionally off- the-beaten-track for backpackers in search of work. As WHMs have become a cornerstone of seasonal labour markets once dominated by itinerant local workers, previously unvisited destinations now host significant number of workers who are also international tourists pursuing leisure experiences. It has also been found that the WHM visa drives international tourist dispersal to regional destinations and facilitates unique forms of local enterprise.<sup>28</sup>

In February 2012 a position paper by the Australia Tourism Export Council (ATEC) indicated the importance of WHMs to tourism in major regional centres.<sup>29</sup> It stated that in regional centres the tourism industry accounts for 37 per cent of total employment compared to 27 per cent for capital cities. The ATEC paper also observed that WHMs are substantial purchasers of key tourism goods and services in these destinations, including food and retail goods which collectively account for 47 per cent of tourism output, and that the average expenditure of backpacker visitors was 60 per cent higher than the average expenditure for international tourists. The importance of the WHM program in

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<sup>27</sup> Tourism Victoria, *Backpacker Tourism Action Plan, 2009-2013* (2009) 22. <<http://www.tourism.vic.gov.au/images/stories/Documents/StrategiesandPlans/Backpacker-Tourism-Action-Plan-2009.pdf>>.

<sup>28</sup> Jarvis et al, above n 13.

<sup>29</sup> Janet Phillips, 'Working holiday makers and Australia's hospitality and horticulture industries,' Parliamentary Library, Parliament of Australia (2012). <[http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/FlagPost/2012/March/Working\\_holiday\\_makers\\_and\\_Australia\\_hospitality\\_and\\_horticulture\\_industries](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2012/March/Working_holiday_makers_and_Australia_hospitality_and_horticulture_industries)>.

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assisting with filling the significant labour shortages that these areas experience was also noted.<sup>30</sup> On the basis of their findings, ATEC recommended broadening the number of source countries, lowering visa fees and allowing multiple visa applications for young people aged up to 35 in line with other countries.

## 2.2 Labour exploitation and WHMs

Recently considerable coverage in the news media has been devoted to cases of alleged mistreatment of WHMs on 417 visas. On 4 May 2015, the Australian Broadcasting Corporation's *Four Corners* television program revealed exploitation of certain groups of migrant workers, including those on WHM visas, in the meat processing and horticulture industries. Issues included the underpayment of wages, excessive working hours, and sub-standard working conditions.

Following the ABC's *Four Corners* program, the Federal Government promised to review the rules governing the 417 visa. Accordingly, The Senate Education and Employment References Committee, considered Australia's temporary work visa programs including that of the 417 visa and the skilled temporary working 457 visa. An interim report was released in October 2015.<sup>31</sup>

The contribution of WHMs to low skilled jobs was highly valued in submissions by farmers and grower organisations who drew attention to difficulties in attracting suitable labour to rural and remote areas, particularly for short periods of time during the peak harvesting season. Farmers argued that WHMs were

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<sup>30</sup> Ibid.

<sup>31</sup> Senate Standing Committees on Education and Employment, Parliament of Australia, *The impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders*, (2015) Interim Report. Chapter 2.  
<[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/temporary\\_work\\_visa/Interim%20Report/c02](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/temporary_work_visa/Interim%20Report/c02)>.

indispensable to picking produce in a timely fashion and meeting peaks in production.<sup>32</sup>

Submissions to the committee also drew attention to the fact that while those on 417 or 462 visas were generally young, with lower than average English language skills, they lacked the same regulatory protections as temporary skilled workers on the 457 visa. The exploitation of vulnerable migrant workers on the 417 visa, and the role of labour hire contractors and sub-contractors in the systematic abuse of the WHM visa program, were highlighted during the committee's inquiry. Specifically, the committee heard from WHM visa holders in a public hearing in June 2015 that labour hire companies overseas were recruiting WHMs and that on commencing employment in Australia WHMs were systematically underpaid.<sup>33</sup>

Dr Joanna Howe of the University of Adelaide School of Law noted in a recent interview with the Australian Broadcasting Commission that 'increasingly the working holiday maker scheme is being used as a back door to the Australian labour market'.<sup>34</sup> Howe highlighted the reduction of WHMs from Ireland origin and increase in the number of those from Asian countries securing the visa 'primarily for work as exemplifying a departure of the scheme from its original intention. Howe noted that the scheme was 'designed chiefly for cultural and tourism motivations, with work incidental to leisure activities, there is no formal departmental monitoring of workers' locations or conditions'.<sup>35</sup>

In addition to the Senate Inquiry the Productivity Commission investigated the migrant intake into Australia in

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<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Clint Jasper, 'Reform needed to Working Holiday Maker visas to prevent exploitation', *ABC Rural* (online) 20 Jan 2015 <<http://www.abc.net.au/news/2015-07-20/temporary-work-visa-reform/6632684>>.

<sup>35</sup> Ibid.

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2015.<sup>36</sup> One notable submission into the inquiry by the Australian Council of Trade Unions (ACTU) proposed that the number of international WHMs should be curbed in favour of traditional permanent migration.<sup>37</sup> The ACTU submission noted that the 417 visa is not subject to any sponsorship or skill requirements, such as labour market testing, and the visa numbers are uncapped. The sole work restriction is condition 8457 which requires that the visa holder only work in Australia for a maximum of six months with each employer. Prima facie monitoring and enforcing compliance with this condition has been given a low priority. According to the ACTU some employers are basing their whole business model around using the labour of WHMs either for free, in some cases, or by paying them well below Australian award standards. Despite more than one million working holiday visas being granted in the past 7 years, no employer has been prosecuted for employing WHMs beyond the six month period.

In their submission the ACTU noted that in 2013-14, a total of 229,378 working holiday 417 visas were granted to young people from overseas while at the same time youth unemployment is currently 13.6 per cent, with around 285,000 Australians aged 15-24 looking for work.<sup>38</sup> They contend, however, that young overseas travellers should not be denied the chance to work in Australia and that the abolition of the WHM program would not immediately solve local youth unemployment. Rather, the potential impact of the 417 visa on the employment opportunities and conditions for Australian citizens,

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<sup>36</sup> Productivity Commission, Australian Government, *Migrant Intake into Australia* (2015) May <<http://www.pc.gov.au/inquiries/current/migrant-intake/issues/migrant-intake-issues.pdf>>.

<sup>37</sup> ACTU, Submission No 36 to the Productivity Commission Inquiry, *Inquiry into the migrant intake into Australia*, 12 June 2015, 27 <[http://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0007/190465/sub036-migrant-intake.pdf](http://www.pc.gov.au/__data/assets/pdf_file/0007/190465/sub036-migrant-intake.pdf)>.

<sup>38</sup> *Ibid.*

particularly on young Australians in lower-skilled parts of the labour market, must be fully scrutinised and reviewed.

The ACTU recommended that the working rights attached to the 417 visa be changed to return its operation to that of a genuine holiday visa with some work rights attached, rather than a visa which in practice allows holders to work for their entire stay in Australia. They also promote the introduction of a quota on the number of visas, as in other countries such as Canada. An annual cap based on advice from the tripartite Ministerial Advisory Council for Skilled Migration would, it is argued, take into account the existing labour market conditions for young Australians. It was noted that ‘section 85 of the *Migration Act 1958* already gives the Minister the power to cap or limit the number of visas which can be granted each year in a particular sub-class’ and that ‘the critical point is that it should be the labour market conditions in Australia that are the determining factor for working holiday visa numbers in Australia, not the labour market in the partner countries, as appears to be more the case at present.’<sup>39</sup>

In addition to the ACTU others have recently argued that the WHM and Work and Holiday programmes should be returned to their original conception of fostering a cultural experience for youth visiting Australia although chiefly as protection from labour exploitation.<sup>40</sup> Entitlements under the Working Holiday visa could be limited to work that is appropriate for young visitors on a brief cultural visit and labour shortages should otherwise be filled using dedicated temporary labour migration visas designed to address labour shortages in the economy.<sup>41</sup> Such reforms are necessary to protect the work conditions of local and migrant workers, to maintain Australia’s reputation as a country with high

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<sup>39</sup> Ibid.

<sup>40</sup> Alexander Reilly, ‘Low-cost labour or cultural exchange? Reforming the Working Holiday visa programme’ (2015) *The Economic and Labour Relations Review*.

<sup>41</sup> Ibid.

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employment standards and to maintain positive relations with countries across working holiday programmes.<sup>42</sup>

## 3. CHANGES TO THE WHM VISA CONDITIONS AND TAXATION ARRANGEMENTS

During the budget speech on the 12 May 2015, then Treasurer Joe Hockey announced two measures affecting those on both 417 and 462 visas. Firstly, that application fees for working holiday visas will rise from July 1, by 5 per cent.<sup>43</sup> The increased visa fee of AUD 500 is considerably higher than comparable fees charged by other countries such as New Zealand, which charges NZD 165 for a WHM visa, and Canada which charges CAD 100 to apply for an open work permit. For those from an exchange program partner country the United States charges USD 160.

The second and most significant change to working holiday arrangements is the change in residency status of WHMs for tax purposes. Currently, a WHM can be treated as a resident for tax purposes if they satisfy the tax residency rules, typically that they are in Australia for more than six months. Satisfying tax residency rules means WHMs are able to access resident tax treatment, including the tax-free threshold, the low income tax offset (LITO) and the lower tax rate of 19 per cent for income above the tax free threshold up to AUD 37,000.

There are four tests of residency contained within the definition of 'resident' in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA). There are four main tests for residency:

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<sup>42</sup> Ibid.

<sup>43</sup> Department of Immigration and Border Protection (Cth), *Visa Application Charges from 1 July 2015*, (2015) <<https://www.border.gov.au/ReportsandPublications/Documents/budget/VAC-increases-fact-sheet.pdf>>.



- Residency – the ‘resides’ test
- Residency – the ‘domicile’ test
- The 183 day rule, and
- The Superannuation test

Even if an individual is not a ‘resident’ according to ordinary concepts as identified below they may fall within one of the other tests.

(a) Residency according to ordinary concepts

Whether a person resides in Australia is a question of fact that depends on the individual’s circumstances. The following factors are considered:

- If the person returns to the country of origin – the frequency, regularity and duration of those trips and their purpose can be decisive factors. If the only reason for the person’s absence from Australia is business, this may not be enough in itself to support a claim that the person is not a resident.
- The extent of family and business ties which the person has, in Australia and in the country of origin.
- Whether the individual is accompanied by his or her family to Australia and on return trips to the country of origin.
- Whether the person is employed in the country of origin.
- Whether a place of abode is still maintained in the country of origin or is available for the person’s use while there.
- Whether personal effects are kept in Australia or in the country of origin.
- The extent to which any assets or bank accounts are acquired or maintained in Australia and in the country of origin.
- Whether the migrant has commenced or established a business in Australia.

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### (b) The domicile test

An individual is deemed to a resident of Australia under the domicile test if they have a domicile in Australia unless the Commissioner is satisfied that the person's permanent place of abode is outside Australia. The domicile test is discussed in Taxation Ruling IT 2650.

### (c) The 183 days test

Under the 183 days test a new migrant having regard to their terms of their migrant visa, who is present in Australia for more than 183 days (continuously or intermittently) in a tax year is, generally speaking, a resident of Australia under the 183 days test. This is unless the Commissioner is satisfied that his usual place of abode is outside Australia and that he does not intend to take up residence.

### (d) The Superannuation Test

Individuals may be 'residents' under this test when they do not in any way reside in Australia in the ordinary sense. In effect individuals are deemed to be residents if they are an eligible employee for the purpose of the *Superannuation Act 1976* (or the spouse or a child under 16 years of age of such a person).

WHMs have previously been regarded as residents for tax purposes under the 183 day test. However, from 1 July 2016, WHMs will be treated as non-residents for tax purposes. Regardless of how long they are in Australia, they will be taxed 32.5 per cent from the first dollar they earn with the tax free threshold of AUD 18,200 being removed. Treating WHMs as non-residents for tax purposes effectively means that they will pay more tax than Australians earning a higher income. While the cost of implementing the changed tax arrangements is estimated to be around AUD 5.1 million, the Federal Government expects

the measure will gain revenue of AUD 540 million over the next four years.<sup>44</sup>

After the change in the budget was announced Senator Chris Ketter asked several questions on notice in the Senate including who treasury consulted in the decision to alter the residency status of WHMs.<sup>45</sup> Treasury responded that consultation had occurred:

...with the Australian Taxation Office, the Department of Employment and the Department of Immigration and Border Protection from February 2015. Consultation was also undertaken with a wide group of stakeholders as part of the Northern Australia White Paper, Agriculture White Paper and National Infrastructure Development Fund processes.<sup>46</sup>

However, Chair of the NSW Farmers' Association horticulture committee, Peter Darley, stated that changes to the WHM tax arrangements were conducted without industry consultation<sup>47</sup>. Further, Darley observed that 'it's well known that without backpackers we don't get our produce off the trees.'<sup>48</sup> Senator Ketter went on to ask whether 'any stakeholders express concern about the removal of the tax free threshold at any time? If so, who? What was the nature of those concerns?' Treasury's response was that 'Treasury's consultation processes of this

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<sup>44</sup> Australian Government, Budget Paper No.2: Budget Measures - Part 1: Revenue Measures, (2015) <[http://www.budget.gov.au/2015-16/content/bp2/html/bp2\\_revenue-07.htm](http://www.budget.gov.au/2015-16/content/bp2/html/bp2_revenue-07.htm) p.26>.

<sup>45</sup> Senate Economics Legislation Committee, Answers to Questions on Notice, Treasury Portfolio Budget Estimates 2014 – 2015, Question: BET 124 – 144, 12 June 2015.

<sup>46</sup> Ibid.

<sup>47</sup> The NSW Farmers Association is the largest body representing farmers in Australia.

<sup>48</sup> Sally Bryant, 'Horticulture industry nervous about backpacker tax fallout', *ABC Rural* (online) 15 May 2015 <<http://www.abc.net.au/news/2015-05-13/horticulture-industry-concern-about-backpacker-tax-fallout/6467084>>.

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nature are generally confidential.<sup>49</sup> Treasury also noted that ‘consultation regarding the design and implementation of the measure as part of the legislative processes is ongoing.’<sup>50</sup>

When questioned as to the basis on which calculations of expected revenue were made Treasury noted that; ‘The revenue impact is essentially the difference between WHMs’ tax liabilities under non-resident and resident tax rates.’<sup>51</sup> Further, ‘the number of WHMs by level of taxable income was estimated by matching immigration data for the relevant visa categories for the 2012-13 year – which is the latest data available – with corresponding tax data. The estimates were grown in line with the historical average annual growth rate for the number of WHMs entering Australia to generate data for the forward estimates years.’<sup>52,53</sup> The implicit assumption therefore is that the demand for the 417 visa is inelastic with respect to changing the amount of tax paid and visa charges.

Treasury was also asked whether the policy was expected ‘to have a significant impact on city WHMs, such as those working in hospitality’, and whether this policy was expected to have any impact on WHMs in regional areas, such as those in the horticulture industry. With regard to both cases Treasury responded that ‘further consultation is to be conducted as part of the legislative drafting process’, thus calling into question the accuracy of any assessment of expected revenue.

## 3.1 Implications of the changes

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<sup>49</sup> Senate Economics Legislation Committee, above.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Figures for the number of 417 visas applied for and granted for the 2014 /2015 year are available at Department of Immigration and Border Protection, (Cth) *Working Holiday Maker visa program report* 30 June (2015) 19.

The Working Holiday Maker Visa Program Report for 30 June 2015<sup>54</sup> indicates a 4.4 per cent reduction in the number of applications lodged for 417 visas in 2014 /15 compared to the 2013 /14 period. While this reduction may be attributed to diverse factors, increasing charges on work and holiday tourists is unlikely to reverse the downward trend. The higher cost of visas, comparable to competitor destinations, and increased taxation combined with Australia's significantly cost of living has the potential to reduce the number of WHMs to reconsider Australia as a potential travel destination.

Reaction to the changes by WHMs as reported in the Australian media has been negative. WHMs interviewed by the Australian Broadcasting Corporation (ABC) claimed they wouldn't travel as far or for as long in Australia under the new taxation requirements. [REDACTED] a Taiwanese WHM employed on an orchard in Tasmania, described the tax changes as a concern. [REDACTED] said he had spoken to other backpackers since the release of the budget and that some were now likely to work in other countries or remain at home in Taiwan: 'We earn more money in Australia than at home, but the cost of living in Australia is much higher and increasing our taxes will prevent us from saving money and spending on goods'.<sup>55</sup>

International media reporting in key source markets for Australia's WHMs, such as the UK, have also emphasised taxation as an added disincentive to travel in Australia. The improvement in Ireland's economy and the rise of Canada as a

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<sup>54</sup> Department of Immigration and Border Protection Australian Government (Cth), (2015). Working Holiday Maker Visa Program Report for 30 June 2015, <<https://www.border.gov.au/ReportsandPublications/Documents/statistics/wor-king-holiday-report-june15.pdf>>.

<sup>55</sup> Tony Briscoe, 'Backpacker tax changes causing concern amongst overseas workers', *ABC Rural* (online) 15 May 2015 <<http://www.abc.net.au/news/2015-05-14/backpacker-tax-changes-causing-concern-amongst-overseas-workers/6469884>>.

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less expensive alternative to Australia have been forecast as heralding a downturn in arrivals of young Irish tourists.<sup>56</sup>

The Australian Chamber of Commerce and Industry (ACCI) have argued that any reduction in temporary visas would damage the economy and ultimately reduce job opportunities. Jenny Lambert, director of employment education and training, noted that both the tourism and agricultural sectors will also suffer as a result of the changes because both industries rely on WHMs to fill seasonal labour shortages.

When the new taxation arrangements for WHMs was announced there was no reporting of changes to the right to claim superannuation on departing the country. All employers must pay superannuation to WHMs of 9.5 per cent. Under current regulations, on departing Australia permanently (after a visa has been either cancelled or expired) WHM superannuation payout is taxed at 38 per cent. Unless arrangements have been made before arrival in Australia by the WHM to have their superannuation paid into an account, all superannuation is deemed as 'unclaimed' and passed over to the Australian Taxation Office. In January, 2014 it was estimated that temporary residents contributed about AUD 20 million in unclaimed super balances each year.<sup>57</sup> This equates to approximately 70 per cent of visitors not claiming their super entitlement. The removal of the tax-free threshold may encourage departing WHMs to be more vigilant about claiming these funds resulting in a further reduction in Treasury's estimated proceeds from this group.

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<sup>56</sup> Pdraig Collins, 'Massive tax increases for backpackers in Australian budget', *The Irish Times* (online) 13 May 2015  
<http://www.irishtimes.com/business/work/massive-tax-increases-for-backpackers-in-australian-budget-1.2209869>.

<sup>57</sup> Craig Gordon, 'Talking Point: Backpacker tax changes to hurt tourism, farms', *The Mercury* (online) 19 May 2015  
<<http://www.themercury.com.au/news/opinion/talking-point-backpacker-tax-changes-to-hurt-tourism-farms/news>>.

#### 4. SUMMARY AND CONCLUDING COMMENTS

The change to taxation arrangements will no doubt raise additional revenue although the magnitude of this revenue is questionable. The extent of any modelling of revenue impact undertaken by Treasury and the assumptions underlying such modelling remain unclear. Questions also persist as to the nature and range of consultation undertaken prior to the decision being made.

There are clear indications that the tax will actively dissuade high yield WHM tourists from visiting Australia resulting in significant negative impact on the nation's tourism industry. The changed residency status of WHMs is only one of the recent variations to the working holiday visa program. In a competitive international environment for the WHM tourist, increased visa fees may also reduce the demand for visas as will disallowing voluntary employment as counting towards the eligibility for the visa extension.

Working holiday programs were created with tourism and cultural exchange as the core concern. As such, any work undertaken by visa holders should be seen as incidental to their time in Australia.<sup>58</sup> The National Institute of Labour Studies evaluation of Australia's working holiday maker program noted that 'the WHM (program) is more a tourism export program than a labour supply program.'<sup>59</sup> The recent Senate Standing Committee on Education and Employment and the Productivity Commission Inquiry concluded that the 417 visa has strayed from its initial purpose of a holiday visa with incidental work entitlements attached. The view of both bodies was that many

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<sup>58</sup> Charlie McKillop, 'Claims backpacker tax grab exploits seasonal workers, hurts rural towns and farmers', *ABC Rural* (online) 15 May 2015 <<http://www.abc.net.au/news/2015-05-14/backpacker-tax-grab-hurts-rural-towns-and-farmers/6469910>>.

<sup>59</sup> Yan Tan et al, above n 6.

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(although no estimate of how many) WHMs are travelling to Australia primarily for work thus justifying changing their residency status. The major challenge with this change, however, is that it does not strategically target those visa holders who do travel primarily for work rather than leisure. Nor does it actively address issues of worker exploitation in Australia.

If many 417 visa holders are travelling to Australia primarily to work, and if there is widespread exploitation by unscrupulous employers, then other measures could provide better outcomes than changing their residency status and risk losing their economic and tourism value. Close auditing of 417 visa holders' employment arrangements to reduce exploitation, and to ensure time spent working is not in contravention of the intended spirit of the visa, is required.

In addition, denying WHMs the tax free threshold is not equitable as it is at odds with other temporary visa categories. Short term skilled workers on 457 visas are subject to the tax free threshold and are treated like domestic taxpayers. To date there has been no government justification as to why the differential tax treatment exists between 457 and 417 visa holders.

WHMs contribute positively to the Australian economy both in taxation revenue and in creating employment through their spending. In the wake of dramatic travel downturns after events such as the 9/11 terrorist attack in 2001 and the SARS epidemic in 2003, WHMs (and the backpacker segment in general) remained a resilient tourist market for Australia. In the face of labour shortages in the horticulture and agriculture industries WHMs also provide an indispensable source of labour and contribution to regional Australian communities. The impact of the changed taxation arrangements on WHM numbers are yet to be seen. However when combined with the recent ending of voluntary labour arrangements and increases in visa application fees in recent years, Australia may well see far fewer working tourists in the future.



## 5. IMPLICATIONS FOR FURTHER STUDY

Prior to the introduction to any change in tax policy there should be an evaluation of the costs and benefits of proposed changes. This has not been done in any formal (published) analysis with regard to the changes to the residency status of the 417 visa. The ACTU submission to the Productivity Commission Inquiry noted that, 'given the large numbers of WHM visa holders in Australia, there appears to be a knowledge gap in relation to the number of WHM visa holders who exercise their work rights, the duration of their employment, the number of employers they work for, their rates of pay, and the locations, industries, and occupations they work in.'<sup>60</sup> Basic economics alone would suggest that the price elasticity of demand for the 417 visa and extension should be modelled.

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<sup>60</sup> ACTU, Submission No 36 to the Productivity Commission Inquiry, *Inquiry into the migrant intake into Australia*, (2015), 43, <[http://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0007/190465/sub036-migrant-intake.pdf](http://www.pc.gov.au/__data/assets/pdf_file/0007/190465/sub036-migrant-intake.pdf)>.