

**Memorandum of Understanding between the
Australian Government and the
Government of the Kingdom of Tonga
in support of
Australia's Pacific Seasonal Worker Pilot Scheme (PSWPS)**

MEMORANDUM OF UNDERSTANDING

1. PARTICIPANTS

This Memorandum of Understanding between the Government of Australia and the Government of the Kingdom of Tonga engages in particular:

- the Department of Education, Employment and Workplace Relations of Australia ("DEEWR"), which will be the designated lead agency for implementation of the Pilot Scheme, acting with responsibility for the administration of the *Workplace Relations Act 1996* and associated acts and regulations;
- the Department of Immigration and Citizenship of Australia ("DIAC"), acting with responsibility for the administration of the *Migration Act 1958*;
- the Australian Agency for International Development ("AusAID"); and
- the Department of Foreign Affairs and Trade of Australia ("DFAT");

and

- the Ministry of Labour, Commerce and Industries of the Kingdom of Tonga ("the Ministry"), responsible for leading work in support of Australia's Pacific Seasonal Worker Pilot Scheme (PSWPS);

hereinafter referred to collectively as "the Participants".

2. PURPOSE

2.1 The purpose of this Memorandum of Understanding is to set out the arrangements to facilitate access of Tongan nationals to seasonal work under Australia's PSWPS in the horticulture industry and other industries as may be determined from time to time as falling under the PSWPS.

2.2 Country-specific facilitative arrangements are set out in Schedule One of this Memorandum of Understanding.

3. DEFINITIONS

For the purposes of this Understanding and its facilitative arrangements, the following definitions apply:

- Australia's "Pacific Seasonal Worker Pilot Scheme" ("PSWPS") means the three year pilot scheme announced by the Australian Government to examine the viability of a seasonal worker program with an initial focus on the Australian

horticultural industry. The PSWPS will aim to stimulate economic development in Pacific partner countries by providing employment opportunities, remittances, and options for upskilling, and will also examine the benefits to the Australian economy and to employers who can demonstrate that they cannot source suitable Australian labour. The PSWPS will commence from November 2008 and run for three years;

- “approved Australian employer” (“AAE”) means an Australian employer or employing organisation or agency which has been approved by DEEWR and DIAC for the purposes of employing Pacific island seasonal workers under the PSWPS;
- “approved recruitment agent” (“ARA”) means a Tongan Government agency or an agent certified by the Government of the Kingdom of Tonga to recruit Tongan nationals as Pacific island seasonal workers, subject to PSWPS policies;
- “industrial instrument” means an Australian instrument or agreement that satisfies Australian workplace relations requirements and which describes a Pacific island seasonal worker’s terms and conditions of employment;
- “invitation letter” means a written offer of employment in Australia issued by an AAE, either directly or through an ARA, to a Pacific island seasonal worker applicant;
- “Pacific island seasonal worker” means a Tongan national who is not an Australian resident or national and who is employed under the PSWPS and who satisfies the visa requirements for participation in the scheme;
- “special program agreement” means an agreement between DIAC and an AAE providing the basis for Australian visa issue; and,
- “Workplace Ombudsman” means the Office of the Workplace Ombudsman, an independent Australian Government body responsible for ensuring compliance with Australian Commonwealth workplace relations laws.

4. PRINCIPLES

The facilitative arrangements subject to this Understanding will be designed and implemented consistent with the following operational principles:

- equity of access and opportunity for workers;
- transparency of process and decision-making ;
- accountability;
- the demand-driven nature of employment under the PSWPS;
- maximisation of development-focused benefits; and,
- mutual commitment to investing maximum effort to mitigate risk to the Participants, respective Governments, and participating nationals.

5. DESIRED OUTCOMES

5.1 Australian agencies enter into this Understanding with a view to achieving the key objectives of Australia’s Pacific Seasonal Worker Pilot Scheme, in particular successfully demonstrating the value of the Scheme by:

- demonstrably boosting the development of Pacific island communities through new employment opportunities, increased remittance incomes, and options for upskilling of Pacific workers;
- contributing to economic development in the Pacific by fostering economic growth and regional integration;
- creating effective partnerships between Australia and participating Pacific Forum island countries (FICs) to support this scheme, including through provision by Australian agencies of assistance to specific FICs to help them establish robust and appropriate facilitative arrangements;
- matching surplus labour resources in Pacific partner countries 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;
- avoiding unethical recruitment practices, application fraud, or overstaying by workers; and,
- avoiding exploitation of workers or displacement of Australia's workforce.

5.2 The Ministry enters into this Understanding with a view to achieving the following outcomes, notably:

- maintaining the integrity of Australia's Pacific Seasonal Worker Pilot Scheme;
- Tonga establishes a reputation for providing a reliable labour force for Australia's horticulture industry, and other industries as may be determined to fall under the Pilot Scheme;
- Tonga's labour force complies with all relevant laws and rules of the PSWPS;
- Tonga's workers 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,
- Tonga secures a satisfactory portion of the seasonal work opportunities available under the PSWPS.

6. CRITICAL SUCCESS FACTORS

The Participants recognise that their facilitative arrangements will be effective if:

- approved Australian employers (AAEs) establish productive relationships with Tongan agencies and communities, and thereby obtain a reliable supplementary workforce to sustain their industries;
- PSWPS objectives are achieved and its principles are adhered to;
- all Participants have and share specific and timely information to enable Tonga to effectively participate in this scheme, and actively participate in monitoring and evaluating measures of success;
- Tongan nationals enjoy fair access to Australia's Pacific Seasonal Worker Pilot Scheme, fair and reasonable treatment by approved Australian employers, are assisted and enabled to adjust to Australian conditions, derive income and skills, have successful re-entry into their home community and heighten the prospect of return employment in Australia;
- Pacific island seasonal workers under the scheme are not levied with any recruitment costs or subject to excessive up-front charges; and,

- opportunities for employment facilitate inclusive participation in the scheme, including through the active promotion of participation by women and under-represented groups.

7. FACILITATIVE ARRANGEMENTS FOR PARTICIPATION IN THE SCHEME

7.1 The facilitative arrangements under this Understanding, governing participation in the PSWPS, will be consistent with the principles and outcomes outlined in Sections Four and Five above, will be mutually determined in writing by the Participants, appended as Schedule One of this Understanding, and will be subject to review at least annually.

7.2 The facilitative arrangements will assist AAEs to recruit from Tonga and enable Tongan nationals to access opportunities available to them under the PSWPS. In particular, recruitment arrangements will ensure that 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, are provided with pastoral support in Australia, have opportunities to access relevant upskilling training, and receive assistance to obtain their full employee entitlements while in Australia and on departure.

7.3 This Understanding and its facilitative arrangements will allocate responsibilities and actions to the Participants for mitigating risks, for ensuring compliance with PSWPS principles, objectives and policies; and for cooperation between the Participants on information sharing, marketing and other facets important to the success of the PSWPS.

8. IMMIGRATION REQUIREMENTS

The decision to grant a visa under the PSWPS remains the prerogative of the Australian Government with decisions being made on a case-by-case basis in accordance with requirements laid down in Australian immigration legislation, regulations and any applicable immigration policy.

9. MARKETING

The need for Tonga to market itself to AAEs as a source of reliable seasonal labour is recognised. DEEWR and AusAID will assist marketing initiatives mounted by Tonga.

10. INFORMATION COLLECTION

10.1 The Participants will cooperate in the collection and sharing of information in a manner consistent with their applicable laws.

10.2 The Participants will cooperate to monitor and evaluate the PSWPS and arrangements under this Understanding in April 2010 and April 2011.

10.3 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 identify areas for improvement in

arrangements for which the Participants are responsible.

10.4 The Participants will in particular cooperate to assess efficiency and transparency of recruitment procedures.

10.5 For the purposes of evaluation any information collected from Tongan workers about their participation in the PSWPS will be voluntary and will be collected in accordance with applicable laws. The Participants will only use information for statistical or research purposes and will not publish this information in a form that could reasonably be expected to identify any individuals.

11. PUBLICITY

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

11.2 The Participants will act promptly to correct any false or misleading information about the PSWPS.

11.3 The Participants will notify each other on the public release of this Understanding, in part or in whole. Information contained in this Understanding can be shared by the Australian Government with approved Australian employers and with relevant Australian union bodies.

12. REVIEW AND CONSULTATIONS

12.1 The Understanding and any facilitative arrangements will be reviewed annually on a date mutually determined by the Participants. The review will provide an opportunity to discuss issues and consider changes to this Understanding and its facilitative arrangements. The review will consider the degree to which the facilitative arrangements are being implemented with respect to principles mutually determined by the Participants and outlined in Section Four of this Understanding.

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

13. VARIATIONS/AMENDMENTS/ADDITIONS

This Understanding and any facilitative arrangements may be amended at any time by mutual determination in writing by the Participants, DEEWR acting on the collective behalf of all Australian participating agencies. Schedule One of this Understanding and any other facilitative arrangements may be amended with the written consent of any persons to whom the Participants have duly delegated authority.

14. COMMENCEMENT AND TERMINATION

14.1 This Understanding will come into effect upon signature by the Participants and may be terminated by either participating Government 60 days following written notice to the other participating Government, the arrangements under the Understanding nevertheless continuing to cover workers remaining in Australia at that time, until their return to Tonga.

14.2 Any evidence of corruption or unethical practices that is not dealt with effectively and immediately will jeopardise participation under the PSWPS and potentially result in the termination of this Understanding.

15. CONTACTS

15.1 Communications on matters relating to this Understanding will, wherever possible, be routed through diplomatic channels.

15.2 The Government of Australia contact point is:

Group Manager
Employment Reform Taskforce
Department of Education, Employment and Workplace Relations
GPO Box 9879
CANBERRA ACT 2601
AUSTRALIA

15.3 The Government of the Kingdom of Tonga contact point is:

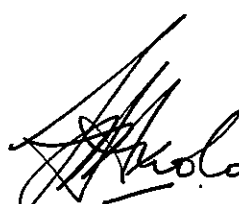
The Secretary
Ministry of Labour, Commerce and Industries
PO Box 110
NUKU'ALOFA
KINGDOM OF TONGA

Signed at **CANBERRA**

on **24** November 2008



For the Australian Government



For the Government of the
Kingdom of Tonga