



Safe Work Australia: Submission to the Department of Agriculture Working holiday maker visa review, September 2016

1. Introduction

Safe Work Australia leads the development of national policy to improve work health and safety (WHS) and workers' compensation arrangements across Australia.

This submission focuses on one of the Terms of Reference of the inquiry: 'the exploitation of and protections for vulnerable workers, including through illegal labour hire practices or non-compliance with laws and regulations'.

It has a focus on the WHS issues facing working holiday makers in the Australian agriculture industry including the elements of those workers' situation which can make them vulnerable to exploitation and how those pose a risk to their health and safety, and outline current initiatives to reduce those risks.

Safe Work Australia considers some working holiday makers, in common with some other categories of temporary and permanent visa holders, are at an increased risk of injury, illness and death at work. This submission provides a brief overview of these risks.

2. Work health and safety laws in Australia

WHS is regulated separately by the Commonwealth, state and territory governments. All jurisdictions except for Victoria and Western Australia have implemented the model WHS laws (including the model WHS Act, model WHS Regulations and model Codes of Practice) that were developed by Safe Work Australia in 2011.

All workers regardless of visa status are covered by WHS laws in Australia. Under section 19 of the model WHS Act (and similar provisions in Victoria and Western Australia), a person conducting a business or undertaking (PCBU) owes the same duties to workers on temporary visas as they do to Australian citizens. In broad terms, these duties are to ensure, so far as is reasonably practicable, the health and safety of workers while they are at work.

Under sections 14–16 of the model WHS Act and relevant laws in Victoria and Western Australia, more than one duty holder can have the same duty in relation to a worker. A PCBU cannot delegate or transfer their duties. For example, while host-employers may direct the workers in their day-to-day work, a labour hire company and the host-employer are jointly responsible for ensuring the WHS of the workers. And, in this case, it is not possible for either the host-employer or labour hire company to contract out or transfer that duty to another person or each other.

3. Working holiday and work and holiday visa holders (subclass 417 and 462 visas)

Background

Visas

Young people (aged 18-31 years) may travel, work and study in Australia for up to 12 months on one of two visas. Depending on the agreement between Australia and their home country, they may hold a subclass 417 (working holiday) or subclass 462 (work and holiday) visa. Under either visa, they can work for a maximum six months with one employer.

The conditions of the subclass 417 visa allow a second 12 months visa for those who have worked for a minimum period in regional areas in some key industries which are experiencing labour shortages. The specified work includes plant and animal cultivation (for example, harvesting and/or packaging of fruit and vegetable crops), fishing and pearling, tree farming and felling (planting trees, felling trees in a plantation or forest), mining, and construction.

In order to apply for the second visa, the worker must work for a minimum three months (88 days) in a regional area.

Who they are

There were over 150 000 young people in Australia on working holiday or work and holiday 'backpacker' visas as at 31 December 2015. Of the top four source countries, two (Taiwan and South Korea) are non-English speaking and are likely to have lower rates of English proficiency than the European source countries.

Where they work

According to the Department of Immigration and Border Protection (DIBP) the vast majority of working holiday or work and holiday visa holders work in agriculture: in the six months to 31 December 2014, around 91% of the second working holiday visa applicants indicated they had engaged in agricultural work to acquire eligibility for the second visa¹.

Factors contributing to additional WHS risks for working holiday makers

While working holiday makers meet genuine labour shortages in regional Australia, some elements – of their visa conditions, their personal characteristics and their economic situation – can put them at heightened risk to their health and safety.

Not all migrant workers are at serious risk of work-related injury. There are however a number of specific vulnerabilities and circumstances that may mean working holiday makers are at a higher risk.

Additional vulnerabilities

A number of characteristics of the working holiday maker visa holders make them particularly at risk. (See Table 1 for a full list all the factors identified in recent research.) These characteristics include:

- they do not have to meet minimum English language requirements. Young people from two of the top four source countries are less likely to have good English proficiency. Poor English language skills may mean that they are less likely to understand (verbal and written) safety instructions and materials and may be less likely to raise safety concerns or report a safety incident or work-related injury.
- they may not fully understand their work rights and entitlements, including WHS rights, workers' compensation entitlements, wages and working conditions, visa conditions, or the Australian legal system and cultural norms.
- they may not be in a position to insist on their employer having good work health and safety practices or compliant workers' compensation policies,
- for those seeking to qualify for a second working holiday visa, the immigration consequences of losing their job may make them prioritise job security over health and safety
- prior negative experience and perceptions of work health and safety from their country of origin may persist even after training and awareness-raising

¹ <http://www.border.gov.au/ReportsandPublications/Documents/statistics/working-holiday-report-dec14.pdf>



- they (particularly those from collectivist orientated societies) may feel a strong sense of loyalty to their employers, and be less likely to report hazards and injuries/illnesses
- they may have a mistrust of government or authority, held from countries of origin, which may mean they are less likely to approach or take on guidance from government, and
- the fact that they are in short-term work placements may make them less likely to receive training or induction, and so they may be less likely to be aware of the risks in the workplace and how to avoid them.

Labour hire companies

It is understood that many labour hire companies supply seasonal and temporary labour (including those on working holiday visas) to host-employers in the agriculture (including fruit picking) and meat processing industries.

While host-employers may direct the workers in day-to-day work, labour hire companies maintain the employment relationship with the worker, pay them wages, monitor working conditions (including hours) and are responsible for taking out a workers' compensation policy for them. As noted above, one or more persons can have the same duty under the the model WHS laws, and where duties are shared, there is an obligation on each duty holder to consult the other(s) in relation to their workers' health and safety. This means the labour hire company and the host-employer are jointly responsible for ensuring the WHS of the workers.

However, these working arrangements raise particular challenges for migrant workers who have a limited understanding of their work rights in Australia, who owes them duties at law and where to go for help.

Host-employers and labour hire companies may not adequately identify the specific risk factors which affect working holiday makers, and they may not respect the need to take extra precautions or measures to ensure the health and safety of temporary migrant workers. This may increase migrant workers' risk of injury while working in Australia, especially for those working in hazardous industries.

Workers' compensation entitlements

Workers' compensation is also regulated separately by the Commonwealth, states and territories. Each jurisdiction has its own workers' compensation scheme. While they differ in design and administration by jurisdiction, working holiday makers injured at work anywhere in Australia are entitled to workers' compensation for work-related injury, disease or fatality.

Despite the legal obligation for working holiday makers to be insured, it is possible that some employers may not take out a policy on their behalf. In late 2014, 18 of 41 Sunshine Coast strawberry farms visited by WHS Queensland (WHSQ) were non-compliant with workers' compensation laws (being either uninsured or underinsured).

If changes to taxation arrangements create increased pressure for working holiday makers to work in the "black" economy, they may be drawn to employers who will also neglect their workers' compensation obligations.

Young workers' health and safety

Safe Work Australia research based on the Australian Bureau of Statistics *Work-related Injuries Survey* data suggests young workers have a greater risk of work-related injury in Australian

workplaces than their older counterparts². As by definition working holiday makers are aged 31 or younger, they fall into this additional risk category.

WHS in the agriculture industry

Over recent years, the agriculture sector has one of the highest rates of both fatalities and serious injuries of any industry in Australia. This will further compound the risks faced by working holiday makers.

4. Interventions to protect working holiday makers' work health and safety

Safe Work Australia is undertaking a program of activity to address some of the work health and safety risks faced by migrant workers. The activities fall under four broad themes – providing information, collaboration between agencies, improving data collection and addressing policy obstacles.

The first step has been to develop targeted information for workers. Safe Work Australia has developed a short generic fact sheet which provides WHS and workers' compensation information aimed specifically at migrant workers, and this has been circulated to government and community agencies.

That information sheet about basic workplace health and safety issues has been published on the Safe Work Australia website and is available in eleven languages as well as English:

- <http://www.safeworkaustralia.gov.au/sites/swa/whs-information/working-safely-in-australia/pages/default> and
- <http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/working-safely-in-australia-information-sheet>

The languages chosen included Korean and Chinese to reflect the increasing numbers of those language speakers among temporary visa holders.

WHS and workers' compensation information is now more prominent in Commonwealth government agencies' information for migrant workers, for example on the websites of the relevant Australian Government agencies.

The next step will be to look at other ways to improve the information which migrant workers, including working holiday makers, receive about their work health and safety and workers' compensation entitlements.

Because agriculture was identified as a high priority industry for the first five years of the *Australian Work Health and Safety Strategy 2012-2022*, Safe Work Australia Members have adopted a national agriculture activity plan which aims to

- improve the capabilities of leaders, managers and workers in the agriculture sector
- improve the design of rural plant, structures and work, and
- support agriculture business and community leaders to promote effective and systematic risk management, and consider work health and safety within agriculture supply chains and networks.

² Safe Work Australia, *Work-Related injuries experienced by young workers in Australia 2009-10*
<http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/764/work-related-injuries-experienced-young-workers-Australia-2009-10.pdf>



5. Conclusion

Not all working holiday makers are vulnerable to exploitation or at serious risk of work-related injuries, illness and death. There are however a number of specific vulnerabilities and circumstances that may mean working holiday makers are at a higher risk.

A range of factors have been found to specifically contribute to a heightened risk for some migrant workers, including a lack of understanding of basic work health and safety issues, their work rights and entitlements due to poor English language proficiency; a tendency to prioritise job security over their personal health and safety or that of others, their experiences of working conditions and WHS in their home country, their cultural values, and the fact that migrant workers are more likely to accept more dangerous jobs and persist despite poor working conditions (ie “survival jobs”).

It is not clear to what extent changes to the “backpacker” taxation arrangements would make these workers more vulnerable to exploitation or would affect their work health and safety.

Any changes to the taxation treatment of working holiday makers should ensure that they are not driven by economic necessity into working arrangements that would hinder their access to the protection of the same work health and safety laws that apply to other workers, or to workers’ compensation should they be hurt at work.



6. Factors that may increase work health and safety risks for migrant workers

Table 1: Factors that may increase work health and safety risks for migrant workers

Factor	Example
Lack of understanding of WHS, work rights and entitlements due to poor English language proficiency	<p>Workers with poorer English language skills, in lesser skilled jobs and with fewer educational qualifications reported that they:</p> <ul style="list-style-type: none"> only received informal on-the-job training about specific tasks (for example, how to handle sharp scissors), particularly in smaller workplaces were regularly sent to training but could not understand the training as it was conducted in English had a poor understanding of what constituted a work safety incident and the appropriate action to take following an accident, and were less likely to recognise hazards and report them. <p>Other stakeholders interviewed commented that foreign-born workers generally had little knowledge of Australian work rights, wages and entitlements.</p>
Prioritise job security over personal health and safety or that of others	<p>Some participants reported that they:</p> <ul style="list-style-type: none"> did not raise safety issues about themselves (including injuries) for fear of losing their job were less likely to report safety issues when a friend or contact helped them get the job, and were less likely to report on workplace working conditions for fear of losing their jobs or being cast as a “trouble maker”. This was also reported among skilled workers.
Experiences of working conditions and WHS are derived from home	<p>Some participants’ attitudes towards WHS persisted from their home country, such as safety being a personal problem rather than a company problem. However, it was reported that personal attitudes changed the longer they lived in Australia and became accustomed to systems here.</p>
Cultural values	<p>Some participants reported that their cultures placed a greater sense of loyalty on their employer, which impeded their willingness to report safety incidents or unsafe working conditions; doing so would be disloyal.</p>
More likely to take and persist in poor working conditions (ie “survival jobs”)	<p>The Study found that recent arrivals to Australia often accepted any job in order to generate income, often within the immediate period after arrival in Australia. This was compounded with pressure of having to send remittances to family.</p> <p>Workers in survival jobs were generally unlikely to complain about working conditions as they did not want to jeopardise employment.</p>

These factors are based on a 2014 qualitative study³ based on in-depth interviews and focus groups with 92 migrant workers in Western Australia and Victoria.

³ Reid, A., Lenguerrand, E., Santos, I., Read, U., LaMontagne, A. D., Fritschi, L., Harding, S., “Taking risks and survival jobs: Foreign-born workers and work-related injuries in Australia”, *Safety Science*, 2014, Vol. 70, pp 378-386.