

**Memorandum of Understanding between the
Government of Australia and the Government of the Republic of Kiribati
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 Republic of Kiribati 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 Pacific Seasonal Worker 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 and Human Resource Development of the Republic of Kiribati ("MLHRD"), acting with responsibility for the administration of the *Employment Ordinance* (Cap.30), and responsible for leading work in support of Australia's Pacific Seasonal Worker Pilot Scheme; and
- the Ministry of Foreign Affairs and Immigration of the Republic of Kiribati ("MFAI"),

hereinafter referred to collectively as "the Participants".

2. BACKGROUND

Australia's Pacific Seasonal Worker Pilot Scheme ("PSWPS") is a 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.

3. PURPOSE

- 3.1 The purpose of this Memorandum of Understanding is to set out the arrangements to facilitate access by Kiribati nationals to seasonal work under the PSWPS in the horticulture industry and other industries as may be determined from time to time as falling under the PSWPS.

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

4. DEFINITIONS

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

- “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 Kiribati Government agency or a licensed seasonal employment agent, appropriately licensed by the Government of the Republic of Kiribati under the *Employment Ordinance* (Cap.30) to recruit Kiribati 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 Kiribati 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 PSWPS;
- “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.

5. PRINCIPLES

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

- equity of access and opportunity for Pacific island seasonal 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 Pacific island seasonal workers.

6. DESIRED OUTCOMES

6.1 The Government of Australia enters into this Memorandum of Understanding with a view to achieving the key objectives of the PSWPS, in particular successfully demonstrating the value of the PSWPS by:

- demonstrably boosting the development of Pacific island communities through new employment opportunities, increased remittance incomes, and options for upskilling of Pacific island seasonal 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 the PSWPS, 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 Pacific island seasonal workers; and,
- avoiding exploitation of Pacific island seasonal workers or displacement of Australia’s workforce.

6.2 The Government of the Republic of Kiribati enters into this Memorandum of Understanding with a view to achieving the following outcomes, notably:

- maintaining the integrity of the PSWPS;
- establishing for Kiribati a reputation for providing a reliable labour force for Australia’s horticulture industry, and other industries as may be determined to fall under the PSWPS;
- ensuring the compliance by Pacific island seasonal workers with all relevant laws and rules of the PSWPS;
- acquiring for Pacific island seasonal workers worthwhile savings and appropriate work skills and experience such as to contribute to their own personal development and to the development of Kiribati and their home communities; and,
- securing for Kiribati a satisfactory portion of the seasonal work opportunities available under the PSWPS.

7. CRITICAL SUCCESS FACTORS

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

- AAEs establish productive relationships with Kiribati 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 Kiribati to effectively participate in the PSWPS, and actively participate in monitoring and evaluating measures of success;
- Kiribati nationals enjoy fair access to the PSWPS;
- Pacific island seasonal workers are accorded fair and reasonable treatment by AAEs, 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 PSWPS are not levied with any recruitment costs or subject to excessive up-front charges; and,
- opportunities for employment facilitate inclusive participation in the PSWPS, including through the active promotion of participation by women and under-represented groups.

8. FACILITATIVE ARRANGEMENTS FOR PARTICIPATION IN THE PSWPS

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

8.2 The facilitative arrangements will assist AAEs to recruit from Kiribati and enable Kiribati nationals to access opportunities available to them under the PSWPS. In particular, recruitment arrangements will ensure that Pacific island 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, 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.

8.3 This Memorandum of 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.

9. 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.

10. MARKETING

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

11. INFORMATION COLLECTION

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

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

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

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

11.5 For the purposes of evaluation any information collected from Pacific island seasonal 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.

12. PUBLICITY

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

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

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

13. REVIEW AND CONSULTATIONS

13.1 This Memorandum of 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 Memorandum of 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 Five of this Memorandum of Understanding.

13.2 The Participants acknowledge that arrangements under this Memorandum of 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 Memorandum of 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.

14. VARIATIONS/AMENDMENTS/ADDITIONS

This Memorandum of 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 to this Memorandum of Understanding may be amended with the written consent of any persons to whom the Participants have duly delegated authority.

15. COMMENCEMENT AND TERMINATION

15.1 This Memorandum of Understanding will come into effect upon signature by the Participants and may be terminated by either participating Government upon written notice to the other participating Government.

15.2 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 Memorandum of Understanding.

16. CONTACTS

16.1 Communications on matters relating to this Memorandum of Understanding will, where appropriate, be routed through diplomatic channels.

16.2 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

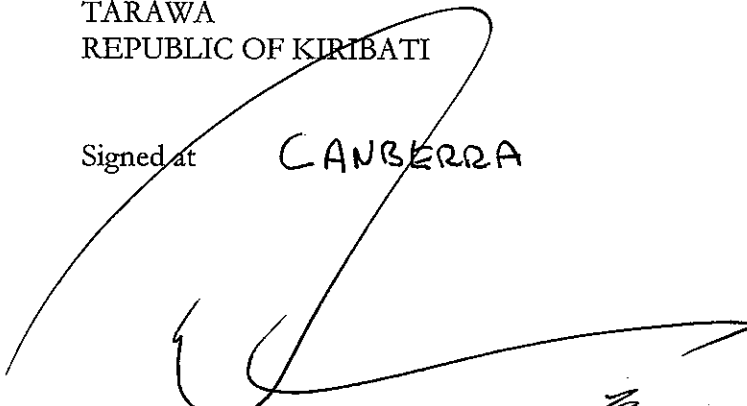
16.3 The Government of the Republic of Kiribati contact point is:

Secretary
Ministry of Labour and Human Resource Development
PO Box 69
TARAWA
REPUBLIC OF KIRIBATI


Signed at

CANBERRA

on 24 NOVEMBER 2008



For the Government of Australia



For the Government of the
Republic of Kiribati