



## Appendix D: Implementation arrangements for the Seasonal Worker Programme

# **Seasonal Worker Programme**

## **Implementation Arrangements**

Australia's Seasonal Worker Programme (SWP) commenced on 1 July 2012. .

The SWP aims to:

- contribute to economic development in partner countries by providing employment opportunities, remittances and opportunities for up-skilling and
- in doing so the SWP will also provide benefits to the Australian economy and to Australian employers who can demonstrate that they cannot source suitable Australian labour.

The following countries have been invited to participate in the Seasonal Worker Programme:

Government of the Republic of Fiji  
Government of the Republic of Kiribati  
Government of the Republic of Nauru  
Government of the Independent State of Papua New Guinea  
Government of the Independent State of Samoa  
Government of Solomon Islands  
Government of the Democratic Republic of Timor-Leste  
Government of the Kingdom of Tonga  
Government of the Government of Tuvalu  
Government of the Republic of Vanuatu

Countries that have entered into a Memoranda of Understanding for the Seasonal Worker Programme are collectively known as "Participating Countries".

The IAs are comprised of the following documents:

1. Supervision and resourcing of labour sending and labour receiving arrangements
2. Recruitment
3. Programme eligibility requirements
4. Visa eligibility requirements
5. Visa application requirements and processing arrangements
6. Employment arrangements
7. Briefings
8. Monitoring and compliance
9. Capacity building for Participating Countries

### **1. Supervision and resourcing of labour sending and labour receiving arrangements**

In order to support and facilitate recruitment of suitable, fit, healthy and work-ready Seasonal Workers from Participating Countries, each Participating Country will maintain close supervision of national labour-sending arrangements and dedicate adequate staff and resources. The nominated Ministry and/or their appointed/licensed recruitment agents will be granted the necessary authority to liaise with Approved Employers(AEs) to:

- offer AEs eligible candidates, taking account of employer requirements, development objectives and gender equity;
- assist AEs to interview and/or screen candidates;
- assist candidates to obtain health checks and police clearances;
- assist candidates to understand the recruitment process;
- assist selected candidates to understand their offer of employment;
- assist selected candidates to lodge fully completed visa applications;
- provide a pre-departure briefing for selected candidates; and
- arrange Seasonal Workers' travel arrangements.

In order to support and facilitate the recruitment of Seasonal Workers from Participating Countries, the Australian Government will maintain close supervision of national labour-receiving arrangements and dedicate adequate staff and resources. The Australian Government will ensure that AEs will:

- select eligible candidates from the nominated Ministry and/or their appointed/licensed recruitment agents; arrange and pay for the full cost of Seasonal Workers return travel to Australia up front as well as any domestic transportation arrangements from Seasonal Workers' port of entry in Australia to their host location and may then deduct in instalments from Seasonal Workers' pay the combined cost of these transportation arrangements minus \$500;
- arrange suitable accommodation and local transport for Seasonal Workers;
- provide an on-arrival briefing for Seasonal Workers;
- provide Seasonal Workers with a minimum average of 30 hours of work per week for the duration of their employment;
- provide Seasonal Workers with pastoral care (see document entitled "Employment Arrangements") and encourage interaction between Seasonal Workers and receiving communities; and
- monitor Seasonal Workers' employment.

## 2. Recruitment

The Participants recognise three recruitment pathways under the Seasonal Worker Programme (SWP):

1. Recruitment from a work-ready pool
2. Recruitment via appointed or licensed Agents
3. Direct recruitment by employers

The Australian Government recognises that the recruitment pathway/s available in a particular country is at the discretion of that country.

Participating Countries are to advise the Australian Government of changes to their recruitment pathways, including their preferred recruitment pathway/s.

### **Work-Ready Pool Recruitment**

*Recruitment Pathway in Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu and Vanuatu*

The nominated Ministry in each Participating Country will establish a work-ready pool of suitable candidates from which the AEs can recruit. The Participating Country may identify individuals for possible inclusion in the work-ready pool in consultation with stakeholders (such as village councils, church representatives and other relevant community leaders).

The Participating Country will then assess these candidates against the Eligibility Requirements established in these Implementation Arrangements. A screening committee could be established to assist with this process and members could include stakeholder representatives.

Candidates who meet the criteria can then be included in the work-ready pool.

Recruitment from the work-ready pool:

- The Participants note that AEs may select Seasonal Workers with the assistance of the nominated Ministry of the Participating Country, either from Australia or by travelling to the Participating Country.
- Where an AE wishes to interview candidates, the nominated Ministry of the Participating Country will assist the AE to arrange interviews.
- The Participants note that that the AE may want to consider candidates already known to the AE or Seasonal Workers who they have previously recruited.
- The Participants note that AEs may want to consider candidates from one village, district or province, or consider candidates from different villages or districts;
- At the request of the AE, the nominated Ministry will pre-select candidates for who meet their requirements.

### **Direct Recruitment**

*Recruitment Pathway in Kiribati, Samoa, Tonga and Vanuatu.* The Australian Government recognises that in Kiribati, and Samoa that recruitment via the work-ready pool is the preferred recruitment pathway. Where an AE wishes to recruit directly, the AE must advise the Australian Government and the Participating Country that they wish to undertake Direct Recruitment. The Participating Country reserves the right to final judgement on any candidate

The AEs should work with the nominated Ministry to ensure that the Seasonal Workers selected meet the Eligibility Requirements and the Seasonal Workers' details are entered in the Participating Country's work-ready pool database. The Participating Country will then ensure that each worker is given a pre-departure briefing.

### **Agent Recruitment**

#### *Recruitment Pathway in Kiribati, Solomon Islands and Vanuatu*

AEs may undertake recruitment via a recruitment agent licensed by the nominated Ministry.

AEs wishing to recruit via an agent should contact the Australian Government which will provide contact details in the Participating Country and/or the names of all current licensees and the procedure for recruiting via an agent (depending on arrangements agreed with the individual Participating Country). Once initial advice has been provided by the Australian Government, the nominated Ministry in the Participating Country will be the primary facilitative contact for the AE.

The nominated Ministry will include all Seasonal Workers selected via agent recruitment in the work-ready pool database to allow the nominate Ministry to provide a pre-departure briefing.

Licensees will work on behalf of the AEs to identify, screen, brief and arrange transport to Australia of selected Seasonal Workers.

Any licensees engaged by AEs will be paid by AEs, but the decision to offer employment and to enter into an employment agreement remains with the AE.

### **Integrity of recruitment**

In order to ensure the integrity of the SWP the Participants agree that:

- Seasonal Workers can only be recruited via Participating Countries nominated Ministry and/or their appointed/licensed recruitment agent. Direct recruitment can also be used if the Participating Country allows.
- Seasonal Workers can only be recruited by AEs and that the nominated Ministry and/or their appointed/licensed recruitment agent will only make an offer of employment on behalf of the an AEs' once they have been notified by the Australian Government that the recruitment exercise has been approved.
- AEs intending to recruit directly, will only make offers of employment once the nominated Ministry has been notified by the Australian Government that the recruitment exercise has been approved.
- The Participants acknowledge that it is the prerogative of AEs to decide which Participating Country they will recruit from.
- As far as possible the Participating Country will give consideration to gender equity in the composition of the work-ready pool and in the selection of candidates recommended to AEs.
- The Participating Country will manage their work-ready pool in a fair, transparent and equitable manner.
- The Australian Government will maintain an up-to-date list of AEs and alert nominated contacts via email of the approval of new AEs.

- The Participants acknowledge that the number of Seasonal Workers recruited from each Participating Country is subject to labour market demand in Australia and satisfactory functioning of recruitment mechanisms.
- The Participants will declare to each other any conflict of interest in the selection of Seasonal Workers prior to their departure to Australia. For example, in the case of a labour sending office in a participating country this would include the recruitment of direct family members by AEs via the Work Ready Pool, Direct or Agent recruitment pathways. In the case of labour receiving arrangements in Australia, this will include the approval of an organisation as an approved employer, where that organisation has a pre-existing relationship with a member of the assessment panel.

### 3. Programme eligibility requirements

The Participating Country will ensure that the nominated Ministry and/or their appointed/licensed recruitment agents only put forward eligible candidates to the AEs for their consideration. In addition to the eligibility requirements below, there are visa eligibility requirements for the SWP which are set out in section 4 and 5 below.

The nominated Ministry and/or their appointed/licensed recruitment agents will review the eligibility of each and every candidate for each recruitment exercise, including recruitment exercises where Seasonal Workers have been invited by an AE to return to Australia under the SWP in a later season and for Seasonal Workers recruited directly.

Where an AE can recruit directly from a Participating Country:

- the Australian Government will encourage AEs to liaise with the Participating Country to facilitate the recruitment of Seasonal Workers who meet the Programme eligibility requirements; and
- details of all Seasonal Workers recruited directly by AEs are to be submitted to the Participating Country to review their eligibility and provide a pre-departure briefing.

Eligibility criteria are as follows:

#### *Good character*

- Prospective seasonal workers must be of good character, and be able to substantiate this by presenting authentic documentation certifying that they do not have a substantial criminal record.

#### *Fit and healthy*

- Prospective Seasonal Workers must be healthy and fit for the work specified, as evidenced by undergoing a medical examination.
- Workers who have a medical condition requiring significant ongoing treatment or hospitalisation or are not deemed fit for active work will not be considered eligible for the SWP.

#### *Age*

- Prospective Seasonal Workers must have turned 21 at the time of visa application.

#### *Citizenship*

- Prospective Seasonal Workers must be citizens of the Participating Country (and not a citizen of Australia) and in the Participating Country at the time of visa application.
  - Citizens of the Participating Country who are in another country are not eligible for the SWP.

#### *Identity*

- The nominated Ministry has verified, based on sufficient inquiries and evidence, that the stated identity of the prospective worker is their real identity.

#### *Intentions to return to the Participating Country*

- Prospective Seasonal Workers have a genuine intention to enter Australia temporarily for seasonal work, and return to the Participating Country after their employment ceases.

## 4. Visa eligibility requirements

In order to facilitate the entry and participation of Seasonal Workers, the nominated Ministry agrees to ensure that only prospective Seasonal Workers that can meet the visa eligibility requirements submit visa applications. Visa eligibility requirements for Seasonal Worker Programme participants are set out in the Australian *Migration Act 1958*, the *Migration Regulations 1994* and the supporting policy instructions.

Seasonal Worker Programme visa applications must be made in accordance with Australian immigration law and regulations. Special Programme (subclass 416) visa category facilitates the Seasonal Worker Programme.

Guidance on the requirements may be found below and on the Department of Immigration and Border Protection's website at [www.immi.gov.au/Visas/Pages/416-swp.aspx](http://www.immi.gov.au/Visas/Pages/416-swp.aspx).

Participants note that visa eligibility requirements will include the criteria that:

- Prospective Seasonal Workers must be of good character.

Participating countries will ensure that prospective workers' good character is confirmed and where requested by the Department of Immigration and Border Protection present authentic documentation certifying that the prospective workers do not have a substantial criminal record

- Prospective workers must be of good health.

Seasonal workers who have a medical condition requiring significant ongoing treatment or hospitalisation may not be able to meet the visa health criteria. The health requirements for seasonal workers from Kiribati, Nauru, Papua New Guinea, Solomon Islands, Timor-Leste and Tuvalu will generally consist of a chest X-ray. Further medical assessments may also be requested of Seasonal Workers from any of the Participating Countries including Fiji, Samoa and Tonga, depending on medical history and proposed activities while in Australia

- Prospective Seasonal Workers must have turned 21 at the time of visa application.
- Prospective workers must be citizens of the Participating Country and residing in the Participating Country at the time of visa application.
- The nominated Ministry has verified, based on sufficient inquiries and evidence, that the stated identity of the prospective seasonal worker is their real identity.
- Prospective Seasonal Workers have a genuine intention to enter Australia temporarily for seasonal work, and return to their Citizenship Country after their employment ceases.
- Seasonal workers seeking to return for a subsequent season must also have complied with the previous Special Programme (subclass 416) visa requirements and visa conditions.

Prospective Seasonal Workers will also need to meet any Seasonal Worker Programme eligibility requirements that precede Visa Eligibility Requirements.



## 5. Visa application requirements and processing arrangements

To assist with the participation of Seasonal Workers in the Seasonal Worker Programme, and subsequent return, the Department of Immigration and Border Protection commits to timely and efficient processing of visa applications on the basis that:

- Visa applicants must complete in full the relevant application forms and provide requested documentation and evidence in support of their application. The Department of Immigration and Border Protection will provide training and assistance to Participating Country nominated Ministries on the visa application processes;
- Seasonal workers must be sponsored by an Australian organisation that has been approved as a Special Programme Sponsor for the Seasonal Worker Programme under Special Programme (Subclass 416) visa; and
- Visa applicants for the Seasonal Worker Programme will not be able to include any dependents or accompanying family members in their visa application.

Complete visa applications with supporting documentation can only be lodged at the office identified by the Department of Immigration and Border Protection for this purpose, and will comprise:

- The completed visa application form signed by the applicant including a passport photo of the visa applicant;
- The visa application charge applicable at time of lodgement;
- A certified copy of the photo identity page of the applicant's passport;
- The original or a certified copy of evidence in writing from the Special Programme Sponsor, who has agreed to sponsor the visa applicant in relation to the Seasonal Worker Programme. The evidence in writing may be in a form of a letter of invitation from the sponsor, detailing the type of employment, duration and location in Australia;
- Evidence that the Australian organisation has been approved as a Special Programme Sponsor, for example, sponsorship application ID number or sponsor approval letter; and
- Evidence of arrangements made for private health insurance while in Australia.

Where required, visa applicants must also undergo a chest X-ray (no more than 3 months before visa application) or a medical assessment at an approved radiology clinic or panel doctor.

Participants acknowledge that a decision on visa grant or refusal is the sole domain of the Australian Government. A decision to refuse to grant a visa under the SWP is merits reviewable by the Migration Review Tribunal in Australia.

Visas granted to Seasonal Workers will be valid for multiple entry, allowing for a stay of up to seven (7) months in Australia, depending on the work placement, and will be subject to the conditions that the visa holder: The maximum work period is for 6 months. The visa cannot be granted more than 2 weeks prior to the proposed travel date

- May only work for the Australian Sponsor that has sponsored the seasonal worker's employment in Australia as part of the Seasonal Worker programme (visa condition 8107); and
- Must have and maintain private health insurance at the appropriate level while in Australia (visa condition 8501); and
- Will not, after entering Australia, be entitled to be granted a substantive visa, other than a Protection Visa, while the holder remains in Australia (visa condition 8503).

The Department of Immigration and Border Protection will provide Participating Countries with information outlining seasonal worker visa obligations while in Australia and employed by the Australian Special Programme Sponsor. Application forms, current fees and other visa information about the Seasonal Worker Programme are available on the Department of Immigration and Border Protection's website at [www.immi.gov.au](http://www.immi.gov.au). The Department of Immigration and Border Protection will inform Participating Countries of any updates and changes.

## 6. Employment arrangements

The Australian Government will ensure that Approved Employers (AEs) make a written offer of employment to a Seasonal Worker and that the offer is signed by, or on behalf of, the AE. The offer will be in line with Seasonal Worker Programme (SWP) requirements and will set out:

- pay and conditions of employment and the relevant industrial instrument;
- commencement and duration of employment;
- location of employment;
- description of the type of work the Seasonal Worker will undertake; and
- accommodation and transportation arrangements.

The employment offer is for work in Australia's agriculture (including aquaculture) industry, and in Australia's accommodation industry in locations specified by the Australian Government. Eligible occupations within these industries are set out on the Seasonal Worker Programme website [www.employment.gov.au/seasonal-worker-programme](http://www.employment.gov.au/seasonal-worker-programme). The employment offer will be made subject to a visa grant.

The nominated Ministries and/or licensed recruitment/appointed recruitment agents will:

- highlight to selected candidates that they have an opportunity to seek independent advice;
- explain the offer of employment in an appropriate language.

The selected candidate must sign the employment offer before they can submit a visa application to work in Australia under the SWP.

The nominated Ministry and/or their appointed/licensed recruitment agent will ensure the selected candidate receives and retains the employment offer.

The nominated Ministry will take a copy of the letter for their records and assist the AE to obtain a signed copy of the employment offer.

To facilitate Seasonal Workers' safe, secure and rewarding participation in the SWP, the Australian Government, will require AEs to:

- employ Seasonal Workers in accordance with an fair work instrument which may exceed (but not be less than) the minimum provided under Fair Work legislation;
- ensure Seasonal Workers are aware they can join a union;
- guarantee Seasonal Workers will be provided with a minimum average of 30 hours of work per week;
- provide employment to Seasonal Workers for up to six months, except in the case of the microstates of Kiribati, Nauru and Tuvalu, who may be employed for up to nine months. Prior to recruiting Seasonal Workers, AEs must demonstrate to the Australian Government that Seasonal Workers will benefit financially from their participation.

- submit a plan for the Australian Government's approval outlining their intended arrangements for the recruitment and pastoral care of Seasonal Workers;
- recruit in accordance with the approval provided by the Australian Government;
- provide Seasonal Workers with Australian workers' compensation insurance;
- tax Seasonal Workers in accordance with Australian taxation laws;
- pay Seasonal Workers superannuation in accordance with Australian laws;
- provide Seasonal Workers with a safe workplace in accordance with Australian Occupational Health and Safety laws;
- arrange and pay for the full cost of Seasonal Workers return travel to Australia up front as well as any domestic transportation arrangements from Seasonal Workers' port of entry in Australia to their host location and may then deduct in instalments from Seasonal Workers' pay the combined cost of these transportation arrangements minus \$500;
- only make deductions from the pay of Seasonal Workers with the written agreement of Seasonal Worker and in accordance with Australian laws;
- establish arrangements for the pastoral care of Seasonal Workers;
- assist Seasonal Workers access church, recreational and sporting activities;
- arrange suitable accommodation for Seasonal Workers;
- arrange transportation to and from accommodation to work;
- ensure Seasonal Workers have access to shops and community facilities;
- contribute information to the pre-departure briefing;
- conduct an on-arrival briefing at no charge to Seasonal Workers;
- facilitate access to personal banking;
- provide a workplace induction;
- provide necessary translation of work notices and guidelines;
- monitor Seasonal Workers progress regularly;
- report to the Australian Government on a regular basis; and
- conduct an on-return briefing at no charge to the Seasonal Worker.

## 7. Briefings

### Pre-application briefing

The nominated Ministry will ensure that prospective candidates and their communities have access to information describing basic facts about the SWP and living and working in Australia prior to applying to participate in the Seasonal Work Programme (SWP).

The Australian Government will provide the nominated Ministry of Participating Countries with material for use in pre-application briefings.

### Pre-departure briefing

In order to maximise the benefits, and minimise the risks to Seasonal Workers of employment in Australia and the adjustments involved, each Participating Country's nominated Ministry will ensure Seasonal Workers receive a pre-departure briefing.

The pre-departure briefing will address:

- Wages and conditions offered to Seasonal Workers;
- How to raise a concern with their Australian Approved Employer (AE);
- The role of the Fair Work Ombudsman (FWO);
- The role of unions in Australia;
- The deductions that can be lawfully made from Seasonal Workers' earnings;
- Taxation;
- Superannuation;
- Workers' compensation;
- Details of a payslip;
- Safety at work;
- Discrimination and harassment in the workplace;
- Productivity at work;
- The costs involved in the SWP:
  - Travel costs to and from Australia
  - Travel costs to and from work
  - Accommodation
  - Living expenses
  - Health insurance
- Financial literacy training, banking and remittance arrangements;

- Visa conditions – what they mean and implications if breached;
- What to do in an emergency;
- The location of the work and accommodation;
- Availability of services in the community;
- Staying healthy and what to do if a Seasonal Worker becomes unwell;
- Personal safety;
- Health insurance;
- Climate;
- Flights to and from Australia; and
- Australia’s customs, immigration and quarantine arrangements.

The Participating Country will invite other representatives with relevant expertise to participate in pre-departure briefings. Representatives may include:

- Unions;
- Banking or financial institutions;
- Government officials from other Ministries;
- Returned Seasonal Workers;
- Medical professionals; and
- Community organisations.

The Australian Government and AEs will make available to the nominated Ministry training materials, a DVD and information that may be drawn on for the purpose of delivering a pre-departure briefing. The Australian Government will liaise with the Ministry regarding the translation of materials, where appropriate.

### **On-arrival briefing**

In order to maximise the benefits, and minimise the risks, to Seasonal Workers of employment in Australia and the adjustments involved, the Australian Government will ensure that AEs provide Seasonal Workers with appropriate on-arrival briefing and orientation material. The Australian Government will provide AEs with information to assist them to deliver an on-arrival briefing.

The on-arrival briefing may be undertaken in consultation with the local receiving community and will cover at a minimum:

- contacts for assistance;
- what to do in an emergency situation;
- accommodation arrangements, including:
  - toilet and washing facilities

- clothes washing and drying facilities
- food storage and cooking facilities
- cleaning arrangements
- cost and payment arrangements
- bond and bill arrangement
- fire evacuation procedure
- accommodation provider's rules
- what to do if the Seasonal Worker would like to make alternate accommodation arrangements;
- transportation arrangements, including what to do if the Seasonal Worker would like to make alternative transportation arrangements;
- local and regional orientation information, including:
  - the location of shops
  - the location of medical and health facilities
  - the location of banking and financial institutions
  - the location of religious and recreational centres
  - the location of community facilities (e.g. library);
- assistance with filling-in relevant forms;
- what to do if a Seasonal Worker becomes unwell;
- pay and conditions of employment;
- workers' rights and responsibilities;
- on the job training and employment orientation, including an occupational health and safety briefing;
- financial literacy, banking and remittance arrangements.

The AE will invite a representative from:

- the relevant union;
- the Fair Work Ombudsman; and
- a banking institution;

to address Seasonal Workers.

The AE will also:

- arrange access to personal banking for Seasonal Workers; and

- assist Seasonal Workers to apply for a tax file number and establish a superannuation account.

### **Pre-return briefing**

The Australian Government will ensure that AEs provide Seasonal Workers with an on-return briefing, which covers at a minimum:

- Transportation arrangements to the airport;
- Finalising bills and accounts; and
- Excess luggage.
- The process for claiming superannuation

### **On-return briefing**

The nominated Ministry will provide Seasonal Workers with an on-return briefing, which covers at a minimum:

- Earnings and Seasonal Workers' goals;
- How to claim superannuation;
- Keeping in touch in case the AE wants the Seasonal Workers to return in following years.

The nominated Ministry will also seek feedback from the Seasonal Workers on their placement and on improvements to the briefings and materials provided to assist future Seasonal Workers to be prepared for employment under the SWP.



## **8. Monitoring and compliance**

The Participants commit to co-operatively evaluate the impacts of the Seasonal Worker Programme (SWP) on Participating Countries and Australian industry.

The Australian Government will establish a monitoring and reporting programme to ensure that Seasonal Workers are employed in accordance with the SWP requirements and Australia's Fair Work, Occupational Health and Safety, Immigration, Tax, and Workers' Compensation laws.

The Participants will promptly investigate allegations of:

- exploitation or misconduct by Australian Approved Employers;
- misconduct by Seasonal Workers; and
- breaches of mutually determined recruitment policies, including allegations of fraud or corrupt recruitment practices.

The Participants will share advice on the outcomes of any investigation.

## 9. Capacity Building for Participating Countries

The Australian Government will assist each Participating Country to establish the necessary mechanisms to facilitate the successful operation of the Seasonal Worker Programme (SWP). To this end, the Australian Government and each Participating Country will negotiate a programme of assistance following careful analysis of current labour-sending arrangements in each Participating Country. This support may be delivered through other development partners and/or existing development assistance programs and will be coordinated with other donors including New Zealand.

Participating Countries will provide the necessary human and funding resources required to achieve the objectives of the SWP.

The programme could include assistance for:

- strengthening Participating Countries' ability to undertake marketing and strengthen employer relationships to help increase the demand for Seasonal Workers;
- ensuring quality of the supply of Seasonal Workers;
- maximising the impact of skills and remittances; and
- improving evidence to policy and management of labour mobility programs.

The Australian Government will provide the nominated Ministry with material for use in pre-application briefings.

The Australian Government will make available to the nominated Ministry training materials, including a DVD and information booklet, which may be drawn on for the purpose of delivering a pre-departure briefing and provided to Seasonal Workers. The Australian Government will liaise with the Ministry regarding the translation of relevant parts, where appropriate.