



Australian Government



**Memorandum of Understanding between the
Government of Australia and the Government of the Democratic Republic of Timor-
Leste 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 Democratic Republic of Timor-Leste engages in particular the following agencies of the Government of Australia:

- 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 (PSWPS), 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 following agency of the Government of Timor-Leste:

- the Secretariat of State for Vocational Training and Employment (SEFOPE), responsible for leading work in support of Australia's 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 Timor-Leste citizens to seasonal work under Australia's PSWPS in the tourism industry and other industries as may be determined from time to time as falling under the Pilot Scheme.

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 and in the case of Timor-Leste, the Australian tourism industry in Broome, Western Australia. The PSWPS will aim to stimulate economic development in partner countries by providing employment opportunities, remittances, and options for up-skilling, 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 commenced in November 2008 and will run until June 2012;
- "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 seasonal workers under the PSWPS;
- "approved recruitment agent" ("ARA") means SEFOPE managing the work-ready pool, subject to PSWPS policies;
- "industrial instrument" means an Australian instrument or agreement that satisfies Australian workplace relations requirements and which describes a seasonal worker's terms and conditions of employment;
- "invitation letter" means a written offer of employment in Australia issued by an AAE directly through the ARA to a seasonal worker applicant;
- "Timor-Leste worker" means a Timor-Leste citizen who is not an Australian resident or national and who is employed as a seasonal worker 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
- "Fair Work Ombudsman" means the Office of the Fair Work 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 respective Governments and participating citizens.

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5. DESIRED OUTCOMES

5.1 The Australian Government enters into this Understanding with a view to achieving the key objectives of Australia's PSWPS, in particular successfully demonstrating the value of the Scheme by:

- demonstrably boosting the development of Timor-Leste communities through new employment opportunities, increased remittance incomes, and transfer of skill and knowledge to Timor-Leste workers;
- contributing to economic development in Timor-Leste by fostering economic growth and regional integration;
- creating effective partnerships between Australia and Timor-Leste to support this scheme, including through provision by Australian agencies of assistance to Timor-Leste to help them establish robust and appropriate facilitative arrangements;
- matching surplus labour resources in Timor-Leste 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 Timor-Leste enters into this Understanding with a view to achieving the following outcomes, notably:

- maintaining the integrity of Australia's PSWPS;
- Timor-Leste establishes a reputation for providing a reliable labour force for Australia's tourism industry, and other industries as may be determined to fall under the PSWPS;
- Timor-Leste's labour force complies with all relevant laws and rules of the PSWPS;
- Timor-Leste'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 Timor-Leste and their home communities; and,
- Timor-Leste 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:

- AAEs establish productive relationships with Timor-Leste's 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 Timor-Leste to effectively participate in this scheme, and actively participate in monitoring and evaluating measures of success;

- Timor-Leste nationals enjoy fair access to Australia's PSWPS, 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;
- Timor-Leste 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 PSWPS, including through the active promotion of participation by women and under-represented groups.

7. FACILITATIVE ARRANGEMENTS FOR PARTICIPATION IN THE PSWPS

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, and appended as Schedule One of this Understanding.

7.2 The facilitative arrangements will assist AAEs to recruit from Timor-Leste and enable Timor-Leste citizens 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 up-skilling 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 Timor-Leste to market itself to AAEs as a source of reliable seasonal labour is recognised. Where possible, DEEWR and AusAID will assist marketing initiatives mounted by Timor-Leste.

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.

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 Timor-Leste workers about their participation in the PSWPS will be voluntary. The Participants will only use information for statistical or research purposes and will not publish 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 Timor-Leste 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 AAEs and with relevant Australian union bodies.

12. REVIEW AND CONSULTATIONS

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

14. COMMENCEMENT AND TERMINATION

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14.1 This 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.

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:

Branch Manager
Migration, COAG and Evidence Branch
Department of Education, Employment and Workplace Relations
GPO Box 9880
CANBERRA ACT 2601
AUSTRALIA

15.3 The Government of Timor-Leste contact point is:

Overseas Employment Coordinator
Overseas Employment Department
National Directorate of Employment - DNE
Secretariat of State for Vocational Training and Employment (SEFOPE)
Ex CNRT Compound
Rua de Balide
Caicoli, Dili
Timor-Leste

Signed at SEFOPE, Timor-Leste

on 01st December 2011



H.E. Miles Armitage
Ambassador

For the Government of Australia



H.E. Bedito dos Santos Freitas
Secretary of State for Vocational
Training and Employment
For the Government of the
Democratic Republic of Timor-Leste