Working Holiday Maker Visa Review

ACTU Submission to the Department of Agriculture and Water Resources

2 September 2016

Australian Unions
Join. For a better life.

ACTU
australian council of trade unions

BACKGROUND AND CONTEXT

ACTU position on temporary work visas

The ACTU welcomes the opportunity to make a submission to this inquiry into the Working Holiday Maker visa.

The ACTU is the peak body for Australian unions and represent almost two million working Australians and their families.

The interests of workers should be paramount. Temporary work visas, and the debate that surrounds them, should be driven by three key, interrelated, priorities.

1. The first is to maximise jobs and training opportunities for Australians - that is, citizens and permanent residents of Australia, regardless of their background and country of origin – and ensure they have the first right to access Australian jobs.

2. The second is to ensure that the overseas workers who are employed under temporary visas are treated well, that they receive their full and proper entitlements, and they are safe in the workplace – and if this does not happen, they are able to seek a remedy just as Australian workers can do, including by accessing the benefits of union membership and representation.

3. The third is to ensure that employers are not able to take the easy option and employ temporary overseas workers, without first investing in training and looking to the local labour market. This is also about ensuring those employers who do the right thing are not undercut by those employers who exploit and abuse the temporary work visa program and the workers under it.

Our position is also that vigorous safeguards need to be in place to protect the interests of overseas workers on temporary visas. These workers are often vulnerable to exploitation by virtue of being dependent on their employer for their ongoing prospects in Australia, including, in many cases, their desire for sponsorship and permanent residency.

INTRODUCTION

Unions are concerned that low wages and poor workplace conditions are prevalent in the industries that Working Holiday Makers (WHM) operate. The government has missed the crucial problem that affects these sectors of the labour market. Better paid jobs, with decent working conditions should be the priority. Where is the government's plan to raise wages and conditions in these sectors? We know that 90% of WHMs work in the agriculture sector where low wages are commonplace. It is also clear that the rules and regulations that govern the workplace need to be better monitored and enforced, including the right of entry and inspection powers for unions and better resources for the Fair Work Ombudsman to carry out monitoring activities.

The Working Holiday Maker visa has unfortunately become synonymous with unscrupulous labour hire companies that abuse their workers. Exploitation of working holiday makers in the farm sector include cases of underpayment, provision of substandard accommodation, debt bondage, and employers demanding payment by employees in return for visa extensions.

There is a growing body of institutions and reports that recognise there is a problem of unregulated labour hire companies exploiting workers. This includes the March 2016 Senate Standing Committee on Education and Employment "A National Disgrace: The Exploitation of Temporary Work Visa Holders". Without the significant problem of unscrupulous labour hire companies being addressed we fear that there will be a continued exploitation of these workers.

On the Backpacker tax the ACTU is concerned that in real terms, a 32.5% tax rate will net a WHM $11.94 per hour from commencement of employment. Overseas workers, like all Australians, should be required to pay tax on their earnings. While it is important overseas workers contribute to tax, their tax liability should be determined on the basis of their earnings in a manner that is consistent with the principles that underpin our progressive tax system. They should not be taxed at a rate so high they are earning an after-tax rate that Australian society would consider unacceptable. The ACTU is concerned that when one considers that the average annual earnings for WHMs are approximately $13,300, the unfair nature of the government's proposal is striking. The government has unfortunately missed the real problem - that wages and conditions are too low in the sectors that WHMs operate.

At a time when unemployment remains at just under 6% and youth unemployment is in double digits, the Australian community needs to have confidence that such a large and growing temporary work visa program is not having adverse impacts on employment and training opportunities for Australians, particularly young people. While we recognise that labour markets are not perfect and there will be cases where genuine skills shortages exist, unions do recommend an annual cap on the number of Working Holiday Maker Visa Holders and the second year extension of the visa should be abandoned altogether.

Equally, the community needs to be assured that employers and others are not exploiting vulnerable temporary overseas workers who are unaware of their rights or not in a position where they feel able to exercise those rights. Unfortunately, the evidence available from our affiliated unions and other sources is that both Australian and overseas workers are being disadvantaged and exploited on a regular basis under the current policy and program settings that govern temporary work visas including WHM visas.

This has been happening far too often and for far too long for it to be dismissed as a few isolated cases in an otherwise well-functioning program.

THE ORIGINAL AIM OF THE WORKING HOLIDAY MAKER VISA WAS A CULTURAL EXCHANGE

The ostensible basis of the WHM visa program is to provide a cultural exchange and to allow visa holders the opportunity to work during their holiday in Australia.

The WHM visa program began in 1975 and allows young adults (aged 18 to 30) from eligible partner countries to work in Australia while having an extended holiday. It has consistently been seen as a cultural program 'facilitating the travel of young people to and from Australia to have a cultural experience, supplemented with a limited opportunity to work'. Indeed, the DIBP states that 'work in Australia must not be the main purpose of the visa holder's visit.

The WHM was not meant to be a working visa to bring low-skilled labour into the country whose primary purpose was work - though it is clear this how the visa is used in practice. The working holiday visa should be primarily about travel and cultural exchange supplemented by some incidental short-term work.

The former Minister Scott Morrison clearly adopted the same view of it, stating "*The WHM program is not a work visa and undertaking work is an optional part of a WHMs stay*".

However for many young people, particularly for those from recession-hit countries with high youth unemployment, it is likely that finding work is the primary purpose of their visit to Australia. In fact the Department of Immigration and Border Protection (DIBP) appear to concede this point, despite its stated position that the 417 visa is not a work visa, when it attributed a recent slight tapering off of working holiday visa grants to improving economic conditions in some partner countries - an acknowledgement that working holiday visa numbers are a reflection of people coming here to find work they cannot find in their home country.

GROWTH OF THE PROGRAM

The most up to date data shows that in 2014-15 the total number of Working Holiday maker visas granted was 226,812 (and in the six months from July to December 2015-16 there were 116,750 visas' granted).

This is now equivalent to around 10.8% of the total Australian labour force aged 15-24. These figures have more than tripled since mid-2007 when working holiday visa holders numbered 74,450 and were 3.7% of the Australian workforce aged 15-24. There are over 150,000 more working holiday visas granted each year now than there were 8 years ago. It is notable that Australia has a substantially larger WHM program than comparable countries (e.g. the UK and Canada only have 20,000 each).

Since mid-2010, the number of working holiday visas have increased from around 100 000 to around 220,000. As a point of comparison, youth unemployment has remained high and in double digits in the same period.

In presenting numbers such as this, our submission is not that young overseas travellers be denied the chance to work in Australia under a visa of this type. Nor do we seek to argue that the abolition of the working holiday maker program would immediately solve youth unemployment. However, it is concerning that a visa program of this size continues to operate without any public assessment and review of the potential impact this additional and growing labour supply has on employment opportunities and employment conditions for Australian citizens and permanent residents, particularly on young Australians in lower-skilled parts of the labour market.

The ACTU is concerned about the potential growth of the program. In June 2015, Australia had reciprocal 'Working Holiday' (417) agreements with 19 countries plus 'Work and Holiday' visa (462) agreements with a further 19 countries. It is currently negotiating 462 visa agreements with a further 21 countries1.

[1] http://www.border.gov.au/ReportsandPublications/Documents/statistics/working-holiday-report-dec15.pdf

THE PROGRAM SHOULD BE CAPPED

Governments should impose quotas or cap the working holiday visa numbers where labour market conditions require it, as they do in other countries such as Canada.

Given the current state of the labour market, unions recommend that now is such a time for a cap to be imposed in order to put a limit on further growth in the working holiday program, and that an annual quota be determined based on advice from the tripartite Ministerial Advisory Council for Skilled Migration and taking into account the labour market conditions for young Australians. We note that section 85 of the Migration Act 1958 already gives the Minister the power to cap or limit the number of visas which can be granted each year in a particular sub-class.

The critical point is that it should be the labour market conditions in Australia that are the determining factor for working holiday visa numbers in Australia, not the labour market in the partner countries, as appears to be more the case at present.

The visa currently applies to any type of work, and is not subject to any sponsorship or skill requirements, such as labour market testing, and the visa numbers are uncapped.

The recent March 2016 Senate Standing Committee on Education and Employment "A National Disgrace: The Exploitation of Temporary Work Visa Holders" highlighted this issue;

> *"the large scale and widespread hiring of 417 visa workers severely curtails the employment prospects of local workers in rural and regional areas of Australia, areas that are already suffering from higher than average levels of unemployment and youth unemployment in particular.*[2]*"*

THERE SHOULD BE NO SECOND YEAR EXTENSION

In examining the working holiday visa, a very important feature to note is that visa holders are able to apply for a second year visa if they undertake 88 days specified work in a designated regional area during the course of the first year of their initial visa in industries such as agriculture, forestry, construction, hospitality and fishing. Department of Immigration and Border Protection (DIBP) reports show there were 41,339 second year visas granted in 2014-15, an increase of 23% (33,501) from 2011-12. This means that around one in four Working Holiday visa holders are now being granted a second year visa. The vast majority (90%) are doing work in agriculture to acquire eligibility for the second year visa, with smaller numbers doing work in construction and mining. The number of second WHM visas granted in the six months of July-December of 2015-16 reporting period is 19,320 and is expected to be around the 40,000 mark again over a 12 month period.

---

[2] Senate Enquiry "A National Disgrace: The Exploitation of Temporary Work Visa Holders " Education and Employment References Committee, March 2016

The number of second working holiday visa grants has grown rapidly since the program commenced in late 2005. There were just 2,962 second year visa grants in 2005-06, compared with 41,339 grants in 2014-15. From 2010-11 to 2013-14 the number doubled. The second working holiday visa now constitutes 20% of the overall working holiday program by 30 June 2014. This compares with just a 3.3% share of overall working holiday visa holders in Australia as at 30 June 2006.

These trends illustrate the strong desire of working holiday makers to gain ongoing work and prolong their stay in Australia. This has created its own set of problems and is tied to cases of exploitation and mistreatment of overseas workers under this visa. Reports that unions receive are that employers are basing their whole business model around using the labour of working holiday makers, in some cases for free or by paying them well below Australian award standards.

A scan through job sites such as Gumtree uncovers numerous examples of job advertisements directly targeted at overseas workers, enticing them with the lure of a second working holiday visa, with Australian workers not even being considered in some cases.

Our recommendation on this point is first that there be an explicit ban on job ads that advertise only for working holiday visa holders or that use the inducement of a second working holiday visa.

However, the Government should go further than this. Our recommendation is that the second year working holiday visa should be abandoned altogether. It serves no useful purpose in our view and has only led to problems of abuse and exploitation of unwitting and/or desperate backpackers.

THE PROGRAM IS POORLY REGULATED AND ABUSED BY LABOUR HIRE COMPANIES

Unions report that labour hire agencies using this visa are now so well organised they are recruiting in the countries of origin of the working holiday makers and have them lined up with permanent full time work before they even enter Australia. A large proportion of working holiday makers make the transition to other visas, including, ultimately, permanent residency.

Working holiday visa holders can lawfully work in Australia from the date of their arrival to the date of their departure non-stop and full-time. The visa currently applies to any type of work, and is not subject to any sponsorship or skill requirements, such as labour market testing, and the visa numbers are uncapped.

The sole work restriction is that the visa holder can only work in Australia for up to six months with each employer. This is known as visa condition 8457. It would appear that very low priority is given to monitoring and enforcing compliance with this condition. Despite more than one million working holiday visas being granted in the past 7 years, not one single employer to our knowledge has been prosecuted for employing working holiday makers beyond this six month period.

The WHM unfortunately has become a fertile ground for unscrupulous labour hire companies that abuse their workers. There is now a growing consensus of this problem. The March 2016 Senate Standing Committee on Education and Employment "A National Disgrace: The Exploitation of Temporary Work Visa Holders" stated;

> *"The WHM visa program is a poorly-regulated program, and the bulk of the evidence to the inquiry showed that the WHM visa program has been abused by unscrupulous labour hire companies in Australia with close links to labour hire agencies in certain south-east Asian countries ……… (labour hire companies) ……are in fact not only using the program to fill potential shortfalls in labour, but also to gain access to cheaper labour[3]"*

A systematic approach by labour hire companies to access cheap labour and use the program as a low skilled work visa has knock on consequences for the domestic labour market. It is clear that on occasions there has been a substitution effect between domestic workers and WHMs costing Australian workers jobs. In addition by having access to cheap labour this has widespread consequences for the domestic labour market in pushing wages and conditions downwards. This was not the intended consequences of the WHM scheme. A visa intended for culture exchange has formed into something quite different form the original design and aims of the visa program.

Drawing upon ILO principles and affiliates' experiences, the ACTU adopted a policy that there should be system of labour hire licensing that has the following features, which we recommend. The labour hire licensing system should:

a) Impose minimum capital requirements for any person or company seeking to register a labour hire agency;

[3] Senate Enquiry "A National Disgrace: The Exploitation of Temporary Work Visa Holders " Education and Employment References Committee, March 2016

b) Stop legislative and regulatory rorts such as the non-payment or underpayment of Return to Work premiums and avoidance of taxation liabilities;

c) Contain measures to adequately address and respond to exploitation, harassment and other forms of mistreatment of workers;

d) Consider the pursuit of agencies for non-payment or underpayment of wages and superannuation entitlements; and

e) Contain multiple avenues for enforcement and penalizing companies in breach of licensing conditions, including pursuing legal action and revoking licenses.

The Senate Standing Committee on Education and Employment "A National Disgrace: The Exploitation of Temporary Work Visa Holders"in March 2016 recommended the following;

> The Senate Standing Committee on Education and Employment "A National Disgrace: The Exploitation of Temporary Work Visa Holders
>
> ***Recommendation 32***
>
> *9.309 The committee recommends that a licensing regime for labour hire contractors be established with a requirement that a business can only use a licensed labour hire contractor to procure labour. There should be a public register of all labour hire contractors. Labour hire contractors must meet and be able to demonstrate compliance with all workplace, employment, tax, and superannuation laws in order to gain a license. In addition, labour hire contractors that use other labour hire contractors, including those located overseas, should be obliged to ensure that those subcontractors also hold a license*

Some industries and companies are now using labour hire agencies to provide bulk labour for their workplace. This has been at the expense of local workers as they are "cheaper" either through undercutting the enterprise agreement rates or through exploitation and sham contracting arrangements. The government needs to act to stop the negative effects of these work arrangements on the domestic labour force.

We also urge the government to take seriously the prevalence of the very worst forms of workplace exploitation in many labour hire companies. The government should act with urgency to deal with the exploitation of workers that unfortunately has become common practice in certain segments of the labour market.

Due to the rampant exploitation of workers in labour hire companies we recommend all WHMs should be direct employees to stop the risk of exploitation.

WORKING RIGHTS ATTACHED TO THE VISA SHOULD BE REVIEWED

We recommend that the working rights attached to the visa be reviewed and re modelled so that it operates as genuine holiday visa with some work rights attached, rather than a visa which in practice allows visa holders to work for the entire duration of their stay in Australia. The government must also ensure that all WHM employment be compliant with the Fair Work Act.

RAISING WAGES AND CONDITIONS

The Union movement would like to see a strategy to raise wages and conditions in the sectors that WHM are prevalent including agriculture, construction and hospitality. Indeed raising wages and conditions in a sector can help to alleviate genuine skills shortages and is how we assume well-functioning labour markets operate.

We need to be clear that recruitment challenges are not necessarily the same as skills shortages. There is evidence that only a very small proportion of employers would seek to address vacancies by increasing the salary/wages being offered, which is generally considered a necessary precondition for a shortage to exist.

Recruitment difficulties are sometimes misinterpreted as a labour shortage but a first point of call should not be to turn to a supply of cheap labour but to look to raise conditions and wages in these sectors to attract domestic workers.

BACKPACKER TAX

The ACTU is concerned that in real terms, a 32.5% tax rate will net a WHM visa holder $11.94 per hour from commencement of employment .The cohort of workers that are on the WHM program already contains some of the poorest, most vulnerable and exploited workers.

Everybody working in Australia should pay a fair amount of tax. Tax revenue provides Australia with infrastructure such as roads, schools and hospital as well as the means to fund social welfare programs to keep our society fair. Our tax system needs to be progressive, with those who earn more contributing their fair share. Tax reform in the first instance must focus on large companies and high income earners paying their fair share. Overseas workers, like all Australians, should be required to pay tax on their earnings. While it is important overseas workers contribute to tax, their tax liability should be determined on the basis of their earnings in a manner that is consistent with the principles that underpin our basic tax system. They should not be taxed at a rate so high they are earning an after-tax rate that Australian society would consider unacceptable.

The ACTU is concerned that when one considers that the average annual earnings for WHMs are approximately $13,300, the unfair nature of the government's proposal is striking.

Last year's Four Corners "Slaving Away' documentary revealed how some contractors were exploiting backpackers in Australia by stealing wages, offering substandard accommodation and threatening and sexually assaulting backpackers. In March 2016 the Senate Standing Committee on Education and Employment "A National Disgrace: The Exploitation of Temporary Work Visa Holders" stated this;

> Senate Standing Committee on Education and Employment "A National Disgrace: The Exploitation of Temporary Work Visa Holders
>
> *A consistent theme throughout this inquiry has been that the keeping of accurate employment records is essential for ensuring compliance with workplace laws. The committee is therefore concerned that an overly onerous tax regime applied to WHMs could give rise to unintended consequences. The consequences could include a perverse incentive for WHMs to seek cash in hand work to avoid a high tax regime, and for employers to offer a below the award cash rate to WHMs. This would risk entrenching illegal rates of pay in certain sectors and place further downward pressure on wages. In addition, it is by no means certain that the measure, as currently conceived, would raise the predicted tax revenue.*
>
> *7.145 The committee is therefore of the view that the government should re-examine its proposed tax changes to WHM visa holders,*

UPSKILLING SUITABLE LOCAL WORKERS

There is a burgeoning consensus that there is a problem that some employers are not upskilling local workers. Indeed the Senate Standing Committee on Education and Employment "A National Disgrace: The Exploitation of Temporary Work Visa Holders" in had this to say concerning the Meat industry using 417 visa holders;

> *"The large-scale hiring of temporary visa workers in skilled positions points to a lack of commitment by employers to upskilling suitable local workers from within the pool of lower-skilled labourers, particularly given evidence that local workers have had to train visa workers to perform skilled tasks"*

There needs to be greater training and upskilling of the domestic labour force to ensure that employers who have a genuine need to sponsor and overseas workers to fill skill shortages are also training the future workforce, reducing their need to rely on temporary overseas workers in future.

MONITORING AND ENFORCEMENT

The importance of Unions and adequately resourcing the Fair Work Ombudsman

It is imperative that unions have right of entry and inspection powers in sectors where WHMs operate. Unions play a vital role in stopping exploitation in the workplace. It is also clear the Fair Work Ombudsman is not adequately resourced to carry out its functions of monitoring breaches of workplace rights. There are less than 100 inspectors to carry out these activities for the country – this is clearly inadequate. This has been recognized by both the Productivity Commission and the Senate Standing Committee on Education and Employment, A National Disgrace: The Exploitation of Temporary Work Visa Holders (2016). The recommendations are contained in Box 1 below;

Productivity Commission Inquiry Report, Workplace Relations Framework: Volume 2 (2015) 927

RECOMMENDATION 29.2

The Australian Government should give the Fair Work Ombudsman additional resources to identify, investigate, and carry out enforcement activities against employers that are underpaying workers, particularly migrant workers.

Senate Standing Committee on Education and Employment, A National Disgrace: The Exploitation of Temporary Work Visa Holders (2016)

Recommendation 31

9.300 The review should make recommendations on the adequacy of the resources of the Fair Work Ombudsman; the appropriateness of the powers of the Fair Work Ombudsman; the appropriateness of the penalty provisions under the Fair Work Act 2009; the utility of the accessory liability provisions under the Fair Work Act 2009; and the utility of the sham contracting provisions under the Fair Work Act 2009.

Unions ask the government to heed these recommendations and increase the resources for the FWO to identify, investigate, and carry out enforcement activities against employers that are underpaying WHMs, domestic workers and other migrant workers.

Unions are also concerned that there are a growing number of WHMs that are obtaining Australian Business Numbers (ABN's) and unwittingly end up working outside of the rules and regulations governing the visa and without adequate employment protection. This should be prohibited.

DATA

Insufficient data collection on the Working Holiday Maker Visa program does not allow for proper monitoring of the program. Good evidence based policy making needs good data and good data collection. It is clear this has been lacking in this area of policy.

The Department of Immigration and Border Protection be sufficiently resourced to allow it to pursue inter-agency collaboration that would enable it to collect and publish the following data on the Working Holiday Maker visa program:

- the number of working holiday visa holders that do exercise their work rights;
- the duration of their employment;
- the number of employers they work for; and
- their rates of pay, and the locations, industries, and occupations they work in.

INTERACTIONS WITH THE SEASONAL WORKER PROGRAM

The ACTU and unions supported, and were closely involved in, the establishment of the Seasonal Workers Program. We believe it has been and can continue to be an important part of a suite of measures to support workers and communities in Pacific Island countries. There is no doubt it has provided an important source of income to small island developing states through remittances, and provided benefits in terms of improved education, housing and other infrastructure for participating households and communities.

It is clear that the SWP and WHM visa are in fact in competition with each other. Easy employer access to the Working Holiday Visa Program continues to 'crowd out' the Seasonal Workers Program.

The WHM was not initially designed as a work visa and is meant to be about cultural exchange whereas the Seasonal Worker Program was specifically set up as a development program with genuine labour shortages in mind.

If genuine labour shortages do exist and substantial increases in wages and conditions cannot attract domestic workers the ACTU prefers a program where Unions were involved in its establishment and has large development impacts for our Pacific neighbors. We also believe the SWP is generally better monitored and has better conditions for workers than the WHM visa program. The Senate Senate Standing Committee on Education and Employment, 'A National Disgrace: The Exploitation of Temporary Work Visa Holders (2016)' agrees.

However that is not to say that there have not been cases of worker exploitation under the SWP. It can still improve as a program for example;

- Labour market testing should continue to form an integral part of the Seasonal Workers Program to ensure that Australian workers are not displaced by the operation of the Program and to foster community support for the program

- Tripartite industry plans be developed for the sectors that are using the program to ensure employment and training opportunities for Australian citizens and permanent residents are maximised.

- Relevant unions in both the home and host countries be given access to workers in pre-departure briefings, consistent with recommendations of the World Bank.

- Greater priority be given to the re-integration of Pacific Island workers into their communities and ensuring that longer-term benefits are realised from the additional skills and financial resources that are gained from participation in the program.

- Measures to encourage greater participation by women in the program need to be developed. This should include educational and promotional efforts in both home and host countries to boost female participation, and consideration of specific targets for female participation.

- A right of return for Seasonal Workers participating in the Program, except where the approved employer can prove that there was workplace misconduct or illegal behaviour on the part of the visa holder. Program participants are highly dependant on their approved employer. Workers' reluctance to raise legitimate concerns about their employment or accommodation are based on the fear that doing so could jeopardise their employment and result in them having to return early and potentially not be chosen to participate in the programme in the future.

BREACHES OF MIGRATION ACT NOT TO RESULT IN ABSENCE OF PROTECTION UNDER THE FAIR WORK ACT

Breaches of the Migration Act should not result in absence of protection under the Fair Work Act. The ACTU is concerned about the pressure that certain employers have exerted on temporary visa workers to breach a condition of their visa in order to gain additional leverage over the employee. Unfortunately there have been examples where unscrupulous employers have exercised their power in the employment relationship and the employee has been rendered vulnerable to exploitation

This has been recongised by both the Productivity Commission and the Senate Standing Committee on Education and Employment "A National Disgrace: The Exploitation of Temporary Work Visa Holders" (2016);

Productivity Commission Inquiry Report, *Workplace Relations Framework: Volume 2* (2015) 931

RECOMMENDATION 29.4

The Australian Government should amend the *Fair Work Act 2009* (Cth) to clarify that, in instances where migrants have breached the *Migration Act 1958* (Cth), their employment contract is valid and the *Fair Work Act 2009* (Cth) applies.

Senate Standing Committee on Education and Employment, *A National Disgrace: The Exploitation of Temporary Work Visa Holders* (2016)

Recommendation 23

8.263 The committee recommends that the *Migration Act 1958* and the *Fair Work Act 2009* be amended to state that a visa breach does not necessarily void a contract of employment and that the standards under the *Fair Work Act 2009* apply even when a person has breached their visa conditions or has performed work in the absence of a visa consistent with any other visa requirements.

SUMMARY OF RECOMMENDATIONS

In summary our key recommendations are as follows;

- The DIBP conduct an empirical assessment of the potential impact the additional labour supply from this visa program has on employment opportunities, as well as wages and conditions, for Australian citizens, particularly on young Australians in lower-skilled parts of the labour market. The review should be conducted with the oversight of the Ministerial Advisory Council for Skilled Migration.

- Governments should have the option of imposing quotas or capping working holiday visa numbers and exercise that option where labour market conditions require it. Given the current state of the labour market, now is such a time for a cap to be imposed. An annual quota for the visa should be determined based on advice from the tripartite Ministerial Advisory Council for Skilled Migration and taking into account the labour market conditions for young Australians.

- The DIBP provide consolidated and publically available information on the working patterns of working holiday visa holders. This should include the number of working holiday visa holders that do exercise their work rights, the duration of their employment, the number of employers they work for, their rates of pay, and the locations, industries, and occupations they work in. If this information is not currently able to be produced, then DIBP should report to the Ministerial Advisory Council for Skilled Migration on how this data can be collected.

- Job ads that advertise only for working holiday visa holders or that use the inducement of a second working holiday visa be banned.

- The second year working holiday visa be abandoned altogether.

- Remodel the work rights attached to the working holiday visa so that it operates as a genuine holiday visa with some work rights attached, rather than a visa which in practice allows visa holders to work for the entire duration of their stay in Australia

- On the Backpacker tax the ACTU is concerned that in real terms, a 32.5% tax rate will net a WHM $11.94 per hour from commencement of employment. Overseas workers, like all Australians, should be required to pay tax on their earnings. While it is important overseas workers contribute to tax, their tax liability should be determined on the basis of their earnings in a manner that is consistent with the principles that underpin our basic tax system. They should not be taxed at a rate so high they are earning an after-tax rate that Australian society would consider

unacceptable. The ACTU is concerned that when one considers that the average annual earnings for WHMs are approximately $13,300, the unfair nature of the government's proposal is striking.

- The government should seek to ensure that there are higher wages and better conditions in the sectors that WHMs work including agriculture, construction and hospitality.
- Unions should be present in all the sectors that WHMs work and have the right to inspect and monitor working conditions. We also recommend increasing the resources for the FWO to identify, investigate, and carry out enforcement activities against employers that are underpaying WHMs, domestic workers and other migrant workers.
- Breaches of the Migration Act should not result in absence of protection under the Fair Work Act. The ACTU is concerned about the pressure that certain employers have exerted on temporary visa workers to breach a condition of their visa in order to gain additional leverage over the employee
- If genuine labour shortages do exist and substantial increases in wages and conditions cannot attract domestic workers the ACTU prefers the use a visa program where Unions were involved in its establishment and has large development impacts for our Pacific neighbours such as the SWP. However improvements to the SWP are needed to prevent worker exploitation including the right of return by participants.

ADDRESS
ACTU
365 Queen Street
Melbourne VIC 3000

PHONE
1300 486 466

WEB
actu.org.au

D No: 92/2016

Australian Unions
Join. For a better life.

ACTU
australian council of trade unions