

2 September 2016

BY ELECTRONIC SUBMISSION

The Hon. Luke Hartsuyker MP
Assistant Minister to the Deputy Prime Minister
c/o Department of Agriculture and Water Resources

Dear Mr Hartsuyker

Please find attached our submissions in response to the Working Holiday Maker Visa Review.

We are pleased to provide these submissions to this review. If we can assist with policy development in this area in any other way, please do not hesitate to contact [REDACTED] on direct line [REDACTED] or by email to [REDACTED], or myself on direct line [REDACTED] or by email to [REDACTED]

Yours faithfully



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A low-angle, upward-looking photograph of several modern skyscrapers with glass facades, illuminated from within and by external lights, against a clear blue sky. The perspective creates a sense of height and architectural grandeur.

FRAGOMEN
WORLDWIDE

Submissions
Working Holiday Visa Review

Presented to

Department of Agriculture and Water Resources

SEPTEMBER 2016

Fragomen (Australia) Pty Ltd
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1. ABOUT FRAGOMEN

- 1.1. Fragomen is one of the world's leading global immigration law firms, providing comprehensive immigration solutions to our clients. Operating from over 40 offices in 19 countries (with capabilities in more than 160 countries), Fragomen provides services in the preparation and processing of applications for visas, work and resident permits worldwide and delivers strategic advice to clients on immigration policy and compliance.
- 1.2. In Australia, Fragomen is the largest immigration law firm with over 175 professionals and support staff nationally, including qualified lawyers, Registered Migration Agents, Accredited Specialists in Immigration Law and other immigration professionals. With offices in Brisbane, Melbourne, Perth and Sydney, Fragomen assists clients with a broad range of Australian immigration services from corporate visa assistance, immigration legal advice, audit and compliance services, litigation and individual migration and citizenship applications. In the 2014-2015 financial year, we assisted clients with lodgement of more than 10,000 applications to the Department of Immigration and Border Protection (**'Department'**).
- 1.3. Further information about Fragomen, both in Australia and globally, is available at www.fragomen.com.

2. INTRODUCTION

2.1. We are pleased to provide these responses to the *Working Holiday Maker Visa Review*. These submissions build on our prior responses to recent enquiries relating to the 457 program and, more broadly, the temporary work visa streams. These include:

- *Independent Review of Integrity in the 457 Program*¹;
- *457 Integrity Review – Training Fund Contribution*;
- *Simplification of the skilled migration and temporary activity visa programme*,² and
- *Inquiry into the impact of Australia's temporary work visa programmes on the Australian labour market and on the temporary work visa holders*³.

THE WORKING HOLIDAY MAKER VISA PROGRAM

2.2. The Working Holiday Maker visa program was first introduced as part of a reciprocal agreement with the United Kingdom in 1975 to allow young people from each country to travel and work around Australia and the United Kingdom.⁴ Since this time the program has been extended to 34 other countries and its' reciprocal nature means that similar opportunities to undertake a working holiday in participating countries are also afforded to young Australians.

2.3. The Working Holiday Maker visa program is currently comprised of two visa subclasses:

- a. Subclass 417 (Working Holiday) visa;⁵ and
- b. Subclass 462 (Work and Holiday) visa.⁶

¹ Fragomen, Submission to the Independent Review of Integrity in the Subclass 457 Program, *Independent Review of Integrity in the 457 Program*, 7 May 2014. Please refer to: <https://www.border.gov.au/ReportsandPublications/Documents/submissions/fragomen.pdf> >

² Fragomen, Submission to the Department of Immigration and Border Protection, *Discussion Paper: Reviewing the Skilled Migration and 400 Series Visa Programmes*, 17 October 2014. Please refer to: <https://www.border.gov.au/ReportsandPublications/Documents/submissions/robert-walsh.pdf>

³ Fragomen, Submission No 21 to the Senate Standing Committee on Education and Employment, *The impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders*, 1 May 2015. Please refer to: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/temporary_work_visa/Submissions

⁴ Joint Standing Committee on Migration, The Parliament of the Commonwealth of Australia, *Working Holiday Makers: More than Tourists* (1997) 2.

⁵ Available to citizens of Belgium, Canada, the Republic of Cyprus, Denmark, Estonia, Finland, France, Germany, Hong Kong, Ireland, Italy, Japan, Republic of Korea, Malta, Netherlands, Norway, Sweden, Taiwan and the United Kingdom.

⁶ Available to citizens of Argentina, Bangladesh, Chile, The People's Republic of China, Indonesia, Israel, Malaysia, Poland, Portugal, Slovak Republic, Slovenia, Spain, Thailand, Turkey, United States of America and Uruguay.

- 2.4. Both the subclass 417 visa and subclass 462 visa are temporary visas available to people aged 18 – 30 who wish to holiday and work in Australia. Departmental policy guidelines provide that the purpose of the subclass 417 visa is to ‘encourage cultural exchange and closer ties’ between participating countries by allowing young people ‘to have an extended holiday supplemented by short term employment,’⁷ while the purpose of the subclass 462 visa is to enable ‘young people to holiday and work in Australia and to improve cultural understanding.’⁸
- 2.5. Both visas allow the visa holder to work for their entire 12 month stay in Australia however they are subject to a condition restricting the visa holder to a maximum of six months employment with each Australian employer (unless the visa holder is performing designated work in Northern Australia or has received permission from the Department to work beyond six months).
- 2.6. While the subclass 462 visa can only be granted once (except for certain citizens of Iran), it is possible to obtain a second subclass 417 visa provided the visa holder has undertaken three months of specified work in a designated regional area while holding the first subclass 417 visa. The specified work must also be performed in one of the following industries:
 - a) plant and animal cultivation;
 - b) fishing and pearling;
 - c) tree farming and felling; and
 - d) mining and construction.
- 2.7. The benefits of the Working Holiday Maker visa program from a cultural and economic viewpoint have long been recognised, as have the concerns regarding the impact the visa program has on job prospects of young Australians.⁹ There have also been recent concerns raised that this program is being used as a ‘back door’ to the Australian labour market.¹⁰
- 2.8. As we have highlighted in the following table, as at 31 December, Australia hosted a significant ‘informal’ overseas workforce (comprising Working Holiday, Student and Graduate visa holders), in comparison to the number of primary subclass 457 visa holders who are sponsored under the highly regulated 457 visa program.

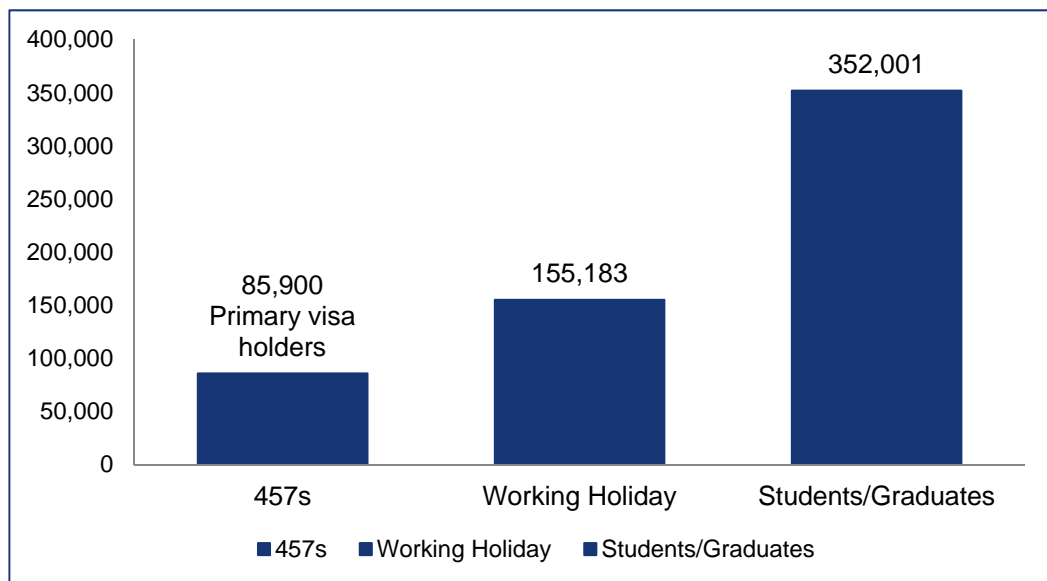
⁷ Procedures and Advice Manual 3 > Home > Migration > 2016 > 21/08/2016 - > P. 21/08/2016 - > PAM3 - MIGRATION REGULATIONS - SCHEDULES > PAM - Sch2 Visa 417 - Working Holiday > About the Working Holiday visa program > Purpose of the program.

⁸ Procedures and Advice Manual 3 > Home > Migration > 2016 > 21/08/2016 - > P. 21/08/2016 - > PAM3 - MIGRATION REGULATIONS - SCHEDULES > PAM - Sch2 Visa 462 - Work and Holiday > Introduction > About the US-462 visa.

⁹ Joint Standing Committee on Migration, above n 4.

¹⁰ Adam Steen and Victoria Peel, ‘Economic and Social Consequences of Changing Taxation Arrangements to Working Holiday Makers’ (2015) 17(1) *Journal of Australian Taxation*, 237.

Temporary visa holders as of 31 December 2015¹¹



- 2.9. Assuming a 20 hour work week for students and graduates, and a 38 hour work week for Working Holiday Visa holders, the number of temporary visa holders in Australia *outside the subclass 457 visa programme* currently represent 13 million potential work hours per week. The fact that this inquiry has been called by the Minister for Agriculture to review “issues affecting the supply and taxation of labour”, provides a telling indication of the key role that temporary visa holders play in the Australian economy and suggests that there is a strong demand for work performed by working holiday makers (as well as international students and graduates). Given the usual age profile of the visa holders (i.e. mostly young people with limited work experience having recently completed or in the process of completing their studies), the work they perform is often lower skilled and lower paid work.
- 2.10. Recent media reports uncovering the employment conditions of working holiday makers, such as the *Four Corners* television report on 4 May 2015,¹² have suggested that this is an area where reform is needed as there are concerns that working holiday visa holders are vulnerable to exploitation from unscrupulous employers.
- 2.11. Earlier this year the Senate Standing Committee on Education and Employment released its final report following the inquiry into the impact of Australia's temporary work visa programs on the Australian labour market and on temporary work visa holders, titled *A National Disgrace: The Exploitation of Temporary Work Visa Holders*. A number of submissions were made by farmers and growers organisations drawing attention to the difficulty in attracting local labour and the high value that the Working Holiday Maker program has to their industries.¹³ As highlighted in the final report, working holiday maker visa holders do not need to be paid market rates, can work in any position for any employer and the employer is not required to demonstrate that they have attempted to fill the role with an Australian worker.¹⁴

¹¹ Department of Immigration and Border Protection, *Statistics* (29 August 2016) <<https://www.border.gov.au/about/reports-publications/research-statistics/statistics>> . The most recent available statistics for the 457 visa program are dated 31 March 2016 and reveal that there were 97,770 primary 457 visa holders in Australia at this date.

¹² Australian Broadcasting Corporation, ‘Slaving Away’, *Four Corners*, 4 May 2015 (see: <<http://www.abc.net.au/4corners/stories/2015/05/04/4227055.htm>>).

¹³ Adam Steen and Victoria Peel, above n 10.

¹⁴ Senate Standing Committee on Education and Employment, The Parliament of the Commonwealth of Australia, *A National Disgrace: The Exploitation of Temporary Work Visa Holders* (2016) 101.

Commentators have pointed to this lack of regulation of the Working Holiday Maker program as a contributing factor in the exploitation of these young and vulnerable workers.¹⁵

- 2.12. In formulating our recommendations we have proceeded on the basis that the Australian labour market cannot meet the increasing demand for lower skilled workers, particularly in sectors that remain people-intensive, untouched by digital disruption, and which cannot be easily automated and will therefore likely remain for the foreseeable future. This type of work includes the work which requires abstract thought and / or work which requires human 'craft' – such as cleaners, personal carers, gardeners, and horticultural workers etc.
- 2.13. Our recommendations in Sections 3 and 4 are presented as two recommendations and two alternative options which address the considerations presented above.
- 2.14. If implemented, we believe that our recommendations will provide a higher level of protection to the working holiday maker population than they are currently afforded on the basis that the visa holders will:
 - a. not be taxed at the rate which applies to others in Australia who are earning significantly more than the average earnings of a working holiday maker;
 - b. not have the perverse incentive of accepting three months regional work in circumstances where they are being exploited in order to qualify for the second working holiday visa; and
 - c. be required to work for approved sponsors who have already been pre-assessed for their compliance with Australian workplace and immigration laws and who are subject to monitoring on an on-going basis; or
 - d. have the ability to work for 12 months in regional Australia on a second working holiday visa without being restricted to performing a particular type of work.
- 2.15. At the same time, our recommendations could assist regional employers in meeting skill shortages as:
 - a. working holiday makers will not be discouraged from travelling to Australia due to a high tax rate; and
 - b. if Alternative Recommendation ONE is accepted, employers who wish to employ working holiday makers must be pre-assessed for approval and be monitored on an ongoing basis. This would assist to encourage compliance with workplace and immigration laws and then in turn encourage working holiday makers to work in regional Australia; or
 - c. if Alternative Recommendation TWO is accepted, working holiday visa holders would be required to work in regional Australia during the period of their second working holiday visa which would in turn increase the numbers of working holiday makers travelling and working in regional Australia.
- 2.16. Advertising these benefits to the wider community may also assist to engender support for these proposed changes.
- 2.17. We do not anticipate that the Department will need to relinquish any control over the Working Holiday Maker program in implementing and enforcing these

¹⁵ Dr Joanna Howe and Associate Professor Alexander Reilly. Submission No 36 to the Joint Standing Committee on Migration, *Inquiry into the Seasonal Worker Programme*, 14 August 2015.

recommendations. A number of minor changes would need to be made to the *Migration Regulations 1994* (Cth) to change the eligibility criteria for the second working holiday visa and the conditions that are imposed on the subclass 462 and 417 visas, as well as the introduction of the simplified sponsorship framework that we have proposed in previous submissions (refer to paragraph 2.1 above). We note that the Department is already tasked with monitoring compliance with work conditions for the current working holiday maker population (i.e. a maximum of 6 months working for each Australian employer) as well as monitoring business sponsors for their compliance with the applicable sponsorship obligations and employer sanctions. It is our submission that the additional monitoring that will be required by the Department should fit with the current monitoring framework of the Australian Border Force.

2.18. Furthermore, while we expect that there will be some unscrupulous employers in Australia who will continue their attempts to take advantage of young and vulnerable foreign workers, the measures recommended below are at least a step towards ensuring that Australia is taking proactive steps to ensure the temporary work programs do not remain a 'National Disgrace.'

2.19. Our recommendations are summarised in the table below.

RECOMMENDATION ONE	Subclass 417 and 462 visa holders should be classed as residents for tax purposes (removing the so called 'Backpacker Tax')
AND	
RECOMMENDATION TWO	Remove the requirement for 417 visa holders to perform three months of specified work in a regional area in order to be eligible for a second 417 visa.
AND	
ALTERNATIVE ONE	Place a condition on the 417 and 462 visas which restricts the visa holders to working for approved employers / sponsors for the life of the visa i.e. Australian employers who have been pre-assessed by the Department.
OR	
ALTERNATIVE TWO	Place a condition on the second 417 visa which restricts the visa holder to working in regional Australia while holding their second 417 visa.

3. RECOMMENDATIONS

RECOMMENDATION ONE

Subclass 417 and 462 visa holders should be classed as residents for tax purposes (removing the so called 'Backpacker Tax')

REASONS

- 3.1. In the budget speech on 12 May 2015, then Treasurer Joe Hockey announced that 'anyone on a working holiday in Australia will have to pay tax from their first dollar earned, rather than enjoying a tax-free threshold of nearly \$20,000. This will save the Budget \$540 million.'¹⁶ The proposed changes were due to come into effect from 1 July 2016 and would result in working holiday makers being treated as non-residents for tax purposes and no longer able to access the tax-free threshold and the lower tax rate of 19% for income just above the tax free threshold. These changes have been postponed pending the outcome of the current review.
- 3.2. The result of classifying working holiday makers as non-residents for tax purposes is that they will pay 32.5 % tax on each dollar they earn and will effectively end up paying 'more tax than Australians earning a higher income.'¹⁷
- 3.3. As noted above (paragraph 2.4) the purpose of the Working Holiday Maker visa program is to allow young people to travel to Australia on an extended holiday and to provide them with the opportunity to experience Australian culture.
- 3.4. An essential element in being able to undertake an extended holiday, travelling the length and breadth of Australia for up to 12 or even 24 months, is having the funds to do so. However, if the proposed tax changes are imposed, these young travellers will need to work longer hours to earn enough money to support themselves on their travels. According to the Department of Agriculture,¹⁸ working holiday makers only earn an average of AUD 13,300 while in Australia and under current arrangements they are able to access the tax-free threshold. However, under the proposed arrangement the visa holders would be left with net earnings of AUD 8,977.50. This is quite a significant reduction given these young travellers are earning a low income and need these funds to cover travel costs, accommodation, food and tourism related activities, exacerbating rather than alleviating any incentive to perform more work in below par employment conditions.
- 3.5. Imposing a high tax rate on working holiday makers does not account for the fact that the primary purpose of this visa is to allow people to travel to Australia for a holiday. Imposing a high tax rate on their income suggests that there is an expectation that they will perform a significant amount of work while in Australia which does not directly address the concern that this visa program is being used as a 'back door' to the Australian labour market. It is our submission that alternative changes could be made to address concerns about the use of the program and the exploitation of vulnerable workers (see below).

¹⁶ The Honourable J. B. Hockey MP, Treasurer of the Commonwealth of Australia, 'Budget Speech 2015' (Speech delivered on 12 May 2015) (please see full text: <<http://www.budget.gov.au/2015-16/content/speech/html/speech.htm> >).

¹⁷ Adam Steen and Victoria Peel, above n 10, 242.

¹⁸ Department of Agriculture, *Working Holiday Maker Visa Review* (18 August 2016) <<http://www.agriculture.gov.au/SiteCollectionDocuments/ag-food/working-holiday/working-holiday-visa-review-summary.pdf>>

- 3.6. It is also our submission that imposing a high tax rate on working holiday makers will act as a disincentive for future young people to travel to Australia on a working holiday, particularly as Australia's competitors offer working holiday visas at significantly lower prices and with more flexibility (for example, the visa application fees for a Canadian work permit that allows the holder to undertake a working holiday is CAD 150, compared to AUD 440 for a working holiday maker visa). Furthermore, a recent survey conducted by Monash University's National Centre for Australian Studies has revealed that 60% of current working holiday makers would not have travelled to Australia if they were taxed at the rate of 32.5%.¹⁹
- 3.7. If a review of the Working Holiday Visa program is warranted to address the concerns regarding exploitation of working holiday makers, then imposing additional tax on the visa holders would seem to be a rather indirect way of solving the problem. Furthermore, if this tax reform does reduce the number of working holiday makers travelling to Australia it does not do anything to protect the working holiday makers who are currently onshore or those fewer numbers who decide to travel to Australia. Employers who do exploit working holiday makers tend to engage in other unscrupulous business practices that do not comply with Australian laws (e.g. double book-keeping and paying cash in hand). Therefore it is unlikely that the tax reform will encourage these employers to change their practices or lead to the actions of these employers coming to the attention of the Australian Taxation Office.

RECOMMENDATION TWO

Remove the requirement for 417 visa holders to perform three months of specified work in a regional area in order to be eligible for a second 417 visa.

REASONS

- 3.8. As noted above, there have been a number of recent reports highlighting the exploitation of young and vulnerable working holiday makers.²⁰ In our view, the requirement to undertake three months of specified work in a regional area in order to be eligible for a second subclass 417 (working holiday) visa²¹ may act as a perverse incentive to working holiday visa holders to accept employment situations that result in their own exploitation for a short time just to ensure they can apply for a second working holiday visa.²²
- 3.9. It is our submission that the regional work requirement should be removed from the *Migration Regulations 1994* (Cth) and that subclass 417 visa holders be permitted to apply for a second working holiday visa without needing to demonstrate that they have worked in a regional area performing designated work.

¹⁹ Jennifer Nichols, 'Survey signals 'backpacker tax' would turn away travellers', *ABC Rural* (online), 24 August 2016 <<http://www.abc.net.au/news/2016-08-24/backpacker-tax-review-strawberry-employment-jobs/7779286>>.

²⁰ Senate Standing Committee on Education and Employment, above n 14.

²¹ *Migration Regulations 1994* (Cth) reg 417.211(5)

²² See also: Peter Mares, *Not Quite Australian: How Temporary Migration is Changing the Nation* (The Text Publishing Company, 2016) 234.

- 3.10. As alternative eligibility criteria for the second working holiday visa, we suggest that the visa applicant be required to provide the following evidence to the Department in their application for a second working holiday visa:
- a. evidence of funds to support their continued stay in Australia; and
 - b. evidence that the applicant intends to comply with the condition restricting them to only working in regional areas (please refer to our Alternative Recommendation TWO in Section 4 below). This evidence could include a copy of their proposed travel itinerary for the second year as well as evidence for any travel, accommodation or activities that have been booked.
- 3.11. We understand that the purpose of allowing subclass 417 visa holders to be granted a second 12 month working holiday visa was to encourage working holiday visa holders to work in regional Australia to 'help alleviate serious and persistent specific seasonal labour shortages (that is, in primary industry)' in these areas.²³
- 3.12. To address this consideration, we also recommend that either or both of the following alternative recommendations in Section 4 be considered. The recommendations in Section 4 are set out as alternative options to improve the integrity of the program and improve protection for vulnerable workers while also ensuring that Australian farmers can meet their labour shortages.
- 3.13. We do acknowledge that removing the requirement to perform specified work in a regional area may ultimately result in a decrease in the number of working holiday visa holders who choose to perform the activities that currently form 'specified work' of the type that would fall under the purview of the Department of Agriculture. Any reforms which reduce the incentive for backpackers to engage in agricultural work may be offset by the outcome of the July 2015 Joint Standing Committee on Migration inquiry into the Seasonal Work Program. The final report titled *Seasonal Change: Inquiry into the Seasonal Worker Programme* was tabled on 5 May 2016. A number of recommendations were made that would assist to expand the scope of the program and ease the administrative burden on farmers and other sponsors in the program. It is our submission, that a viable, flexible and efficient Seasonal Worker Program is a more appropriate mechanism for supporting agricultural labour demands in regional areas than a visa stream whose primary purpose is a holiday.

²³ Procedures and Advice Manual 3 > Home > Migration > 2016 > 21/08/2016 - > P. 21/08/2016 - > PAM3 - MIGRATION REGULATIONS - SCHEDULES > PAM - Sch2 Visa 417 - Working Holiday > About the Working Holiday visa program > The second Working Holiday visa initiative.

4. ALTERNATIVE RECOMMENDATIONS

ALTERNATIVE ONE

Place a condition on the 417 and 462 visas which restricts the visa holders to working for approved employers / sponsors for the life of the visa i.e. Australian employers who have been pre-assessed by the Department.

REASONS

- 4.1. As an additional measure, consideration should be given to imposing a condition on all subclass 417 and 462 visas specifying that they only perform work for an 'Approved Employer'.
- 4.2. This would require all employers who wish to employ a working holiday maker to undergo a form of vetting by either the Department of Immigration and Border Protection or possibly the Department of Employment. In turn we recommend that Approved Employers are regularly monitored for immigration compliance.
- 4.3. We envisage that this arrangement could manifest itself in two ways:
 - A. Employer must hold a single sponsorship approval that covers all of the 400 stream visas**
- 4.4. In previous submissions, Fragomen has recommended that the Temporary Activity Visa Program be simplified and that the current siloed classes of sponsorship should be consolidated into a single scheme that approves, monitors and rewards organisations for use of all temporary work and activity related visas.
- 4.5. In our view, there are sufficient similarities between the role of the host organisation across the current temporary visa streams that maintaining different types of approval processes is inefficient and unnecessarily convoluted. These include:

CURRENT SPONSORSHIP PROGRAM

Standard Business Sponsorship
Professional Development
Training and Research
Temporary Work (Sport/ Exchange/ Religion)
Entertainment
Temporary Work (International)

PROPOSED PROGRAM

Temporary work sponsorship

- 4.6. As we have previously noted, a business that has already passed through a sponsorship approval process for one of these current streams should not be required to separately seek approval for each other type of sponsorship. Access to any and all of these streams could be approved through a single application

process, with access to additional streams obtained through a simple variation request. In addition, most organisations (however new to the Department) are likely to have provided information relevant to sponsorship approval to other state, territory and federal government agencies. The Department's commitment to improve information- sharing with other agencies and governments, and further developments of centralised government portals such as AusKey accounts, should be leveraged to reduce the required documentation and simplify the sponsorship assessment process.

- 4.7. For this present review, we reiterate our previous recommendations with the added suggestion that this single sponsorship provide the employer with an approval status that allows the sponsor to employ working holiday makers. We also recommend that an assessment of the employment conditions of working holiday visa holders form part of the monitoring of these sponsors.
- 4.8. To assist working holiday makers to locate Approved Employers or vice versa, we also recommend that visa holders be given the ability to search for Approved Employers through either:
 - a. the Department's Visa Entitlement Verification Online (**VEVO**) portal;
 - b. publishing a list of Approved Employers on the Department's website; or
 - c. publishing the blacklist of employers who do not have permission to employ working holiday makers on the Department's website.
- 4.9. It is our submission that allowing the visa holders to search for Approved Employers will place some of the responsibility for ensuring they work in accordance with their conditions back on the visa holder and may provide assistance to Australian organisations and the Department in monitoring of the program. We also recommend that the visa approval notices that are issued by the Department to working holiday makers provide information on the visa holders rights and obligations as well as guidelines on how to locate Approved Employers.

B. Employer must obtain approval to specifically employ working holiday makers

- 4.10. All Australian employers who wish to employ working holiday makers are pre-assessed by the Department of Immigration and Border Protection or alternatively the Department of Employment to ensure the following:
 - a. the organisation has good immigration practices and there is no adverse information known about the organisation or persons associated with the organisation (an integrity check of the business and its managers and or directors should be conducted and details verified about the business registrations, management and organisation structure by the Department); and
 - b. that the working conditions that are offered to working holiday makers are in line with standard Australian employment conditions.
- 4.11. This assessment would be similar to the assessment undertaken by the Department of Employment when assessing Expressions of Interest from employers who wish to join the Seasonal Worker Program except we have added the requirement to review the working conditions offered to the visa holders. An Approved Employer would then be issued with a Certificate as proof of their status. Visa holders should also then be able to search for Approved Employers as per our suggestion at paragraph 4.8 above. Optionally, any employer that is also an Approved Sponsor in another 400 series visa program (such as the subclass 457)

could be automatically recognised as an Approved Employer for the purposes of the Working Holiday Visa program.

- 4.12. We do not intend that this assessment process would be particularly burdensome for either the employer or the Department responsible for assessing the applications for Approved Employer status.
- 4.13. However, it is important to recognise that extra protection must be afforded to working holiday makers. As the program currently stands, the only formal monitoring of employment conditions of working holiday maker appears to be undertaken by the Fair Work Ombudsman. Furthermore, unlike the heavily regulated 457 visa program, organisations that employ working holiday makers do not have any obligations towards them.
- 4.14. It is our submission that implementing this assessment process will go some way to proactively protect the visa holders, rather than reacting after the exploitation has taken place. Moreover, ongoing monitoring of employers will also assist to reinforce the need to comply with Australian employment and immigration laws.

ALTERNATIVE TWO

Place a condition on the second 417 visa which restricts the visa holder to working in regional Australia while holding their second 417 visa.

REASONS

- 4.15. As an alternative to our Alternative Recommendation ONE above, consideration could also be given to grant of the second working holiday visa subject to a condition that restricts the visa holder to working in regional Australia for the period of the second working holiday visa.
- 4.16. If this is desirable, we also recommend that the definition of 'regional Australia' for the purposes of the Working Holiday program be extended from the current composition (extracted at Appendix A)²⁴ to include the postcodes and areas designated as regional for the purposes of the subclass 187 (Regional Sponsored Migration Scheme) visa (extracted at Appendix B)²⁵ as this will ensure that the visa holders have the opportunity to explore a greater area of Australia during the period of their second working holiday visa while still helping alleviate labour shortages in regional Australia. To assist you, we have included a Table at Appendix C which compares the postcodes which have been designated as regional for the purposes of each visa programme.
- 4.17. We envisage that the condition imposed on the second working holiday visa could read as follows:

The holder must work only for an Approved Employer in an area specified in an instrument in writing while the holder is in Australia.

A separate Legislative Instrument would then need to include the relevant designated postcodes for the purpose of this condition.

²⁴ Peter Dutton, Minister for Immigration and Border Protection, *Working Holiday Visa – Definitions of Specified Work and Regional Australia*, IMMI 16/041, 5 May 2016.

²⁵ Peter Dutton, Minister for Immigration and Border Protection, *Regional Certifying Bodies and Regional Postcodes*, IMMI 16/045, 5 May 2016.

4.18. In addition to encouraging compliance by the visa holder, imposing a visa condition would make it an offence under s. 245AC of the *Migration Act 1958*²⁶ for a person to employ a Working Holiday Visa holder if the person is not an Approved Employer and/or not in a designated regional area.

4.19. Alternatively, the visa condition at 8549(1) may be imposed:

8549

(1) Unless subclause (2) applies, while the holder is in Australia, the holder must live, study and work only in a designated area, as in force:

(a) when the visa was granted; or

(b) if the holder has held more than 1 visa that is subject to this condition — when the first of those visas was granted.

4.20. We also recommend that the visa approval notices that are issued by the Department to working holiday makers provide information on the visa holders rights and responsibilities while in Australia.

4.21. The advantages of this proposal are:

- a. the subclass 417 visa holders will still have the option to apply for a second working holiday visa and spend an additional 12 months exploring Australia;
- b. subclass 417 visa holders will receive greater encouragement to travel and work in regional Australia without the added incentive of accepting short term exploitation as a means to an immigration outcome;
- c. employers in regional areas will have more opportunities to employ working holiday visa holders; and
- d. employers in metropolitan areas would have more opportunities to employ local Australian workers.

4.22. Some working holiday visa holders may not welcome a change that requires them to spend 12 out of 24 months in regional Australia. However, given the purpose of the visa program is to allow young people to explore Australia, offering an incentive to spend more time in a more broadly defined 'Regional Australia' would seem to fit the purpose of the program. Furthermore, those working holiday visa holders who would have been willing to perform at least three months of specified work in regional Australia would likely be willing to perform work in a regional area (which is not necessarily restricted to specified work) for some period of time even if they do not end up spending the full 12 months in regional Australia.

4.23. A possible result of this change could be that working holiday visa holders plan their holiday so that they spend their first 12 months in Australian cities and save their regional travel experiences for their second 12 months. If working holiday makers must perform regional work while holding their second working holiday visa, then they may be less likely to perform regional work in their first year. A flow on benefit is that this may affect the business model of labour hire companies who recruit directly from overseas for working holiday visa holders to work in regional areas with the promise of helping obtain a second working holiday visa. Rather than being whisked from the airport straight to a regional worksite, working holiday visa holders

²⁶ Under s. 245AC, a person is liable for civil and criminal penalties if they "allow, or continue to allow, another person to work...in breach of a work-related condition".

would be able to spend their first 12 months becoming familiar with Australia and Australian work conditions, which may then make it harder for labour hire companies to recruit into exploitative situations.

- 4.24. While regional employers may welcome this recommendation, it is important to note that this change would result in all Australian employers needing to keep track of the regional locations for the purposes of the visa condition to ensure that they are not allowing working holiday visa holders to work in breach of their visa conditions.
- 4.25. A question that may be posed is how can the Department implement and monitor this new visa condition? Our response to this is that the Department already does have systems and processes in place to monitor visa holders and employers for compliance with visa conditions and the employer sanctions of the *Migration Act*.²⁷ It is our submission that these monitoring procedures should be extended to cover working holiday makers and their employers. In practice, monitoring could be implemented by continuing compliance activity such as the following:
 - a. Enhanced data matching between the ATO, the Fair Work Ombudsman and the Department, revealing which organisations have employed working holiday makers;
 - b. Requiring Approved Employers to self-report on their compliance with immigration and workplace laws, either by completing the Department's self-audit questionnaire or through the AusKey portal; and
 - c. Undertaking formal monitoring on a regular basis.

²⁷ See *Migration Act 1958* (Cth) pt 2 div 12 sub-div C Offences and civil penalties in relation to work by non-citizens.



Commonwealth of Australia

Migration Regulations 1994

**WORKING HOLIDAY VISA – DEFINITIONS OF *SPECIFIED WORK* AND
REGIONAL AUSTRALIA 2016/041**

(subitem 1225(5))

I, *PETER DUTTON*, Minister for Immigration and Border Protection, acting under subitem 1225(5) of Schedule 1 to the *Migration Regulations 1994* (the Regulations):

1. REVOKE Instrument IMMI 08/048, Working Holiday Visa – Definitions of ‘Specified Work’ and ‘Regional Australia’ (F2008L02264), signed on 23 June 2008; and
2. SPECIFY for the purposes of subitem 1225(5) of Schedule 1 to the Regulations:
 - (a) a suburb or location postcode listed in the Schedule to this Instrument, that is identifying that suburb or location as a ***regional Australia*** place; and
 - (b) ***specified work*** to be any type of work identified in the list below:
 - (i) plant and animal cultivation:
 - A. the harvesting and/or packing of fruit and vegetable crops;
 - B. pruning and trimming vines and trees;
 - C. general maintenance crop work;
 - D. cultivating or propagating plants, fungi or their products or parts;
 - E. immediate processing of plant products;
 - F. maintaining animals for the purposes of selling them or their bodily produce, including natural increase;
 - G. immediate processing of animal products including shearing, butchery, packing and tanning;
 - H. manufacturing dairy produce from raw material.
 - (ii) fishing and pearling:
 - A. conducting operations relating directly to taking or catching fish and other aquatic species;
 - B. conducting operations relating directly to taking or culturing pearls or pearl shell.

- (iii) tree farming and felling:
 - A. planting or tending trees in a plantation or forest that are intended to be felled;
 - B. felling trees in a plantation or forest;
 - C. transporting trees or parts of trees that were felled in a plantation or forest to the place where they are first to be milled or processed or from which they are to be transported to the place where they are to be milled or processed.
- (iv) mining:
 - A. coal mining;
 - B. oil and gas extraction;
 - C. metal ore mining;
 - D. construction material mining;
 - E. other non-metallic mineral mining and quarrying;
 - F. exploration;
 - G. mining support services.
- (v) construction:
 - A. residential building construction;
 - B. non-residential building construction;
 - C. heavy and civil engineering construction;
 - D. land development and site preparation services;
 - E. building structure services;
 - F. building installation services;
 - G. building completion services;
 - H. other construction services.

This Instrument, Working Holiday Visa – Definitions of *Specified Work* and *Regional Australia*, IMMI 16/041 commences on 1 July 2016.

Dated: 5 May 2016

Peter Dutton
 THE HON PETER DUTTON MP
 Minister for Immigration and Border Protection

SCHEDULE

AREAS	POSTCODES INCLUSIVE
NEW SOUTH WALES	2311 to 2312 2328 to 2411 2420 to 2490 2536 to 2551 2575 to 2594 2618 to 2739 2787 to 2898
NORFOLK ISLAND	Entire Territory
NORTHERN TERRITORY	Entire Territory
QUEENSLAND	4124 to 4125 4133 4211 4270 to 4272 4275 4280 4285 4287 4307 to 4499 4510 4512 4515 4516 4517 to 4519 4522 to 4899
VICTORIA	3139 3211 to 3334 3340 to 3424 3430 to 3649 3658 to 3749 3753, 3756, 3758, 3762, 3764 3778 to 3781

AREAS	POSTCODES INCLUSIVE
	3783, 3797, 3799 3810 to 3909 3921 to 3925 3945 to 3974 3979 3981 to 3996
WESTERN AUSTRALIA	6041 to 6044 6083 to 6084 6121 to 6126 6200 to 6799
SOUTH AUSTRALIA	Entire State
TASMANIA	Entire State

Appendix B

**Commonwealth of Australia***Migration Regulations 1994***REGIONAL CERTIFYING BODIES AND REGIONAL POSTCODES 2016/045***(Sub-subparagraph 5.19(4)(h)(ii)(F) and subregulation 5.19(7))*

I, *PETER DUTTON*, Minister for Immigration and Border Protection, acting under sub-subparagraph 5.19(4)(h)(ii)(F) and subregulation 5.19(7) of the *Migration Regulations 1994* (the Regulations):

1. REVOKE Instrument IMMI 13/049, Regional Certifying Bodies and Regional Postcodes, signed on 17 June 2013; and
2. SPECIFY for the purposes of sub-subparagraph 5.19(4)(h)(ii)(F) of the Regulations, each organization or entity in a State or Territory listed in Schedule A to this Instrument as a body; and
3. SPECIFY for the purposes of subregulation 5.19(7) of the Regulations, the suburb or location and State or Territory area postcode listed in Schedule B to this Instrument as a part of Australia for the purposes of the definition of regional Australia.

This Instrument, Regional Certifying Bodies and Regional Postcodes 2016/045, IMMI 16/045, commences on 1 July 2016.

Dated: 5 May 2016

Peter Dutton

THE HON PETER DUTTON MP
Minister for Immigration and Border Protection

SCHEDULE A

STATE or TERRITORY	BODY
AUSTRALIAN CAPITAL TERRITORY	ACT Economic Development Directorate
NEW SOUTH WALES	Industry and Investment NSW
	Regional Development Australia, Far South Coast
	Central NSW - Regional Development Australia, Central West Inc
	Central NSW - Regional Development Australia, Orana Inc
	Northern NSW - Regional Development Australia, Hunter Inc
	Northern NSW - Regional Development Australia, Northern Inland Inc
	Northern NSW - Regional Development Australia, Northern Rivers Inc
	Northern NSW - Regional Development Australia, Mid North Coast Inc
	Eastern NSW - Regional Development Australia, Central Coast Inc
	Southern NSW - Regional Development Australia, Southern Inland Inc
	Southern NSW - Regional Development Australia, Illawarra Inc
	Southern NSW - Regional Development Australia, Murray Inc
	Southern NSW - Regional Development Australia, Riverina Inc
	Western NSW - Regional Development Australia, Far West Inc

STATE or TERRITORY	BODY
NORTHERN TERRITORY	Department of Business and Employment
QUEENSLAND	Chamber of Commerce and Industry Queensland (Brisbane)
	South East Qld - Chamber of Commerce and Industry Queensland (Gold Coast)
	South East Qld - Chamber of Commerce and Industry Queensland (Sunshine Coast)
	South West Qld - Maranoa Regional Council
	South West Qld - Chamber of Commerce and Industry Queensland (Toowoomba)
	Central Qld - Central Western Queensland Remote Area Planning and Development Board Inc
	Central Qld - Chamber of Commerce and Industry Queensland (Rockhampton and Central Qld)
	Central Qld - Mount Isa Chamber of Commerce Inc
	Central Qld - Winton Shire Council
	Central Qld - Gladstone Area Promotion and Development Limited
	Central Qld - Regional Development Australia Central Queensland
	North Qld - Cairns Chamber of Commerce Inc
	North Qld - Cape York Peninsula Development Association Inc
	North Qld - Chamber of Commerce and Industry Queensland (Cairns and Far North Qld)

STATE or TERRITORY	BODY
	North Qld - Chamber of Commerce and Industry Queensland (Mackay)
	North Qld - Chamber of Commerce and Industry Queensland (Townsville and North Qld)
	North Qld - Gulf Savannah Development Inc
	North Qld - Townsville Enterprise Limited
SOUTH AUSTRALIA	Department of Manufacturing Innovation, Trade, Resources and Energy
TASMANIA	Department of Economic Development, Tourism and the Arts
VICTORIA	Department of Business and Innovation (Ballarat)
	Department of Business and Innovation (Bendigo)
	Department of Business and Innovation (Geelong)
	Department of Business and Innovation (Mildura)
	Department of Business and Innovation (Shepparton)
	Department of Business and Innovation (Traralgon)
	Department of Business and Innovation (Wangaratta)
	Department of Business and Innovation (Wodonga)
	Ballarat City Council
	Greater Geelong City Council

STATE or TERRITORY	BODY
	Swan Hill Rural City Council
	Rural City of Wangaratta City Council
	Warrnambool City Council
	Wimmera Development Association Inc
WESTERN AUSTRALIA	Gascoyne Development Commission
	Great Southern Development Commission
	Kimberley Development Commission
	Mid West Development Commission
	Peel Development Commission
	Pilbara Development Commission
	Skilled Migration Western Australia
	South West Development Commission
	RDA Goldfields Esperance

SCHEDULE B

AREA	POSTCODES INCLUSIVE
AUSTRALIAN CAPITAL TERRITORY	Entire Territory
NEW SOUTH WALES (Excluding Sydney Newcastle and Wollongong)	2250 to 2251 – (Central Coast)
	2256 to 2263 – (Central Coast)
	2311 to 2312
	2328 to 2411
	2415
	2420 to 2490
	2536 to 2551
	2575 to 2594
	2618 to 2739
	2787 to 2898
NORFOLK ISLAND	Entire Territory
NORTHERN TERRITORY	Entire Territory
QUEENSLAND (Excluding the greater Brisbane area and the Gold Coast)	4124 to 4125
	4133
	4211
	4270 to 4272
	4275
	4280
	4285
	4287
	4307 to 4499
	4515
	4517 to 4519

AREA	POSTCODES INCLUSIVE
	4522 to 4899
SOUTH AUSTRALIA	Entire State
TASMANIA	Entire State
VICTORIA (Excluding Melbourne metropolitan Area)	3211 to 3334
	3340 to 3424
	3430 to 3649
	3658 to 3749
	3753
	3756
	3758
	3762
	3764
	3778 to 3781
	3783
	3797
	3799
	3816 to 3909
	3921 to 3925
	3945 to 3974
	3979
	3981 to 3996
WESTERN AUSTRALIA	Entire State

Appendix C

Areas	'Regional Australia' postcodes for the purposes of the current second subclass 417 (Working Holiday) visa	'Regional Australia' postcodes for the purposes of the current subclass 187 (Regional Sponsored Migration Scheme) visa
ACT	Not specified	Entire Territory*
NSW	2311 to 2312 2328 to 2411 2420 to 2490 2536 to 2551 2575 to 2594 2618 to 2739 2787 to 2898	2250 to 2251 – (Central Coast)* 2256 to 2263 – (Central Coast)* 2311 to 2312 2328 to 2411 2415* 2420 to 2490 2536 to 2551 2575 to 2594 2618 to 2739 2787 to 2898
Norfolk Island	Entire Territory	Entire Territory
NT	Entire Territory	Entire Territory
QLD	4124 to 4125 4133 4211 4270 to 4272 4275 4280 4285 4287 4307 to 4499 4510* 4512* 4515 4516* 4517 to 4519 4522 to 4899	4124 to 4125 4133 4211 4270 to 4272 4275 4280 4285 4287 4307 to 4499 4515 4517 to 4519 4522 to 4899

Appendix C

SOUTH AUSTRALIA	Entire State	Entire State
TASMANIA	Entire State	Entire State
VICTORIA	3139 3211 to 3334 3340 to 3424 3430 to 3649 3658 to 3749 3753, 3756, 3758, 3762, 3764 3778 to 3781 3783, 3797, 3799 3810 to 3909* 3921 to 3925 3945 to 3974 3979 3981 to 3996	3139 3211 to 3334 3340 to 3424 3430 to 3649 3658 to 3749 3753, 3756, 3758, 3762, 3764 3778 to 3781 3783, 3797, 3799 3816 to 3909 3921 to 3925 3945 to 3974 3979 3981 to 3996
WESTERN AUSTRALIA	6041 to 6044 6083 to 6084 6121 to 6126 6200 to 6799	Entire State*

Note – Red highlights indicate additional postcodes which are not available under the alternative program.