DEPARTMENT OF IMMIGRATION AND MULTICULTURAL AFFAIRS SUBMISSION TO THE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION COMMITTEE

INQUIRY INTO A POSSIBLE PACIFIC REGIONAL SEASONAL CONTRACT LABOUR SCHEME

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BACKGROUND

Australia has no recent history of granting visas to unskilled workers to temporarily work in Australia. Rather, Australia has focused on the entry of skilled workers in the temporary visa stream as such persons supplement the skilled labour workforce in Australia by enabling businesses to not be hampered by a lack of skilled workers.

For some time now there have been calls for measures to be taken to supplement the supply of unskilled labour in regional Australia to assist in the harvesting of a variety of produce across many parts of regional Australia. Despite an unemployment rate in Australia amongst unskilled labour of 8.5%, Australian agricultural producers continue to report difficulty in recruiting labour to harvest crops.

In addition to the above, there have been a number of calls from countries in the South Pacific Forum, as well as from East Timor, for workers from these countries to be allowed to enter Australia to undertake semi and unskilled work. Such an arrangement is thought to be of possible economic assistance to these countries by way of remittances and the promotion of closer economic and cultural links.

Any proposal to allow the entry of unskilled workers into Australia is fraught with potential difficulties, and so must be carefully considered. Such schemes risk the exploitation of workers while opening up Australia to possible higher than acceptable rates of overstayers. When the casual nature of harvest work, the flat tax rate of 29% that applies to temporary residents and costs such as travel are factored into the proposal the economic advantages to the worker can be marginal.

The Government has not supported calls for such schemes in the past, and DIMA is not aware of any Government proposals that could support a contract labour scheme. The Prime Minister has stated that any proposal to move away from Australia's non-discriminatory migration policy is not something the Government would do very readily.

The Committee Inquiry has requested information on the following issues:

COMPLIANCE

The key issues from an immigration compliance perspective are whether the introduction of a regulated scheme for the entry of seasonal contract labour from the South Pacific region would be likely to:

- reduce the incidence of illegal work in Australia, or
- present, of itself, a significant compliance risk.

Statistically, citizens from many countries in the South Pacific region are a higher immigration compliance risk than citizens from countries in other potential source areas. In addition the profile of the likely participants of a seasonal worker scheme would be relatively young, fit, unskilled males, the cohort who pose the biggest risk of overstaying. The Department believes based on previous experience that it is inevitable that some seasonal workers under this kind of scheme will fail to comply with immigration requirements, and that the possible costs to the community of this non-compliance would be an appropriate matter for Government to consider when looking at any detailed proposal.

The risk of overstayers could however be mitigated by the inclusion of requirements that reduce the incentive to overstay, penalties for overstaying and a substantial level of monitoring and follow-up. For example targeting applicants with family who remain in their country of origin, and who have a positive report from employers. Conditions could be placed on the visas to preclude the opportunity to apply for other visas while in Australia (other than Protection Visas). Also only those with no negative immigration history, who have been selected by their relevant home government, should participate.

In 2004-05 the Department located 18,341 unlawful non-citizens and people breaching their visa conditions. Of these, 3,870 were confirmed as working illegally in Australia (the true number that had been working illegally is certainly much higher, as not all people located will admit to this criminal offence). In 2004-05 the business sectors most likely to employ illegal workers were accommodation, cafes and restaurants (21% of the total number of confirmed illegal workers were in this sector), and Agriculture Forestry and Fishing (20%).

A total of 770 illegal workers were confirmed to have been employed in the Agriculture, Forestry and Fishing business sector (although as noted above the true figure is certainly much higher) and most of these were engaged in short-term manual work in the horticultural industry, for example fruit picking.

The horticulture industry is therefore a problem area for illegal work, and is part of a business sector that accounted for 20% of illegal workers located in the last program year.

It appears possible that an economically viable and well regulated scheme could lead to a preference for seasonal contract labour from the South Pacific over available sources of labour in Australia (of which illegal workers are one part). However the Department believes is not possible to say with any certainty that there would be substantial substitution of seasonal contract workers for illegal workers.

Indeed one very possible outcome is that the seasonal contract workers would displace legitimate Australian workers rather than illegal workers, as there are indications that illegal workers are willing to work harder in poorer conditions than local workers.

The Department has a number of published ways of calculating the risk associated with non-compliance with the conditions of temporary entry to Australia.

The first of these is in the “Stock Estimate of Unlawful Non-Citizens” published annually in *Population Flows: Immigration Aspects.* The 2004-05 edition of *Population Flows* has at Appendix C a measurement of the percentage of unlawful non-citizens to temporary entry arrivals by country of citizenship (see over page).

These figures extracted below show that two of the top five countries for risk measured in this way are from the South Pacific region. These countries are Tonga at number one and Samoa at two.

Stock Estimate of Unlawful Non-Citizens in Australia as at 30 June 2005
Statistics extracted from Appendix C

Rank	Country of Citizenship	Stock Estimate of Unlawful Non-Citizens at 30 June 2005	Visitor, Temporary Resident & Student Arrivals (July 1999 to June 2005)*	Percentage of Unlawful Citizens to Temporary Entrant Arrivals
1	Tonga	703	16,728	4.20
2	Samoa	289	14,622	1.89
3	Pakistan	366	19,461	1.88
4	Lebanon	343	19,726	1.74
5	Philippines	2,333	138,788	1.68

* Includes some entrants who have visited more than once in the period

Another way that the Department measures risk is to assess Visitor Visa overstay rates. These are published each year in *Managing the Border*.

The 2004-05 edition of *Managing the Border* shows the estimated percentage of visitors (i.e. people who arrived in Australia primarily as tourists), who no longer have a valid visa. The overall visitor overstay rate for the period 1 July 2004 to 30 June 2005, was 0.27%.

These figures also feature countries from the South Pacific region. Kiribati had a visitor overstay rate almost 10 times higher than the overall visitor overstay rate, while Samoa had an overstay rate of more than 8 times the overall visitor overstay rate and Tonga had an overstay rate of around 3 times the overall visitor overstay rate.

Visitor Visa Overstay Rates
Statistics extracted from *Managing the Border* 2004-05 Edition

The 10 countries with the highest visitor overstay rates (only countries with 500 or more people visiting Australia were included) were:

Kiribati (2.46% of 1,867 visitors)
Samoa (1.94% of 3,271 visitors)
Greece (1.88% of 5,963 visitors)
Philippines (1.75% of 27,828 visitors)
Stateless (1.47% of 781 visitors)
The Former Yugoslav Republic of Macedonia (1.46% of 960 visitors)
Vietnam (1.12% of 8,203 visitors)
Brazil (1.05% of 7,228 visitors)
Poland (0.94% of 5,875 visitors)
Tonga (0.91% of 3,742 visitors)

A third way that the Department measures these risks is through what is known as the non-return rate (NRR). The NRR is the number of people who enter Australia on visitor visas and, on the date after their visa expires, are still in Australia, as a percentage of all arrivals who had a visa expire.

Unlike the visitor overstay rate, the visitor NRR is not limited to persons unlawfully in Australia and includes visitors who have obtained another visa after their arrival.

A non-return, for whatever reason, brings into question the claims originally made to DIMA decision-makers overseas regarding an intention to make a genuine visit. The NRR is relevant feedback to the overseas post in deciding future visitor visa applications. Visitors from some countries, usually those with small numbers of visitors, have a NRR rate up to 10 times higher than the global average.

The NRR figures again feature South Pacific nations, with Samoa and Nauru being in the top 6 countries for non-return.

Visitor Visa Non-Return Rates
Statistics extracted from *Managing the Border* 2004-05 Edition

For countries with more than 500 arrivals, the highest visitor NRR rates as at June 2005 were:

Greece with 8.00%
Nepal with 7.81%
Samoa with 6.86%
Nauru with 6.49%
Poland with 5.25%
Egypt with 4.77%

The global average non-return rate at 30 June 2005 was 1.22%. Samoa and Nauru had a visitor non-return rate more than five times the average. The two countries with the highest number of visitors, the United Kingdom and Japan, had non-return rates of 1.58% and 0.53% respectively.

Each of these methods used by the Department shows nations from the South Pacific region featuring as risk countries for temporary entry to Australia.

Although this does not prove that a scheme for the entry of seasonal contract labour from the South Pacific region would necessarily result in high overstay or non-return rates, it is clear that some countries in the region are a higher risk than other potential source areas. The Department believes that citizens of countries in the South Pacific region do present a risk of overstay or non-return, and that this risk is a legitimate consideration for Government when assessing the merits of any proposal.

COSTS ASSOCIATED WITH ILLEGAL WORKERS

Considerable resources and effort are expended by the department in attempting to locate and remove illegal workers as well as delivering strategies such as the Employer Awareness Campaign and Entitlements Verification service aimed at preventing the employment of illegal workers. The costs associated with illegal workers places a considerable burden on the Australian Community. This burden includes the cost of compliance activity but also relates to other broader issues such as:

- Denying Australian citizens and permanent residents the opportunity to obtain a job;
- Adding to the extra tax burden due to the costs associated with locating and removing them, uncollected taxes and fraudulently claimed social security benefits;
- Disadvantaging employers who employ legal workers and who may be unable to compete with employers who employ and under-pay illegal workers; and
- Some illegal workers are exploited by their employers.

According to DIMA's Driver Based Costing returns for the 2004-05 financial year, the cost of locating illegal workers and issuing warning notices to their employers was approximately $1691 per illegal worker. The average cost of cancelling a visa was approximately $9932. The average cost of detaining an unlawful non-citizen located in the community was approximately $221 per day and the average cost of their removal from Australia was $1800. This translates to a minimum cost of approximately $3,712 for each unlawful non-citizen who is located, detained and removed from Australia and $13,644 for each illegal worker whose visa is cancelled for breach of a work condition and who is subsequently detained and removed from Australia. It should be noted that Driver Based Costing allocates costs to a range of Departmental outputs. The compliance costs for overstayers form part of the total compliance costs and have been extrapolated from the consolidated output costs for 2004-05. For this reason, the figures should only be regarded as estimates of the cost of this compliance activity

These costs are even higher when the period of detention before removal from Australia is longer. These figures indicate that the costs of locating, detaining and removing illegal workers are significant.

In determining whether the overall cost of introducing a guest worker scheme would be greater than any corresponding benefit to the Australian Community, the government would need to consider these factors in addition to the direct cost of DIMA compliance activity.

In 2003-04 and 2004-05 respectively the department located a total of 20,003 and 18,341 unlawful non-citizens. This included 8,840 and 9,062 people that were located through compliance fieldwork In 2003-04 the department removed 12,689 non-citizens who had no authority to remain in Australia and in 2004-05 there were 12,524 removals.

In considering whether there will be an increase in compliance costs we will need to understand the motives of people, particularly from the South Pacific region, in overstaying their visa and undertaking work illegally in Australia. If for example the primary motivation for South Pacific Islanders to remain illegally in Australia is to gain extended access to the Australian job market, then the introduction of a guest worker scheme might over time have the effect of reducing the number of Pacific Islanders undertaking work illegally.

The introduction of a guest worker scheme will probably not reduce the number of Pacific Islanders currently in Australia unlawfully. It is probable that Pacific Islanders who are currently in Australia unlawfully will remain and many will continue to work illegally. Even if long term visa overstayers were to depart, they would be excluded from being granted the proposed guest worker visa in the short term, unless a waiver of exclusion periods and/or removal costs were considered.

MULTIPLE ENTRY PROVISIONS

Generally multiple entry provisions are granted to low risk applicants or applicants with a good track record in previous visits to Australia. Given the likely profile of the applicants and the short duration of likely stay, in the initial stages of any such trial scheme it is anticipated that a single entry only visa would be granted to successful applicants. After a period of time this could be examined and applicants with a good record of complying with visa conditions could be considered for multiple entry visas.

PRACTICALITIES OF DEALING WITH AIR CHARTER OPERATIONS TO REGIONAL CENTRES

The *Migration Act 1958* provides that passengers and crew must be cleared upon arrival into Australia and undergo certain formalities on departure from Australia.

A basic principle of international law is that each country has the right to decide who shall enter and remain within its boundaries. It follows that for policy reasons (especially effective border control) it is desirable that visa holders enter Australia in an orderly manner through a proclaimed port. A "proclaimed port" is a port appointed under section 15 of the *Customs Act 1901* or a port appointed by the Minister under subsection (5);

In most cases, international flights must land at an ‘unrestricted international’ airport. A pre-condition for an airport to be designated as ‘unrestricted international’ is that full border services are available on demand at the airport. These services may not be available at the chosen regional airports at the present time.

Requests for ad hoc international flights into airports which are not designated ‘unrestricted international’ are considered on a case by case basis by the National Passenger Processing Committee (NPPC). The NPPC co-ordinates the activities of Government border agencies involved in processing passengers travelling on charter flights arriving at, or departing from non-international airports. Its members have to consider and approve each request for the operation of the flight subject to a number of conditions. The NPPC is chaired by Customs and includes members including the DIMA and other border and regulatory agencies.

Where DIMA agrees to support these requests there is a requirement for the provision of advanced passenger processing (APP) or advanced passenger information (API) to Customs. Customs performs the primary immigration clearance function on behalf of DIMA. As such Customs officers would be required to be present at the non-international airport to perform the immigration clearance functions.

Agencies such as Australian Quarantine and Inspection Service would require that any quarantine risk be contained and may also require one or more Quarantine Officers to attend all arrivals and departures.

Customs Officers are authorised to approve the entry of persons without DIMA officers present. However there may be occasions where a DIMA officer is required to support Customs Officers on immigration matters. In these situations DIMA may seek to recover the costs for the provision of these services. At present the release of staff is dependent on the needs of other recognised airports to maintain passenger facilitation and border integrity levels.

While agencies may be able to undertake their functions on a one-off or ad hoc basis, they may be unable to sustain the activity on a regular basis as there would be significant operational impacts as a result of regular staff diversion.

For a long term proposal DIMA is not the authority to designate an International airport. The designation of International Airports falls within the portfolio responsibility of Customs who would need to be consulted.

POSSIBLE VISA ALTERNATIVES

There is general acceptance that there is a need for some temporary workers (such as the Business Long Stay visa holders) as they are supplementing the skills base in the Australian labour market. As part of the visa requirements, DIMA assesses whether the employer will provide these non-citizen employees with Australian conditions, including a minimum salary level. As there is currently no consensus on the need for unskilled labour, there is no visa catering for such a group. Should a visa category be developed for this group, visa requirements would need to ensure that employers would offer the workers the employment conditions provided by applicable Australian legislation.

Preferable visa options for workers from the South Pacific and East Timor include using the Business Long Stay visa and the Occupational Trainee visa (which involve skills and/or educational components).

OCCUPATIONAL TRAINEE VISA (OTV): Allows persons from overseas to undertake a supervised training program in Australia that is workplace-based (at least 70%) and that has been designed specifically to add to, or enhance, the person's level of practical skill in their present occupation or area of expertise.

The Australian organisation or company who will be providing the training must have their training program assessed and approved in Australia by DIMA. A nomination must:

- be completed for each person being nominated under a training program by the Australian organisation or company which will be providing the training;
- include an attachment setting out details of the comprehensive workplace based training program, including duration and content;
- demonstrate that the organisation has an established history of offering and providing occupational training to Australian residents and/or non-residents; and
- demonstrate that occupational opportunities available to Australian citizens or permanent residents of Australia will not be adversely affected if the visa is granted.

No nomination form is required if the nominator is a commonwealth government agency.

There are a few agricultural training programs in place which successfully operate to provide additional skills to farm workers from overseas who are in Australia on an OTV. Family unit members are allowed to accompany occupational trainees but are not permitted to work.

The experience with the Fijian tobacco workers who come to Victoria on OTV's indicates that advantages can flow both ways with a structured training and on the job work experience program. However, this program involves staff of one company only, ensuring that the risk of overstaying and other visa abuses are reduced. The department may lose the ability to control the number of overstayers beyond this model.

In the program year 2004-05, there were **7147** OTV's granted. In the program year 2005-06 (up to 31/12/05) **3692** OTV's have been granted.

TEMPORARY BUSINESS (LONG STAY) VISA: Enables employers to sponsor overseas workers to work in their business under the Temporary Business (Long Stay) Visa for up to four years. Providing they are offering genuine employment, any approved business can sponsor skilled workers under this visa, from anywhere in Australia.

Some Business (Long Stay) visas may be approved under special arrangements for regional employers. Where a Regional Certifying Body supports the nomination of a regional position, normal eligibility criteria relating to skill and salary levels may be waived to enable the employment of overseas workers for specific positions in regional areas.

The Department has an officer out-posted to the National Farmers Federation (NFF) to assist the agricultural sector work within available visa options. The NFF may be a group who could take on the role of organising body to ensure employee and employer responsibilities are met.

In the program year 2004-05, there were **49061** Temporary Business (Long Stay) visas granted. In the program year 2005-06 (up to 31/12/05) there have been **33374** Temporary (Long Stay) visas granted.

IMPACT OF THE WORKING HOLIDAY MAKER PROGRAM ON THE HARVEST LABOUR MARKET

The Working Holiday Maker (WHM) Program aims to encourage cultural exchange by allowing working holiday makers an extended holiday in the participating countries. The WHM visa is primarily a holiday visa, however, young people are given limited work rights to encourage them to travel. Australia currently has 19 reciprocal Working Holiday arrangements with: the United Kingdom, Canada, the Netherlands, Japan, Republic of Ireland, Republic of Korea, Malta, Germany, Denmark, Sweden, Norway, the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China, Finland, the Republic of Cyprus, France, Italy, Belgium, Estonia and Taiwan. The reciprocal arrangements provide similar opportunities for Australians overseas.

Working Holiday visa applicants need to be aged between 18 and 30 years, without dependant children, and from countries with which Australia has a reciprocal WHM arrangement. WHMs are permitted a stay of 12 months from the date of initial entry to Australia, regardless of whether or not they spend the whole period in Australia. They are allowed to study or train for up to three months.

WHMs in Australia are permitted to do any kind of work of a temporary or casual nature, but are not permitted to work for more than 3 months with any one employer. Although WHMs may stay for a maximum of 12 months in Australia, they should not work for the full period of their stay.

The benefits of the WHM Program to the Australian economy were explored in the 2002 report: *The Working Holiday Maker Scheme and the Australian Labour Market*, for which the research was carried out by the Melbourne Institute of Applied Economics and Social Research at the University of Melbourne. According to this report, WHMs have a positive net impact on the Australian economy, they spend the money they earn in Australia – 80,000 WHMs spend $A1.3 billion, and create more jobs than they take – 80,000 WHMs create a net total of 8,000 jobs. Around 15% of working holiday makers already undertake seasonal harvest work during their stay.

The changes to the WHM program, made on 1 November 2005, capitalise on this existing trend by providing the opportunity for WHMs who have undertaken at least three months seasonal harvest work in regional Australia to apply for a second WHM visa. Previously, WHMs were limited to one such visa in a lifetime. The initiative has been a great success, with more than 1,000 applications for second WHM visas being received between 1 November 2005 and 31 December 2005.

The introduction of an alternative visa targeting seasonal work could possibly dilute the benefits of the WHM Program. An important feature of WHM arrangements is that they provide for reciprocal work and holiday opportunities for young Australians. Work opportunities for young Australians in some countries would be very limited, therefore agreements with such countries would not be truly reciprocal. The main purpose of a Working Holiday visa is to holiday and travel, and work for longer than three months with any one employer is not allowed. This work limitation may disadvantage WHMs, with growers preferring to employ people on an alternate seasonal work visa with no work limitation.

Over the past five years the number of WHM visas granted has increased steadily, with a growth of approximately 36% occurring across program years 2000-01 to 2004-05.

Program Year	2000-01	2001-02	2002-03	2003-04	2004-05
No. grants	76,576	85,207	88,758	93,108	104,353

The United Kingdom remains the country with the highest number of WHM grants, however, the number of grants to applicants from the United Kingdom decreased in 2004-05, with 30,092 grants in 2004-05 compared with 35,061 grants in 2003-04, a variation of -14.17%. The second ranked country in 2004-05 was the Republic of Korea, with 17,706 grants in 2004-05 compared with 9,522 grants in 2003-04, a difference of 85.95%.

PROPOSED TECHNICAL COLLEGE FOR THE SOUTH PACIFIC

On 27 October, 2005 at the Pacific Island Forum, Australian Prime Minister John Howard announced that Australia is committed in principle to forming an Australian technical college for the South Pacific. The college would be headquartered in one of the more populous Pacific Island countries, but with a number of campuses across the South Pacific. It will offer Australian trade qualifications, which would enable people who pass through the college to carry that qualification into occupations and activities in careers in their own countries and also greatly help them if they wished to fill any of the skilled vacancies in countries like Australia. The college initiative would be funded out of the increases in the aid budget.

Areas to be targeted include building, construction, health and hospitality industries. Terms of Reference for the study to look into the project are being drafted by AusAID. Initial advice is that DIMA, along with a number of other government agencies and the Australian educational sector and industry will be involved in the study.

GENERAL COMMENTS

More generally, the department holds reservations about the implementation of a seasonal workers program.

DIMA has some reservations as to the economic viability of such a scheme for participants due to the 29% flat tax rate applicable to temporary entrants, health insurance costs, travel costs to and within Australia and the costs in maintaining the worker in Australia and the family back home. Part of the response to this needs to highlight that airfares, visa charges and a requirement on employers to pay for medical insurance, none of which apply to Australia workers, will always make overseas workers more expensive than equivalent Australian workers. Additionally the casual nature of harvest work, the flat tax rate of 29% that applies to temporary residents and costs such as travel are factored into the proposal the economic advantages can be marginal to both Australia and participants.

Any seasonal labour scheme must also consider the needs of Australians, especially unskilled Australian's and their families who could be disadvantaged. These workers face the highest level of unemployment in the Australian labour market. Additional competition for unskilled jobs by foreign workers would require careful public presentation.