

**Memorandum of Understanding between the
Australian Government and the Government of the Kingdom of Tonga
in support of Australia's Seasonal Worker Programme (SWP)**

MEMORANDUM OF UNDERSTANDING

The Government of Australia (Australia) and the Government of the Kingdom of Tonga (Tonga), hereinafter referred to collectively as the Participants, have reached the following understandings:

1. RELEVANT AGENCIES

1.1 This Memorandum of Understanding ("MoU") will engage the following agencies:

For Australia:

- the Department of Employment ("DoE"), as the designated lead agency for implementation of the SWP, acting with responsibility for the administration of the *Fair Work Act 2009* and associated acts and regulations;
- the Department of Immigration and Border Protection ("DIBP"), acting with responsibility for the administration of the *Migration Act 1958*; and
- the Department of Foreign Affairs and Trade ("DFAT"); and
- the Office of the Fair Work Ombudsman ("Fair Work Ombudsman").

For Tonga:

- Ministry of Internal Affairs of the Kingdom of Tonga ("the Ministry"), responsible for leading work in support of the SWP.

2. DEFINITIONS

2.1 For the purposes of this MoU and the Implementation Arrangements, the following definitions will apply:

"Seasonal Worker Programme" (SWP) means the Seasonal Worker Programme announced by the Australian Government in December 2011;

"Approved Employer" (AE) means an Australian employer which has been vetted and approved by Australian Government agencies for the purposes of employing Pacific island and Timorese seasonal workers under the SWP;

"Implementation Arrangements" means the subsidiary documents governing participation in the SWP;

"Fair Work Instrument" refers to an Australian instrument or agreement that satisfies Australian workplace relations requirements and which describes a Pacific island or Timorese seasonal worker's terms and conditions of employment;

“Letter of Offer” means a written offer of employment in Australia issued by an AE to a Pacific island seasonal worker applicant; and

“Tongan Seasonal Worker” refers to a Tongan citizen, who is not an Australian resident or national, who is employed under the SWP and who satisfies the visa requirements for participation in the SWP.

3. OBJECT AND PURPOSE

3.1 The purpose of this MoU is to set out the arrangements to facilitate access for Tongan citizens to undertake seasonal work under the SWP in the industries specified in the Implementation Arrangements.

3.2 The objective of the SWP is to contribute to economic development in partner countries by providing employment opportunities, remittances and opportunities for up-skilling. In doing so, the SWP will also provide benefits to the Australian economy and to Australian employers who have been able to demonstrate that they cannot source suitable Australian labour.

4. PRINCIPLES

4.1 The Implementation Arrangements will be consistent with the following operational principles:

- a) equity of access and opportunity for workers;
- b) transparency of process and decision-making;
- c) accountability;
- d) the demand-driven nature of employment under the SWP;
- e) maximisation of development-focused benefits; and
- f) mutual commitment to investing maximum effort to mitigate risks to the Participants and Tongan Seasonal Workers.

5. DESIRED OUTCOMES

5.1 Australia will work to achieve the objective of the SWP and will successfully demonstrate the value of the SWP, by:

- a) boosting the development of communities through new employment opportunities, increased remittance incomes, and transfer of skills and knowledge to Tongan Seasonal Workers;
- b) contributing to economic development in Tonga by fostering economic growth and regional integration;
- c) creating effective partnerships between Australia and Tonga to support the SWP, including by assisting Tonga to meet its responsibilities as set out in the Implementation Arrangements;
- d) avoiding unethical recruitment practices, application fraud, or overstaying by seasonal workers; and
- e) avoiding exploitation of seasonal workers or displacement of Australia’s workforce.

5.2 Tonga will work to achieve the objective of the SWP by:

- a) maintaining the integrity of the SWP;
- b) establishing a reputation for providing an efficient, reliable labour force for Australian industry, determined to fall under the SWP;
- c) matching surplus labour resources in Tonga with labour market needs in Australia by providing a reliable and work-ready workforce for areas in rural Australia with a demonstrated shortage of suitable Australian workers;
- d) complying with all relevant laws and rules of the SWP;
- e) supporting Tongan Seasonal Workers to acquire worthwhile savings and appropriate work skills and experience such as to contribute to their own personal development and to the development of Tonga and their home communities; and
- f) securing a satisfactory portion of the seasonal work opportunities available under the SWP.

6. CRITICAL SUCCESS FACTORS

6.1 The Participants recognise that the Implementation Arrangements will be effective if:

- a) AEs establish productive relationships with Tongan agencies and communities, thereby obtaining a reliable supplementary workforce to sustain their industries;
- b) SWP objectives are achieved and its principles are adhered to;
- c) all Participants have and share specific and timely information to enable Tonga to effectively participate in the SWP, and actively participate in monitoring and evaluating measures of success;
- d) Tongan Seasonal Workers enjoy fair access to the SWP, fair and reasonable treatment in accordance with Australian law by AEs, are assisted and enabled to adjust to Australian conditions, derive income and skills, have successful re-entry into their home community and have a heightened prospect of return employment in Australia;
- e) Tongan Seasonal Workers under the SWP are not levied with any recruitment costs or subjected to excessive up-front charges; and
- f) opportunities for employment facilitate inclusive participation in the SWP, that actively promote participation by women and under-represented groups.

7. IMPLEMENTATION ARRANGEMENTS FOR PARTICIPATION IN THE SWP

7.1 Australia intends that, as far as possible, the Implementation Arrangements will be common to all participating countries in the SWP. The Implementation Arrangements may be amended by the Australian Government from time to time and will be published on the SWP website.

7.2 The Implementation Arrangements will assist AEs to recruit from Tonga and enable Tongan Seasonal Workers to access opportunities available to them under the SWP. In particular, recruitment arrangements will ensure that Tongan Seasonal Workers: are provided with adequate information prior to departure and after arrival in Australia (including regarding the role and function of unions); are not subject to recruitment agency fees; clearly understand what application, health/character checking, passport and visa issue costs they are liable to pay in advance of their arrival; provided with pastoral

support in Australia; given opportunities to access relevant up-skilling and relevant training; and receive assistance to obtain their full employee entitlements while in Australia and on departure.

7.3 The Implementation Arrangements will allocate responsibilities and actions to the Participants for mitigating risks, for ensuring compliance with SWP principles, objectives and policies, and for cooperation between the Participants on information sharing, marketing and other facets important to the success of the SWP.

8. IMMIGRATION REQUIREMENTS

8.1 The decision to grant a visa to a Tongan citizen under the SWP remains the prerogative of Australia, with decisions being made on a case-by-case basis in accordance with requirements laid down in the relevant Australian immigration legislation, regulations and any applicable immigration policy. The visa requirements will be set out in the Implementation Arrangements.

9. INFORMATION COLLECTION

9.1 The Participants will cooperate in the collection and sharing of information relevant to the SWP in a manner consistent with their applicable laws, including in relation to privacy.

9.2 The Participants will cooperate to monitor and evaluate the SWP and arrangements under this MoU and the Implementation Arrangements.

9.3 Monitoring and evaluation mechanisms will enable the Participants to assess progress against the Participants' desired outcomes (Section Five) and critical success factors (Section Six), identify successes, and areas for improvement in arrangements for which the Participants are responsible.

9.4 The Participants will, in particular, cooperate to assess the efficiency and transparency of recruitment procedures.

9.5 For the purposes of evaluation, any information collected from Tongan Seasonal Workers about their participation in the SWP will be voluntary. All collected information will only be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify any individuals who work under the SWP, unless consent is provided by Tongan Seasonal Workers.

10. PUBLICITY

10.1 The Participants will make efforts to increase awareness and understanding of the SWP in Tonga and Australia.

10.2 The Participants will be responsible for clarifying and or correcting any false or misleading information about the SWP.

11. REVIEW

11.1 This MoU will be reviewed regularly by the Participants. Such reviews will provide an opportunity to discuss issues and consider changes to the MoU and the Implementation Arrangements, including the degree to which the Implementation Arrangements are being effectively implemented.

11.2 The Participants acknowledge that arrangements under this MoU are likely to evolve with experience. The Participants will consult each other as necessary to promptly address and endeavour to resolve any issues arising out of this MoU or the operation of the Implementation Arrangements. Such issues may include any identified needs for capacity building through institutional strengthening and improvement in coordination among government agencies.

12. VARIATIONS/AMENDMENTS/ADDITIONS

12.1 This MoU may be amended at any time by mutual determination in writing by the Participants.

13. COMMENCEMENT AND TERMINATION

13.1 This MoU will come into effect upon signature by the Participants and may be terminated by either Participant upon 60 days written notice conveyed through diplomatic channels. The arrangements under this MoU will nevertheless continue to cover Tongan Seasonal Workers that remain in Australia after termination until their return to Tonga.

13.2 The Participants acknowledge and affirm that the integrity of the SWP depends on the SWP remaining free of corruption and other unethical practices. Any evidence of corruption or unethical practices that is not dealt with effectively and immediately will jeopardise participation under the SWP and potentially result in the termination of this MoU.

14. CONTACTS

14.1 Communications on matters relating to this MoU will, wherever possible, be through diplomatic channels.

14.2 The contact point for Australia is:

Branch Manager
Seasonal Worker Programme
Department of Employment
GPO Box 9880
CANBERRA ACT 2601
AUSTRALIA

14.3 The contact point for Tonga is:

Chief Executive Officer
Ministry of Internal Affairs
PO Box 1380
NUKU'ALOFA
KINGDOM OF TONGA

Signed at NUKU'ALOFA

on 17 August 2017



For the Government of Australia



For the Government of the
Kingdom of Tonga

