



**HELPING  
PEOPLE  
NAVIGATE**  
| AUSTRALIAN  
| IMMIGRATION LAW

# SUBMISSION TO THE REVIEW OF REGIONAL MIGRATION SETTINGS

Submission by the Immigration Advice and Rights Centre

July 2024

## INTRODUCTION

**This submission recommends specific reforms to the Working Holiday Maker program in order to reduce migrant worker exploitation, while still ensuring regional Australia accesses the workers it needs. It also proposes broader reforms to Australia's visa settings to incentivise greater migration to the regions.**

The Immigration Advice and Rights Centre (IARC) is a not-for-profit, specialist community legal centre providing free legal advice and assistance to people throughout New South Wales. Our vision is for a fair, just, and accessible Australian immigration system. We provide advice in relation to migrant worker exploitation, immigration and domestic violence, Family visas, Refugee and Humanitarian visas, visa cancellations, and Australian citizenship. IARC promotes a fairer immigration system through law reform, community development, and free legal education to workers and the broader community.

We welcome this opportunity to provide recommendations on Australia's regional migration settings. Over the years, many of our Working Holiday Maker visa holder clients have experienced exploitation by unscrupulous employers. It is imperative to address the root causes of this exploitation to protect these vulnerable migrants – many of whom face cultural and language barriers and lack knowledge of Australian workplace rights – and to uphold Australia's international reputation.

Simultaneously, we recognise the broader challenges that regional Australia faces in attracting and retaining migrants. To incentivise greater regional migration, we recommend reforms to Australia's visa settings to make regional migration more accessible and appealing to migrant workers. Many of our Sydney-based clients would be happy to live and work in regional Australia but are discouraged by the complex immigration system and the lack of sufficient incentives to relocate there.

## Recommendations

**Reforming the Working Holiday Maker program to reduce migrant worker exploitation**

- 1) Expand the range of eligible jobs for specified subclass 417 and subclass 462 work.
- 2) Introduce robust obligations for regional employers who wish to hire Working Holiday Makers.
- 3) Establish a publicly available register of approved and sanctioned regional Working Holiday employers.

**Making regional migration more accessible and attractive to prospective migrants**

- 1) Accelerate pathways to permanent residence for migrants who wish to reside in regional Australia for the long term.
- 2) Simplify and make more accessible existing visas that are specifically targeted to the regions.

## REFORMING THE WORKING HOLIDAY MAKER PROGRAM TO REDUCE MIGRANT WORKER EXPLOITATION

IARC's core position is that specified work (i.e. farm work) should be completely removed from the Working Holiday Maker (WHM) program. Instead, other visa settings should be used to incentivise this work in regional areas – this is set out in the later part of our submission.

However, if it is the Government's position to retain specified work in the WHM program, we propose three reforms to the policy settings of the WHM program (subclass 417 and subclass 462 visas).

Implementing these reforms together would substantially reduce migrant worker exploitation. These changes would also incentivise WHM visa holders to continue working and residing in regional Australia by offering greater economic opportunities and enhancing their overall experience in regional Australia.

### **Expand the range of eligible jobs for specified subclass 417 and subclass 462 work**

WHM visa holders must carry out specified work in regional Australia to obtain additional Working Holiday visas after their first year in Australia. To qualify for a second year Working Holiday visa, applicants must conduct 88 days of work in regional Australia; the requirement for a third year Working Holiday visa is 179 days of work in the regions.

The restricted range of eligible jobs for specified subclass 417 and subclass 462 work represents a significant source of migrant worker exploitation within the Working Holiday Maker program. As the Departmental Discussion Paper records, almost half (49 per cent) of second Working Holiday visas are within the Agriculture, Fishery and Forestry sector.<sup>1</sup> While many employers within this sector play by the rules and treat their employees fairly, a concerning number have been found to exploit temporary migrant workers, most of whom are Working Holiday visa holders. For instance, the Fair Work Ombudsman investigated 638 harvest trail businesses in 2018 and found that 70 per cent of them had breached Australia's workplace laws.<sup>2</sup>

We commend the Government for already expanding the range of eligible jobs for specified work, largely in response to various natural disasters facing Australia. For instance, bushfire-recovery work, and recovery work in flood, cyclone, or other severe weather-affected areas, now constitutes eligible specified work for both subclass 417 and subclass 462 visa holders.<sup>3</sup>

We recommend that the Government further expands the range of eligible jobs for specified

work. Restricting migrant workers' mobility and choices within regional Australia makes it easier for employers to take advantage of them because there are fewer alternative jobs available. This change would help reduce migrant worker exploitation by granting migrants a greater range of workplace options. The reform would also incentivise WHM visa holders to continue working and residing in regional Australia after the WHM program finishes (provided they possess the requisite skills). Offering these migrants greater economic opportunities in the regions and granting them the ability to apply for a greater range of jobs will enhance their overall experience in regional Australia.

### **Introduce robust obligations for regional employers who wish to hire Working Holiday Makers**

At present, the regional work component of the Working Holiday Maker program is under-regulated. In line with the Departmental Discussion Paper, we recommend the introduction of obligations for regional employers that wish to hire Working Holiday Makers. However, these obligations should be more robust than the backpacker tax registration requirements cited as an example in the Discussion Paper.<sup>4</sup> These requirements merely compel a prospective employer to provide the Australian Tax Office (ATO) with their Australian Business Number (ABN) and basic contact details.

We propose that regional employers who wish to hire Working Holiday Makers should be subject to the same obligations that apply to all temporary activity sponsors. Like these sponsors, regional employers should be compelled to keep records that demonstrate continual compliance with their obligations to pay Working Holiday Makers fairly and regularly. They must also be prepared to provide records or information when requested by a departmental officer to help determine whether they are complying with their obligations, and whether any circumstances exist relating to which the Minister might take administrative action.<sup>5</sup>

<sup>1</sup> Department of Home Affairs. (2024). *Supporting strong and sustainable regions: Review of Regional Migration Settings Discussion Paper* (p. 13).

<sup>2</sup> Fair Work Ombudsman. (2018). *A report on workplace arrangements along the Harvest Trail*.

<sup>3</sup> Department of Home Affairs. (2024, July 18). *Specified work conditions for Working Holiday Maker (WHM) program*. Retrieved July 25, 2024, from [Specified work for Working Holiday](#)

[visa \(subclass 417\) \(homeaffairs.gov.au\)](#); [Specified work for Work and Holiday visa \(subclass 462\) \(homeaffairs.gov.au\)](#).

<sup>4</sup> Department of Home Affairs. (2024). *Supporting strong and sustainable regions: Review of Regional Migration Settings Discussion Paper* (p. 12).

<sup>5</sup> Department of Home Affairs. (2024, March 7). *Sponsorship obligations for Temporary activity sponsor*. Retrieved July 25,

Greater monitoring and oversight of regional employers involved in the WHM program would reduce the likelihood of migrant worker exploitation and increase employer compliance with Australian workplace laws.

#### CASE STUDY:

**Li\***

Li arrived in Sydney on a Working Holiday visa. He wanted to extend his stay for another year and to do so, he would need to work regionally for 88 days. He arranged his farm work through a phone number he got on a Working Holiday visa group on Facebook. He was told the employer could arrange accommodation, food, and equipment, and pay him a fair wage. The employer told him he had hired many Working Holiday visa holders before.

Unfortunately, when he arrived at the farm, Li's experience was very different. He was told he would be paid based on the amount of fruit he picked: piece rates. He would also have to pay for his own bucket to put the fruit in, and his accommodation and food would come out of his pay.

By the end of the 88 days, the farmer told Li he owed him money and he would not sign anything or give him any payslips until he paid him back. Li was concerned he would have to go through this all again, so he paid the employer the money. The employer withheld the payslips that Li was promised, making him unable to apply for another Working Holiday visa.

\*Name altered to protect client confidentiality.

#### **Establish a publicly available register of approved and sanctioned regional Working Holiday employers**

The above case study provides insights into the nature of workplace exploitation under the existing WHM program. Like many Working Holiday visa holders, Li struggled to find reliable information

2024, from [Sponsorship obligations for Temporary activity sponsor \(homeaffairs.gov.au\)](https://www.homeaffairs.gov.au).

about reputable regional employers. Instead, he depended on dubious contact details that he obtained through social media to arrange his regional employment. Rogue employers regularly advertise jobs on social media to Working Holiday visa holders seeking to satisfy their visa requirements (both in metropolitan and regional Australia).<sup>6</sup>

To reduce Working Holiday Makers' reliance on unreliable social media advertisements and contacts for finding regional work, we propose that the Department establish a publicly available register of approved *and* sanctioned regional Working Holiday employers. This register could be developed over time by compiling information gathered through the robust obligations imposed on regional employers (see previous recommendation). To make the register as accessible as possible, it should be published in the various languages of the countries participating in the WHM program.

## **MAKING REGIONAL MIGRATION MORE ACCESSIBLE AND ATTRACTIVE TO PROSPECTIVE MIGRANTS**

Many of our Sydney-based clients are happy to relocate to regional Australia to live and work there. Unfortunately, they are often discouraged by the complex immigration system and the lack of sufficient incentives to move outside Sydney to either regional New South Wales, or elsewhere in regional Australia. We recommend altering Australia's visa settings to make regional Australia more attractive and appealing to prospective migrants.

#### **Accelerate pathways to permanent residence for migrants who wish to reside in Australia for the long term**

At present, Australia's visa settings effectively disincentivise regional migration for prospective migrants who wish to obtain permanent residence in Australia. To be eligible to apply for the Permanent Residence (Skilled Regional) visa

<sup>6</sup> IARC-Unions NSW Submission to *Migration Amendment (Protecting Migrant Workers) Bill 2021 [Provisions]*. (2022, January 28). (p. 20).

(subclass 191), skilled migrants must hold an eligible provisional visa (either subclass 491 or subclass 494) for at least three years.<sup>7</sup> This three-year residence requirement for prospective migrants who wish to live and work in regional Australia stands in contrast to its metropolitan counterpart: the Temporary Skills Shortage visa (subclass 482). Since November 2023, subclass 482 visa holders have had access to permanent residency after only two years through the Temporary Residence Transition stream<sup>8</sup>, providing a greater incentive to stay in metropolitan Australia. This differential should be addressed by ensuring parity between the regional visa subclasses and their metropolitan equivalents. Otherwise, many migrants, including skilled IARC clients referred to us through the Visa Assist program in partnership with Unions NSW, will opt to stay in metropolitan Australia to satisfy their desire to reside in Australia for the long term.

### **Simplify and make more accessible existing visas that are specifically targeted to the regions**

Many of our Sydney-based clients are also discouraged from relocating to regional Australia because of the complexity of existing visa settings and the prohibitive nature of current visa requirements. Regional visas should be designed to incentivise, not deter, migration. We propose simplifying the requirements for existing regional visas to make them more accessible and appealing to prospective migrants.

Some of the requirements attached to the Skilled Employer Sponsored Regional (Provisional) visa (subclass 494), for example, should be removed or modified, to make it more attractive. The Skilling Australians Fund (SAF) levy that employers pay to sponsor skilled migrant workers is too prohibitive for many regional employers and should be either scrapped or significantly reduced. The regional certifying bodies for the subclass 494 should be abolished, thereby removing a specific requirement for this visa subclass that does not exist for visas

targeted to metropolitan Australia. Lastly, the mandatory skills assessment for *all* subclass 494 applicants should be removed, with assessments only necessary, at most, for the same occupations as those specified in the Legislative Instrument 18/039 (which is in force for the Subclass 482 visa).<sup>9</sup>

We recognise that the Government is currently designing a new Skills in Demand visa with full mobility and clear pathways to permanent residence for skilled migrant workers.<sup>10</sup> An alternative proposal that would simplify the immigration system and make it more navigable for our clients is to eliminate existing regional visa subclasses, and instead, include a separate stream/criteria within the new Skills in Demand visa specifically targeted at regional areas. Applications for this regional stream could be incentivised through various concessions, such as a reduced minimum income threshold to reflect lower average wages in the regions, and by increasing age limits. Migrants in the Essential Skills Pathway within this regional stream should also be allowed to work for multiple employers (provided their sponsor remains their primary employer). This flexibility would enable migrants to increase their income and boost their subsequent employment prospects.

## **CONCLUSION**

The immigration system can and must be designed to minimise migrant worker exploitation, while attracting workers to regional Australia. Implementing the proposed reforms in this submission would ensure that Working Holiday visa holders are better protected and more inclined to reside in regional areas after completing their WHM program. The recommendations for altering the skilled immigration visa settings would further incentivise prospective migrants who wish to live and work in regional Australia.

<sup>7</sup> Department of Home Affairs. (2022, December 20). Retrieved July 25, 2024, from [Permanent Residence \(Skilled Regional\) visa \(homeaffairs.gov.au\)](https://www.homeaffairs.gov.au/permanent-residence-skilled-regional-visa).

<sup>8</sup> See 5.19 *Migration Regulations 1994* (Cth).

<sup>9</sup> Migration (IMMI 18/039: Mandatory Skills Assessment—Subclass 482 Visa) Instrument 2018. Retrieved July 25, 2024,

from [Federal Register of Legislation - Migration \(IMMI 18/039: Mandatory Skills Assessment—Subclass 482 Visa\) Instrument 2018](https://www.federalregister.gov/documents/2018/03/19/2018-06131-mandatory-skills-assessment-subclass-482-visa).

<sup>10</sup> Australian Government. (2023). *Migration Strategy: Getting migration working for the nation*. (p. 42).

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