

**Memorandum of Understanding between the
Government of Australia and the Government of the Independent State of Samoa
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 Independent State of Samoa 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, 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 Samoa

- The Ministry of the Prime Minister and Cabinet, 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 for Samoan citizens to attend seasonal work under Australia's Pacific Seasonal Worker Pilot Scheme (PSWPS) in the horticulture 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") refers to 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 commenced in November 2008 and will run until June 2012;

- “approved Australian employer” (“AAE”) refers to 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;
- “industrial instrument” refers to 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 to a Pacific island seasonal worker applicant;
- “Samoan worker” refers to a Samoan citizen 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” refers to an agreement between DIAC and an AAE providing the basis for Australian visa issue; and,
- “Fair Work Ombudsman” refers to 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 risks to the Participants, respective Governments, and participating citizens.

5. DESIRED OUTCOMES

5.1 The Australian Government enters 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 Samoan communities through new employment opportunities, increased remittance incomes, and transfer of skill and knowledge to Samoan workers;
- contributing to economic development in Samoa by fostering economic growth and regional integration;

- creating effective partnerships between Australia and Samoa to support this scheme, including through provision by Australian government agencies of assistance to the Independent State of Samoa to help them establish robust and appropriate facilitative arrangements;
- matching surplus labour resources in Samoa 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 Independent State of Samoa enters into this Understanding with a view to achieving the following outcomes, notably:

- maintaining the integrity of Australia's Pacific Seasonal Worker Pilot Scheme;
- Samoa establishes a reputation for providing an efficient, reliable labour force for Australia's horticulture industry, and other industries as may be determined to fall under the PSWPS;
- Samoa's labour force complies with all relevant laws and regulatory rules of the PSWPS;
- Samoa'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 Samoa and their home communities; and,
- Samoa 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 Samoan 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 Samoa to effectively participate in this scheme, and actively participate in monitoring and evaluating measures of success;
- Samoan nationals enjoy fair access to Australia's Pacific Seasonal Worker Pilot Scheme, fair and reasonable treatment in accordance with Australian law 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;
- Samoan 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, that actively promote 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, shall be consistent with the principles and outcomes outlined in Sections Four and Five above, and these will be mutually determined in writing by the Participants, and appended as Schedule One to this Understanding.

7.2 The facilitative arrangements will assist AAEs to recruit from Samoa and enable Samoan workers 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 and relevant 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 the relevant Australian immigration legislation, regulations and any applicable immigration policy.

9. MARKETING

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

10. INFORMATION COLLECTION

10.1 The Participants will cooperate in the collection and sharing of relevant PSWPS 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 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 Samoa's workers about their participation in the PSWPS will be voluntary. All collected information shall only be used for statistical or research purposes and will not to be published in a form that could reasonably be expected to identify any individuals who work under the PSWPS.

11. PUBLICITY

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

11.2 The Participants are respectively responsible for clarifying and or correcting 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

The Participants acknowledge that arrangements under this Understanding are likely to evolve with experience. The Participants will consult each other 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 acting on the collective behalf of all Australian participating agencies. Schedule One to this Understanding may be amended with the written consent of the Participants, each of whom may be represented for this purpose by any person to whom the Participant has duly delegated authority.

14. COMMENCEMENT AND TERMINATION

14.1 This Understanding shall come into effect upon signature by the Participants and may be terminated by either participating Government upon written notice to the other 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 Samoa.

14.2 The Participants acknowledge and affirm that the integrity of the PSWPS depends on the PSWPS remaining free of corruption and other unethical practices. 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 Samoa contact point is:

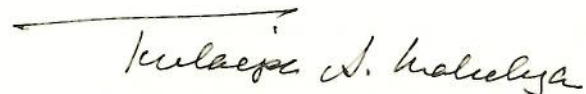
Head
Seasonal Worker Unit
Ministry of the Prime Minister and Cabinet
L5 Government Building
APIA

Signed at *Apia*

on *15 December* 2011



For the Government of Australia



For the Government of the
Independent State of Samoa