

Submission to The Review of Regional Migration

Settings

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Summary

This submission focuses on the Working Holiday Maker (WHM) or backpacker visas: that is, the 417 (Working Holiday) visa and the 462 (Work and Holiday) visa. These visas, originally designed for cultural exchange, have increasingly become temporary, regional work visas with high risks of exploitation. The government is unwilling to implement its Migration Review's recommendation to abolish the second- and third-year WHM visas, which are granted if specified work requirements are met, and which are a major cause of backpacker exploitation. However, the government could put in place a number of other measures to reduce the risk of exploitation to backpackers. A distinction needs to be drawn between those backpackers here primarily to work and those here primarily for a working holiday. The former should be treated like any other group of foreign workers. Employers who hire them should be regulated accordingly. The government should also simplify the specified work requirements to get a second or third year visa by allowing any regional work to count towards second and third year visa eligibility requirements. It should also reintroduce the long-standing restriction that a WHM visa holder can only work for a single employer for up to six months, or equivalent.

Recommendations

Recommendation 1: WHM visa holders who wish to use their visa as primarily a work visa should be regulated like any other group of unskilled migrant workers. "Working WHM visa holders" should be defined as those WHM visa holders who either want to apply for a second or third year WHM visa or are on a second or third year visa.

Recommendation 2: The Department of Employment and Workplace Relations (DEWR) should be given responsibility for regulating working WHM visa holders and their employers.

Recommendation 3: Working WHM visa holders should only be able to work for approved employers (AEs). AEs who want to hire a working WHM visa holder would have to be accredited with DEWR and meet standards similar to those of the PALM visa.

Recommendation 4: The specified work requirement for second and third year WHM visa grants should be defined in relation to any work in regional areas.

Recommendation 5: The restriction on WHM visa holders that they can only work for an employer for six months (or equivalent) should be reinstated. It should apply to first, second and third year visa holders.

Background

The 417 (Working Holiday) visa is available to passport holders from 19 high-income countries. The 462 (Work and Holiday) visa is available to passport holders of 29 countries, 12 of which are middle-income countries and the remainder high-income. The majority of backpackers are on a 417 visa, but the share of 462 visas has grown.

According to an OECD 2019 report,¹ Australia is the most popular destination for working holiday makers, and received in that year 44 per cent of all working holiday makers across 10 OECD countries.

The first-year WHM visa is promoted as a 12-month holiday visa, with work and study rights, mainly for 18 to 30 year olds from partner countries for work, travel, and cultural exchange. However, the introduction of the second-year (and more recently the third-year) visa was a deliberate policy decision to incentivise WHMs to work in regional Australia, primarily in horticulture, and to extend their stay in Australia as workers.

Starting in 2005, a series of decisions have made the backpacker visa into something more akin to a work visa:

- 2005: Second-year visa introduced for 417 visa holders in return for three months of specified regional work
- 2016: Second-year visa introduced for 462 visa holders on a restricted regional basis (Northern Territory, and north of the Tropic of Capricorn in Queensland and Western Australia)
- 2018: 462 second-year visa eligibility expanded to include all regional areas (as per 417)
- 2019: Third-year visa introduced for 417 and 462 visa in return for six months of specified regional work.
- 2022: The restriction that WHM visa holders only work for six months during each of their visa years was removed for various types of work, including agriculture, tourism and hospitality.²

Until recently, the “specified regional work” required to get a second or third year visa had to be either on a farm (plant and animal cultivation), other agriculture (fishing and pearling, tree farming and felling), construction or mining. Traditionally, nearly all backpackers who applied for a subsequent visa did so on the basis of agricultural work. However, two recent decisions have reversed the trend of “funneling” backpackers into agriculture, that is, they have reduced the incentives for backpackers to undertake agricultural work.

First, from 2020/21, second and third year extensions have been able to be obtained for work in tourism and hospitality, though only in Northern Australia, remote and very remote Australia and a few other postcodes, not in other regional areas.

¹ See Orton, B (19 August 2020) “Working Holiday Makers not a long-term solution for horticulture”, *Devpolicy Blog*, <https://devpolicy.org/working-holiday-makers-not-a-long-term-solution-for-horticulture-20200819/>

² <https://immi.homeaffairs.gov.au/what-we-do/whm-program/specified-work-conditions/6-month-work-limitation>

Second, as part of its free-trade negotiations, Australia was required to offer to the UK a three-year backpacker visa without any work requirements (as the UK offers to Australia). The way Australia has done this is to offer UK citizens up to three one-year WHM visas, but without any work requirements for the second and third year visas. UK backpackers are responsible for 20% of all backpacker grants, so this is a significant segment of the backpacker population which is no longer being funnelled into agriculture.

The impact of these changes have been significant. For example, in December 2012, it was reported that 85% of second-year visas were on the basis of agricultural work.³ However, in December 2023, it was reported that only 49% of second-year visas were on the basis of agricultural work (and 55% for third-year visas).⁴

While these recent changes are welcome, the entire second- and third-year backpacker visa extension program remains problematic for five reasons.

First, the fact that more backpackers are working outside of agriculture does not mean they are safe from exploitation. In any case, about half second and third backpacker visa grants are still on the basis of work in agriculture, a sector that is particularly prone to worker exploitation. A 2016 report Fair Work Ombudsman into the main 417 visa⁵ found that “the work-for-visa system is broken.” It concluded that “the 417 visa program created an environment where:

- unreasonable and unlawful requirements are being imposed on visa holders by unscrupulous businesses;
- exploitative workforce cultures / behaviours are occurring in isolated and remote workplaces; and,
- employers are making unlawful deductions from visa holders’ wages, or are unlawfully requiring employees to spend part or all of their wages in an unreasonable manner.” (p.4)

It also found that “417 visa holders: ...

- are largely unaware of their workplace rights
- almost a third did not receive payment for some or all of the work they did
- ... a quarter described their accommodation conditions as poor
- 14 per cent had to pay to secure regional work; and,
- 6 per cent had to pay an employer to ‘sign off’ of their regional work requirement.
- more than a third claimed they were paid less than minimum wage;
- of those who were paid for their regional work, around 27 per cent were paid cash.” (p.4)

The fact that many backpackers did not have good English made them particularly vulnerable to exploitation, the report noted.

³ Department of Immigration and Citizenship (31 Dec. 2012), [Working Holiday Maker visa program report](#).

⁴ Department of Home Affairs (December 2023), [Working Holiday Maker visa program report](#).

⁵ Fair Work Ombudsman (October 2016) [Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program](#), Commonwealth of Australia.

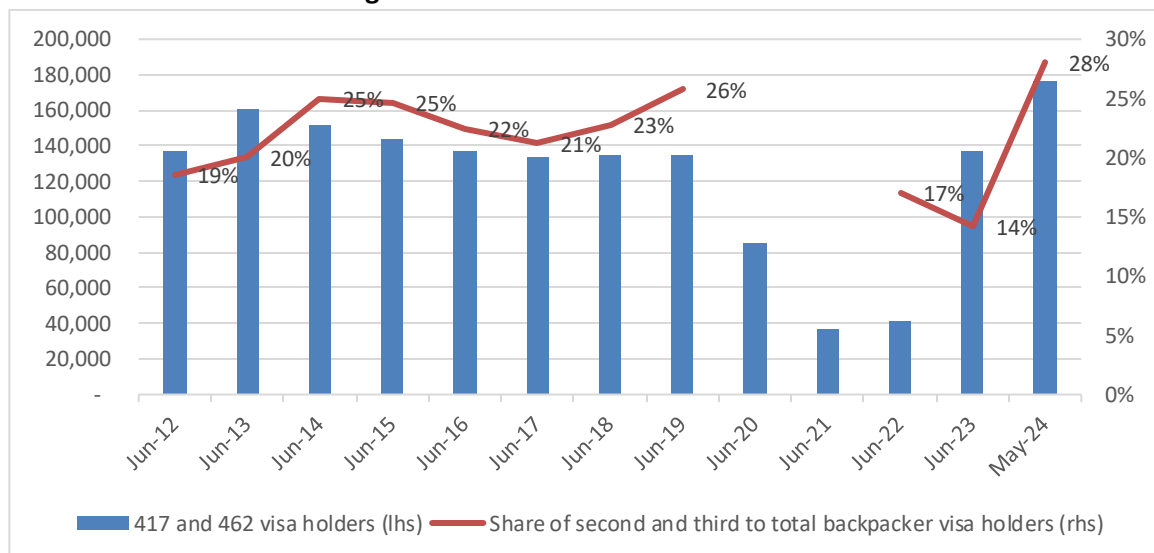
There have been similar findings from academic research. A major 2017 University of Adelaide study⁶ funded by horticulture industry associations found that “[t]he SWP [now PALM, the highly-regulated Pacific scheme] results in less exploitation of workers ... when compared with other low-skilled visa pathways”, such as backpackers.

A 2019 report⁷ from the University of Adelaide and University of Sydney also supported these findings, stating that: “The WHM program is not designed as a labour market program and, as such, there are almost no additional requirements on growers who use the visa to access workers, and no additional mechanisms for oversight and monitoring. As the second year visa extension has exacerbated worker exploitation it is hard to see how the third year visa extension will produce a different outcome.”

It is unlikely that the situation on the ground has changed significantly in recent years. There have been no backpacker-specific reforms, and just a few modest reforms to protect migrant workers in general.

Second, backpacker numbers have grown rapidly post-pandemic. The number of backpackers in Australia is at an all-time high, with 176,897 being recorded at the end of May 2024. The previous high was June 2013, when the total was 160,503. Numbers declined before and collapsed during COVID, but have more than recovered since. Moreover, of that total the share on a second or third year visa is also at an all-time high apart from the COVID era (when nearly all first-year backpackers left). It has now reached 28%.

Figure 1: WHM visa holders in Australia



Note: June 2021 and June 2022 ratios excluded because they were atypical due to COVID. The figures were 37% and 97% respectively. Source: [Department of Home Affairs](#), 2024.

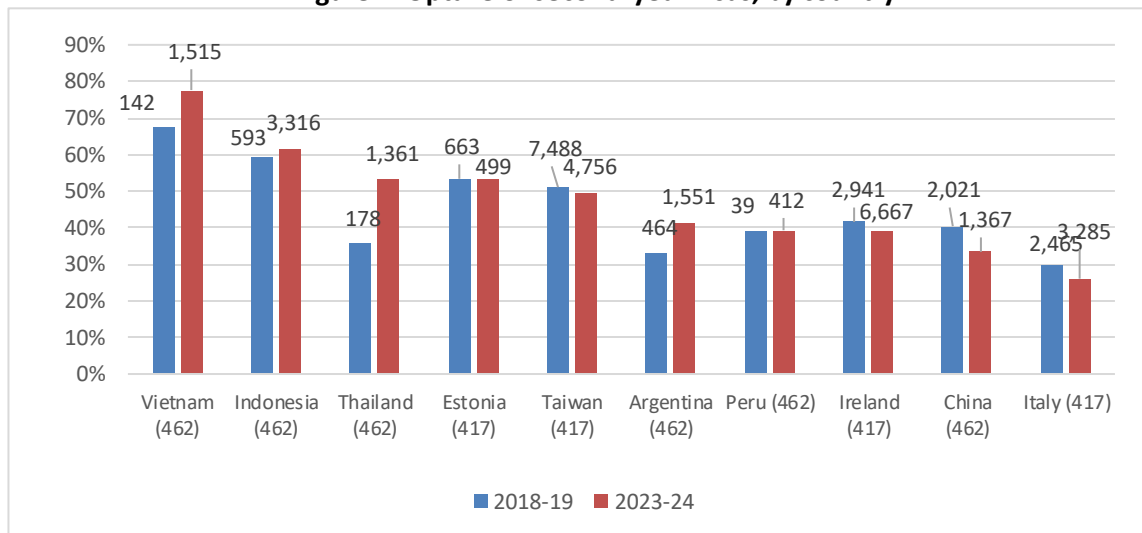
⁶ Howe, J et al (2017) [Sustainable solutions: the future of labour supply in the Australian vegetable industry](#), The University of Adelaide

⁷ Howe, J et al (2019) [Towards a durable future: tackling labour challenges in the Australian horticulture industry](#), The University of Adelaide.

Third, apart from UK nationals, incentives to work have actually been increased with the dropping during COVID-19 of the long-standing restriction that backpackers can only work for a single employer for six months. Making it easier for backpackers to work longer clearly increases the incentive to work, and further undermines the idea that this visa is primarily about holidays and cultural exchange.

In fact it clear that for the nationals of some countries, the WHM visa is already primarily a work visa. The next figure shows the uptake of second-year visa (or second-to-first year visa ratio), by country, for the ten countries with the highest second-to-first-year ratio (out of all countries that have at least 100 second-year visa holders in 2023-24). Six of the top ten are in the 462 visa subclass, and again this is where the growth is. The uptake for second-year visas in 2023-24 for Vietnam was 78%, Indonesia 62%, and Thailand 53%. In 2018-19, only 142 Vietnamese took up a second year visa; in 2023-24 it was 1,515. For Indonesia, the growth in second-year visas is from 593 to 3,316, and for Thailand from 178 to 1,361. Citizens of only one of the top ten countries would have English as a native language (Irish). For the top five countries, 50% of more are applying for a second-year visa. For these nationals, clearly the WHM visa already is primarily a work visa.

Figure 2: Uptake of second-year visas, by country



Source: [Department of Home Affairs](#), 2024. Second-to-first year ratios (uptake) are calculated as the number of second-year visas granted in a year relative to the number of first-year visas granted the year before. As data is only available until March 2024, the figures for 2023-24 is obtained by annualizing the data for the first three quarters. Data labels = number of visas granted. The type of visa available to the nationals of the concerned country (417 or 462) is shown next to the country's name.

Fourth, current settings make the government look hypocritical. Government websites continue to say that the WHM visa is primarily for holidays. The [Department of Home Affairs website](#) says that the purpose of the WHM program is “to allow young adults to have a 12 month holiday, during which they can undertake short-term work and study.” On the second-year WHM visa website, the statement is made: “If the main purpose of your stay is to work, consider a work visa.” But of course for thousands of backpackers, the main purpose of the ir visa is to work. And the government rewards them for this, by giving them another visa, and then a third one if they work even more. The government also makes it easy for backpackers to undertake not short-term but long-term work by

no longer imposing a six-month limit on work with a single employer. This is a type of institutionalized hypocrisy. A criticism such as this should not be dismissed as nitpicking. Undermining integrity and exposing a gap between rhetoric and action only adds to cynicism, and encourages both employers and visa holders not to follow the rules of a system that is already seen as being undermined by government itself.

Fifth and finally, the backpacker scheme has become increasingly complex, with different types of work being accepted as qualifying the visa holder for a subsequent visa depending on where the employment is. The matrix prepared for this review shows 14 combinations of types of work and regions that could qualify a backpacker for a subsequent visa. Why should the government favour particular sectors and postcodes over others? This is a recipe for lobbying, excessive discretion, and continually growing complexity.

Recommendations

In 2023, the government's migration review recommended the abolition of the second and third backpacker visas. Other inquiries have reached a similar conclusion. In November 2020, the Joint Standing Committee on Migration [recommended](#) in the report of its [inquiry into the backpacker visas](#) that the second-year visa extension also be given in return for work in tourism and hospitality in "all hard-to-staff rural and remote areas".⁸ In September 2021, a [Senate Select Committee on Temporary Migration](#) [recommended](#) that the 88-day work requirement to obtain a second WHM visa be abolished.⁹ The backpacker visas, the committee argued, should be refocused on their original purpose of facilitating cultural exchange, and the Seasonal Worker Programme (SWP) – now PALM (the Pacific Australia Labour Mobility program) should become the "predominant source of low and semi-skilled labour in Australia's agriculture industry."

The government in its discussion paper for this review has indicated that it is not open to abolishing the second and third year visas, but is open to reforms to reduce exploitation. The recommendations that follow are made in that spirit.

The first recommendation is that a distinction needs to be drawn between those backpackers primarily here for a holiday or working holiday and those primarily in Australia to work. The latter group should be regulated like any other group of unskilled temporary migrant workers.

How should we define the group of backpackers who should be treated as workers? I recommend that "Working WHM visa holders" be defined as those WHM visa holders who: (a) want to apply for a second or third year backpacker visa; or (b) are on a second or third year visa. (While it might be viewed as impossible to verify whether a WHM intends to apply for a subsequent visa, this is in fact not a problem for the recommended approach; as per Recommendation 3 below, the upshot for group (a) is that work requirements to qualify for subsequent visas would need to be with Approved Employers.)

⁸ Joint Standing Committee on Migration (2020), [Final report of the inquiry into the Working Holiday Maker Program](#).

⁹ Select Committee on Temporary Migration (2021) [Select Committee on Temporary Migration](#)

Recommendation 1: WHM visa holders who wish to use their visa as primarily a work visa should be regulated like any other group of unskilled migrant workers. “Working WHM visa holders” should be defined as those WHM visa holders who either want to apply for a second or third year WHM visa or are on a second or third year visa.

These “working WHM visa holders” and their employers should be regulated by the Department of Employment and Workplace Relations (DEWR). DEWR already has responsibility for regulating PALM, which is another regional, low-skill visa. Since PALM and WHM workers often compete for the same jobs it makes sense for the same department to be regulating both groups of workers.

Recommendation 2: The Department of Employment and Workplace Relations should be given responsibility for regulating working WHM visa holders and their employers.

Working WHM visa holders should only be able to work for Approved Employers (AEs). This means that only AEs would be able to hire second and third year WHM visa holders who have obtained their visa on the basis of work. Likewise, only work for AEs would count to a second or third year visa. (In other words, if a WHM wanted to apply for a second or third visa, they would have to make sure that they meet their first or second year work requirement with an AE.) AEs who want to hire a working WHM visa holder would have to be accredited with DEWR and meet standards similar to those of the PALM visa.

Recommendation 3: Working WHM visa holders should only be able to work for approved employers (AEs). AEs who want to hire a working WHM visa holder would have to be accredited with DEWR and meet standards similar to those of the PALM visa.

To reduce the complexity of the WHM visa extension requirements, it is recommended that the rules be simplified. Government should minimize discrimination between different types of regional work and regional areas as much as possible.

Recommendation 4: The specified work requirement for second and third year WHM visa grants should be defined in relation to any work in regional areas.

As noted earlier, the [Department of Home Affairs website](#) says that the purpose of the WHM program is “to allow young adults to have a 12 month holiday, during which they can undertake short-term work and study.” To then allow participants in that program to work for the full 12 months for the same employer is clearly inconsistent with this, as it encourages participants to come to Australia not to study but to work. The restriction that WHM visa holders could only for work six months for the same employer was lifted in emergency conditions, in 2022. There is no longer a labour force shortage. The six-month restriction should be reinstated either in its original form or in a modified form, e.g. part time work equivalent to six-months fulltime work in a year could be allowed

Recommendation 5: The restriction on WHM visa holders that they can only work for an employer for six months in a single year or its equivalent should be reinstated. It should apply to first, second and third year visa holders.