

2016

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INCOME TAX RATES AMENDMENT (WORKING HOLIDAY MAKER
REFORM) BILL 2016
TREASURY LAWS AMENDMENT (WORKING HOLIDAY MAKER REFORM)
BILL 2016
SUPERANNUATION (DEPARTING AUSTRALIA SUPERANNUATION
PAYMENTS TAX) AMENDMENT BILL 2016
PASSENGER MOVEMENT CHARGE AMENDMENT BILL 2016

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer, the Hon Scott Morrison MP and the
Assistant Minister for Immigration and Border Protection the Hon Alex Hawke MP)

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
AAT	Administrative Appeals Tribunal
ABN	Australian Business Number
ATO	Australian Taxation Office
Commissioner	Commissioner of Taxation
FWO	Fair Work Ombudsman
PAYG Withholding	Pay-as-you-go withholding
RIS	Regulation Impact Statement
TAA 1953	<i>Tax Administration Act 1953</i>
TFN	Tax File Number
WHM	Working holiday maker

General outline and financial impact

Working holiday maker reform package

The Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016, Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2016 and Passenger Movement Charge Amendment Bill 2016, (the Bills) reform tax and other arrangements for working holiday makers.

A working holiday maker is an individual who holds a Subclass 417 (Working Holiday) visa, a Subclass 462 (Work and Holiday) visa or certain related bridging visas.

The Bills:

- apply a 19 per cent income tax rate to working holiday maker taxable income (that is assessable income derived from Australian sources by working holiday makers less relevant deductions) on amounts up to \$37,000, with ordinary tax rates for taxable income exceeding this amount;
- help protect working holiday makers from unfair employment arrangements by allowing the Commissioner of Taxation (Commissioner) to disclose information that is relevant to ensuring an entity's compliance with the *Fair Work Act 2009* to the Fair Work Ombudsman;
- require employers of working holiday makers to register with the Commissioner, which will allow such employers to withhold tax at income tax rates applying to working holiday makers;
- require the Commissioner to give the Treasurer, for presentation to the Parliament, a report on working holiday makers, which includes statistics and information derived from the register;
- increase the rate of the departing Australia superannuation payments tax to 95 per cent for working holiday makers;

- reduce the visa application charge for Subclass 417 (Working Holiday) visas and Subclass 462 (Work and Holiday) visas from \$440 to \$390; and
- increase the passenger movement charge from \$55 to \$60.

Date of effect: The measures in these Bills generally apply from 1 January 2017. The measures to change certain visa application charges and the passenger movement charge and to increase the rate of the departing Australia superannuation payments tax generally apply from 1 July 2017.

Proposal announced: The measures in these Bills were announced by the Treasurer on 27 September 2016.

Financial impact: In the 2015-16 Budget the Government announced that from 1 July 2016, working holiday makers would be taxed at 32.5 per cent from their first dollar of income, like other non-resident taxpayers. This was estimated to increase revenue by \$540 million over the then forward estimates period, to 2018-19.

On 17 May 2016 the Minister for Small Business and Assistant Treasurer announced the Government would undertake a review of the broad range of issues affecting the supply and taxation of working holiday makers. The 2015-16 Budget measure was deferred by six months, to start from 1 January 2017. This deferral had an estimated revenue cost of \$40 million.

On 27 September 2016 the Treasurer announced the Government's Working Holiday Maker Reform Package, with the following financial impact:

<i>Underlying cash balance (\$m)</i>	<i>2016-17</i>	<i>2017-18</i>	<i>2018-19</i>	<i>2019-20</i>
1. Lower tax rate for all working holiday makers	-25	-75	-100	-100
2. Increase tax on the Departing Australia Superannuation Payment to 95 per cent	0	35	35	35
3. Providing greater flexibility for employers of working holiday makers	0	0	0	0
4. Reduce working holiday maker visa application charge by \$50	0	-10	-10	-10
5. Increase passenger movement charge by \$5	0	55	100	105

<i>Underlying cash balance (\$m)</i>	<i>2016-17</i>	<i>2017-18</i>	<i>2018-19</i>	<i>2019-20</i>
6. Tourism Australia advertising campaign	-2.5	-5	-2.5	0
7. Compliance for working holiday makers employer register	-3.5	-3.5	-1.5	-1.5
Total	-31	-3.5	21	28.5

These Bills give effect to all of the elements of the package except for items 6 and 7, which will be given effect through the next round of Appropriation Bills following Mid-Year Economic and Fiscal Outlook 2016-17. Item 3 will be progressed separately by the Department of Immigration and Border Protection.

Human rights implications: The amendments in Schedule 2 of Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016 require employers of working holiday makers to register with the Commissioner which may disincentivise the employment of working holiday makers. To that extent, the amendments engage the right to work under Article 6 of the International Covenant on Economic, Social and Cultural Rights. The amendments in Schedule 4 apply in relation to information about individuals and therefore engage the right to privacy under Article 17 of the International Covenant on Civil and Political Rights. The remaining provisions of this Bill do not engage any Human Rights. The Bill is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate. See Statement of Compatibility with Human Rights — Chapter 2, paragraphs 2.5 to 2.22.

The Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016, Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2016 and Passenger Movement Charge Amendment Bill 2016 do not raise any human rights issues. See *Statements of Compatibility with Human Rights* — Chapter 2, paragraphs 2.1 to 2.4 and 2.23 to 2.30.

Compliance cost impact: Low.

Summary of regulation impact statement

Regulation impact on business

Impact: This package is expected to decrease the regulatory burden by \$3.6 million per year.

Main points:

- Legislative action is required to ensure that all working holiday makers are taxed on a consistent basis, at a rate that ensures Australia is an attractive destination for working holiday makers, given their role in providing seasonal labour.
- Employers and working holiday makers will need to be aware of the new withholding arrangements, and employers will need to be aware of the new registration arrangements. This is expected to be relatively straightforward.
- The measure is expected to result in a low overall compliance costing.

Chapter 1

Working holiday maker reform package

Outline of chapter

1.1 The Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016, Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2016 and Passenger Movement Charge Amendment Bill 2016 (the Bills) reform tax and other arrangements for working holiday makers.

1.2 A working holiday maker is an individual who holds a Subclass 417 (Working Holiday) visa, a Subclass 462 (Work and Holiday) visa or certain related bridging visas.

1.3 The Bills:

- apply a 19 per cent income tax rate to working holiday maker taxable income (that is assessable income derived from Australian sources by working holiday makers less relevant deductions) on amounts up to \$37,000, with ordinary tax rates for taxable income exceeding this amount;
- help protect working holiday makers from unfair employment arrangements by allowing the Commissioner of Taxation (Commissioner) to disclose information that is relevant to ensuring an entity's compliance with the *Fair Work Act 2009* to the Fair Work Ombudsman;
- require employers of working holiday makers to register with the Commissioner, which will allow such employers to withhold tax at income tax rates applying to working holiday makers;
- require the Commissioner to give the Treasurer, for presentation to the Parliament, a report on working holiday makers, which includes statistics and information derived from the register;
- increase the rate of the departing Australia superannuation payments tax to 95 per cent for working holiday makers;

- reduce the visa application charge for Subclass 417 (Working Holiday) visas and Subclass 462 (Work and Holiday) visas from \$440 to \$390; and
- increase the passenger movement charge from \$55 to \$60.

Context of amendments

1.4 Working holiday makers are an important source of Australia’s international tourism and a key source of seasonal labour in regional areas, particularly in the agriculture, horticulture, tourism and hospitality sectors. The reforms recognise the important contribution of working holiday makers to the Australian economy. The reforms seek to increase Australia’s attractiveness as a destination of choice for working holiday makers, whilst ensuring that they pay tax at a fair rate on their earnings in Australia.

Income tax rates applying to working holiday makers

1.5 Currently, working holiday makers who satisfy the tax residency criteria receive the benefit of the \$18,200 tax-free threshold. In contrast, working holiday makers that are non-residents for tax purposes are taxed at 32.5 per cent from their first dollar of income. The non-resident income tax rates that currently apply to the taxable income of working holiday makers are:

Table 1.1: non-resident income tax rates

<i>Taxable income</i>	<i>Tax rate</i>
less than \$80,000*	32.5 per cent
exceeds \$80,000* but does not exceed \$180,000	37 per cent
Exceeds \$180,000	45 per cent

*Subject to passage of legislation before Parliament, the \$80,000 threshold will be raised to \$87,000. The above rates do not include the Temporary Budget Repair Levy — for 2016-17 this levy is payable at a rate of 2 per cent for taxable incomes over \$180,000.

Departing Australia superannuation payments tax

1.6 The departing Australia superannuation payments tax applies to the superannuation balance paid to eligible temporary visa holders (including holders of Subclass 417 (Working Holiday) visas and Subclass 462 (Work and Holiday) visas) where the individual has left Australia and their visa has expired or is cancelled.

1.7 Currently, the rate of the departing Australia superannuation payments tax is:

- nil for the tax free component of the payment;
- 38 per cent for the element taxed in the fund of the taxable component of the payment;
- 47 per cent for the element untaxed in the fund of the taxable component of the payment;
- 47 per cent for the amount of the element that is not an excess untaxed roll-over amount; and
- nil for the amount of the element that is an excess untaxed roll-over amount.

PAYG Withholding

Withholding obligations and registration for withholding

1.8 Under Pay-As-You-Go Withholding (PAYG Withholding), amounts are collected in respect of particular kinds of payments or transactions. Usually, someone who makes a payment to a recipient is required to withhold an amount (section 16-5 Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953)) and at a later date remit these amounts to the Commissioner. Division 12 of Part 2-5 of Schedule 1 to the TAA 1953 contains payments from which amounts must be withheld, known as 'withholding payments' (section 10-5 of Schedule 1 to the TAA 1953 contains a summary table of withholding payments). Payers of withholding payments are currently required to register with the Commissioner (refer section 16-140 of Schedule 1 to the TAA 1953).

1.9 Employers of working holiday makers make a number of payments to working holiday maker employees which are withholding payments. These employers are subject to withholding obligations and are required to register for PAYG Withholding.

Working out how much to withhold

1.10 The Commissioner has the power to make withholding schedules, which allow the Commissioner to provide for different rates of income tax to be withheld. Section 15-30 of Schedule 1 of the TAA 1953 specifies the matters to be considered when the Commissioner exercises the power to make withholding schedules. The Commissioner also has the power to undertake enforcement action to ensure that employers withhold and remit the correct amounts.

Commissioner can provide limited information to the Fair Work Ombudsman

1.11 The Commissioner can currently only disclose to the Fair Work Ombudsman the fact that an entity has actual or reasonably suspected non-compliance with a taxation law. Due to the restrictions imposed by the secrecy provisions in Schedule 1 to the TAA 1953, the Commissioner is unable to disclose a wider range of information to the Fair Work Ombudsman for the purpose of ensuring an entity complies with the *Fair Work Act 2009*.

No reporting on working holiday makers by the Commissioner to the Treasurer

1.12 Certain information on working holiday makers, such as the number of working holiday makers who work while in Australia, the employers they work for and the regions in which the employers are located, is currently not reported.

Rate of visa and passenger movement charges

1.13 Currently, the application fee for Subclass 417 (Working Holiday) visas and Subclass 462 (Work and Holiday) visas is \$440.

1.14 The passenger movement charge is \$55 for non-exempt passengers.

Summary of new law

Tax rate changes

1.15 The Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016 provides for an income tax rate of 19 per cent for taxable income up to \$37,000 of working holiday makers in a year of income. Income above this amount in a year of income is subject to ordinary marginal income tax rates.

1.16 The Superannuation (Departing Australia Superannuation Payments) Bill 2016 increases the rate of the departing Australia superannuation payments tax to 95 per cent for those components of the payment that are currently subject to the tax.

Registration of working holiday maker employers, protection of working holiday makers and periodic reporting by the Commissioner

1.17 The Treasury Laws Amendment (Working Holiday Reform) Bill 2016 sets up a framework requiring employers of working holiday makers to register with the Commissioner. Registered employers may apply reduced rates of PAYG Withholding to withholding payments made to working holiday makers.

1.18 The framework allows the Commissioner to cancel the registration of an employer in certain circumstances, including where the Commissioner is satisfied that the employer is not a fit and proper person.

1.19 The date on which an entity's registration or cancellation of registration takes effect will be made publicly available on the Australian Business Register.

1.20 The Commissioner is required to provide to the Treasurer an annual report, for presentation to the Parliament, on the taxation of working holiday makers and the registration of their employers, including on statistics and information derived from the register.

1.21 The information the Commissioner can disclose to the Fair Work Ombudsman without breaching secrecy provisions in Schedule 1 to the TAA 1953 is expanded to allow the Commissioner to disclose information that is relevant to ensuring an entity's compliance with the provisions of the *Fair Work Act 2009*.

Visa and passenger movement charge changes

1.22 The Treasury Laws Amendment (Working Holiday Reform) Bill 2016 and the Passenger Movement Charge Amendment Bill 2016:

- reduce the visa application charge for Subclass 417 (Working Holiday) visas and Subclass 462 (Work and Holiday) visas from \$440 to \$390; and
- increase the rate of the passenger movement charge from \$55 to \$60.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<i>Income tax rates applying to working holiday makers</i>	
<p>The rate of income tax applying to the taxable income of a working holiday maker will be:</p> <ul style="list-style-type: none"> • taxable income less than \$37,000 — 19 per cent; • taxable income exceeding \$37,000 but less than \$80,000 — 32.5 per cent; • taxable income exceeding \$80,000 but less than \$180,000 — 37 per cent; and • taxable income exceeding \$180,000 — 45 per cent. <p>Subject to passage of legislation currently before Parliament, the \$80,000 threshold will be raised to \$87,000. The above rates do not include the Temporary Budget Repair Levy — for 2016-17 this levy is payable at a rate of 2 per cent for taxable incomes over \$180,000.</p>	<p>Working holiday makers self-assess their residency status for tax purposes. The taxable income of a working holiday maker is subject to resident or non-resident rates of income tax, depending on the facts and circumstances of the individual.</p> <p>The non-resident rates for the 2016-17 year of income are as follows:</p> <ul style="list-style-type: none"> • taxable income less than \$80,000 — 32.5 per cent; • taxable income exceeding \$80,000 but less than \$180,000 — 37 per cent ; and • taxable income exceeding \$180,000 — 45 per cent. <p>Subject to passage of legislation currently before Parliament, the \$80,000 threshold will be raised to \$87,000. The above rates do not include the Temporary Budget Repair Levy — for 2016-17 this levy is payable at a rate of 2 per cent for taxable incomes over \$180,000.</p>
<i>Rate of departing Australia superannuation payments tax for working holiday makers</i>	
<p>The rates of tax applying to a departing Australia superannuation payment for a working holiday maker will be:</p> <ul style="list-style-type: none"> • nil for the tax free component of the departing Australia superannuation payment and for the element of a roll-over that is an excess untaxed roll-over amount; and • 95 per cent for the element taxed in the fund of the taxable component, for the element 	<p>The rates of tax applying to a departing Australia superannuation payment for a working holiday maker are:</p> <ul style="list-style-type: none"> • nil for the tax free component of the departing Australia superannuation payment and for the element of a rollover that is an excess untaxed roll-over amount; • 38 per cent for the element taxed in the fund of the taxable component; and • 47 per cent for the element

<i>New law</i>	<i>Current law</i>
<p>untaxed in the fund of the taxable component and for the element of a roll-over that is not an excess untaxed roll-over amount.</p>	<p>untaxed in the fund of the taxable component and for the element of a roll-over that is not an excess untaxed roll-over amount.</p>
Registration of employers of working holiday makers	
<p>In addition to registering for PAYG Withholding, employers of working holiday makers will need to register with the ATO and make relevant declarations. An employer may be liable for an administrative penalty for failing to register with the Commissioner by the due date.</p> <p>The Commissioner will be required to have regard to whether an employer is registered when making a PAYG Withholding schedule. The Commissioner will be expected to exercise his power to make withholding schedules to provide that:</p> <ul style="list-style-type: none"> • if an employer is registered as a working holiday maker employer with the Commissioner — the amount the employer is required to withhold from their withholding payments to working holiday maker employees is worked out using the PAYG Withholding schedule based on the more concessional rates of tax that apply to income derived by working holiday makers; or • if an employer is not registered as a working holiday maker employer with the Commissioner — the amount the employer is required to withhold from their withholding payments to working holiday maker employees is worked out using the PAYG Withholding schedule based on the rates of tax that apply to income derived by non-residents. <p>The Commissioner will be able to cancel an employer’s registration in certain circumstances, including</p>	<p>Under PAYG Withholding, payers of withholding payments are required to register with the Commissioner.</p> <p>Generally, the amount employers of working holiday makers are required to withhold from their withholding payments to these employees is worked out based on PAYG Withholding schedule rates. The rate withheld will depend on whether the working holiday maker is a resident or non-resident for tax purposes. A working holiday maker who is a non-resident for tax purposes has income tax withheld at the 32.5 per cent rate where the employee’s taxable income is less than \$80,000.</p>

Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016
Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016
Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2016
Passenger Movement Charge Amendment Bill 2016

<i>New law</i>	<i>Current law</i>
<p>where the Commissioner is satisfied that the employer is not a fit and proper person.</p> <p>The Australian Business Registrar must enter in the Australian Business Register the date on which an entity's registration takes effect and, if applicable, the date on which an entity's cancellation of registration takes effect.</p>	
<i>Allowing the Commissioner to provide information to the Fair Work Ombudsman</i>	
<p>The information sharing provisions in Schedule 1 to the TAA 1953 are broadened so that the Commissioner can disclose information to the Fair Work Ombudsman for the purpose of ensuring an entity's compliance with the <i>Fair Work Act 2009</i>.</p>	<p>The Commissioner can only disclose to the Fair Work Ombudsman the fact that an entity has not complied with a taxation law or is reasonably suspected of such non-compliance.</p>
<i>Commissioner's report to the Treasurer on working holiday makers</i>	
<p>The Commissioner must provide the Minister with a report, to be presented to the Parliament, concerning working holiday makers, which will include aggregate statistics and information the Commissioner derives from the working holiday maker employer register.</p> <p>The Commissioner must provide the report for a financial year as soon as practicable after 30 June for each year of income.</p>	<p>No equivalent.</p>
<i>Visa and passenger movement charge changes</i>	
<p>The following rates apply:</p> <ul style="list-style-type: none"> • the visa application charge for Subclass 417 (Working Holiday) visas and Subclass 462 (Work and Holiday) visas is \$390; and • the passenger movement charge is \$60. 	<p>The following rates apply:</p> <ul style="list-style-type: none"> • the visa application charge for Subclass 417 (Working Holiday) visas and Subclass 462 (Work and Holiday) visas is \$440; and • the passenger movement charge is \$55.

Detailed explanation of new law

Lower working holiday maker income tax rate

1.23 The Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016 amends the income tax rates that apply to working holiday maker taxable income. Working holiday maker taxable income is assessable income derived from sources in Australia by working holiday makers, less related deductions. *[Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016, item 2, subsection 3A(2) of the Income Tax Rates Act 1986]*

1.24 A working holiday maker is an individual holding one of the following temporary visas:

- subclass 417 (Working Holiday) visa; or
- subclass 462 (Work and Holiday) visa.

[Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016, items 1 and 2, subsection 3(1) and subsection 3A(1) of the Income Tax Rates Act 1986]

1.25 A working holiday maker may also be an individual who holds a bridging visa permitting the individual to work in Australia if:

- the bridging visa was granted under the *Migration Act 1958* in relation to an application for one of the visas referred to above;
- the Immigration Minister's decision on that application is yet to be made; and
- the most recent visa, other than a bridging visa, held by the individual was a Subclass 417 (Working Holiday) visa or Subclass 462 (Work and Holiday) visa.

[Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016, items 1 and 2, subsection 3(1) and subsection 3A(1) of the Income Tax Rates Act 1986]

1.26 The amendments ensure working holiday maker taxable income is subject to income tax at the following rates:

Table 1.2: Income tax rates applying to working holiday taxable income

<i>Taxable income</i>	<i>Tax rate</i>
Less than \$37,000	19 per cent
Exceeds \$37,000 but less than \$80,000*	32.5 per cent
Exceeds \$80,000* but does not exceed \$180,000	37 per cent
Exceeds \$180,000	45 per cent

*Subject to passage of legislation before Parliament, the \$80,000 threshold will be raised to \$87,000. The above rates do not include the Temporary Budget Repair Levy — for 2016-17 this levy is payable at a rate of 2 per cent for taxable incomes over \$180,000.

[Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016, items 2 and 7, subsections 3A(2) and Part III of Schedule 7 to the Income Tax Rates Act 1986]

1.27 A working holiday maker's working holiday taxable income is reduced by related deductions before applying the income tax rate. *[Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016, item 2, subsection 3A(2) of the Income Tax Rates Act 1986]*

Example 1.1: Working holiday maker taxable income

Pierre is a non-resident for income tax purposes. He is a working holiday maker for the whole of the 2017-18 income year earning \$75,000 for the income year.

Pierre pays tax at the rate of 19 per cent for the first \$37,000 and 32.5 per cent for the remaining \$38,000 comprising his working holiday taxable income which exceeds the first income tax bracket.

1.28 Working holiday makers may earn income other than employment income whilst in Australia. These other amounts that form part of their taxable income are taxed as working holiday maker taxable income.

1.29 A person may be a working holiday maker for part of an income year and, for the balance of that income year, hold a different visa that does not qualify them as a working holiday maker. In these circumstances, the working holiday maker rates of income tax apply only to income derived during the period of the year of income in which the person qualifies as a working holiday maker. For the balance of the year of income in which they are not a working holiday maker, the person must assess their residency status, determined on a whole of year basis (typically as a non-resident) and the relevant rates of tax will apply.

Example 1.2: Working holiday maker taxable income and other income

Fabio is a non-resident for income tax purposes. Fabio earns \$50,000 while a working holiday maker in Australia from 1 July 2017 to 31 March 2018 and has \$1,000 of deductions that relate to this income. His working holiday taxable income is therefore \$49,000. He also earns a \$39,000 salary in Australia while holding a different class of visa from 1 April 2018 to 30 June 2018 which does not result in him being a working holiday maker for this period.

Fabio pays tax at the rate of 19 per cent on the working holiday taxable income from \$0 to the tax threshold of \$37,000 and 32.5 per cent for the remaining \$12,000 of his total of \$49,000 of working holiday taxable income.

For Fabio's taxable income of \$39,000 that is not working holiday taxable income, he pays income tax at the 32.5 per cent non-resident rates for the first \$38,000. The remaining \$1,000 is taxed at 37 per cent, as his overall income for the year is higher than \$87,000 so he moves into the next tax bracket.

1.30 The income tax rate schedules for resident and non-resident taxpayers are also amended to ensure that:

- the working holiday maker income tax rates correctly apply to working holiday maker taxable income; and
- working holiday maker taxable income is correctly taken into account if an individual is assessed by the Commissioner where, in a year of income, they have both working holiday maker taxable income (with rates under Part III of Schedule 7 of the *Income Tax Rates Act 1986* to apply) and other taxable income earned in a part of the income year in which they were not a working holiday maker (to which either Parts I for residents or Part II for non-residents would apply).

[Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016, items 3, 4, 5 and 6, clauses 1 and 4 of Part I and clauses 1 and 4 of Part II to Schedule 7 of the Income Tax Rates Act 1986]

Increase in departing Australia superannuation payments tax

1.31 Temporary residents, including working holiday makers, who work in Australia, and have superannuation contributions paid by their employer, are entitled to claim their superannuation benefits once they leave Australia and their visa expires or is cancelled. This payment is called a departing Australia superannuation payment. The rates of tax

applied to the departing Australia superannuation payment depend upon the make-up of the payment.

1.32 Increasing the rate of tax on departing Australia superannuation payments for working holiday makers is consistent with the objective of superannuation which is to support Australians in their retirement.

1.33 The *Superannuation (Departing Australia Superannuation Payments Tax) Act 2007* is amended so that the rates of the departing Australia superannuation payments tax for working holiday makers is as follows:

Table 1.3: Departing Australia superannuation payment tax rates

<i>Taxable Component</i>	<i>Rate</i>
<i>Ordinary payment</i>	
Taxed element	95%
Untaxed element	95%
<i>Payment that is a roll-over superannuation benefit</i>	
The amount of the element that is not an excess untaxed roll-over amount	95%

[Superannuation (Departing Australia Superannuation Payment Tax) Amendment Bill 2016, item 1, Superannuation (Departing Australia Superannuation Payment Tax) Act 2007, subsection 5(3)]

1.34 No change is made to the nil rate of tax applying to departing Australia superannuation payment tax for the untaxed element of a lump sum as this generally represents the member's own after-tax superannuation contributions. The roll-over amount that is an excess untaxed roll-over also continues to have no departing Australia superannuation tax applied. This is because imposing tax on this component would result in double taxation.

1.35 The increase in the departing Australia superannuation payment tax only applies to departing Australia superannuation payments made from 1 July 2017 that relate to superannuation contributions that were made when the person was a working holiday maker.

1.36 The increase in the rate of tax is also consistent with the objective of superannuation, which is to support Australians in their retirement.

Registration of employers of working holiday makers

1.37 The Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016 sets up a legislative framework allowing the Commissioner to establish a mandatory registration process for employers of working holiday makers. The framework applies different rates of withholding to payments to working holiday maker employees based on whether their employer is registered at the time of withholding. The amendments allow the date of effect of an employer's registration to be made publicly available on the Australian Business Register.

Registration requirements

1.38 Employers of working holiday makers that have an obligation to withhold from payments made to these employees must apply for registration with the Commissioner. Such employers are required to make this application in the approved form to the Commissioner by the day on which the entity is first required to withhold an amount from such withholding payments or within such further time the Commissioner allows. An employer may be liable to an administrative penalty of 20 units for failing to register with the Commissioner by the due date. This registration process applies in addition to a payer's obligations to register for PAYG Withholding. *[Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 2, item 4, section 16-146 of Schedule 1 to the TAA 1953]*

1.39 As the registration application is required to be in the approved form, the Commissioner has flexibility to specify the manner of providing the information required in the application (refer section 388-50 of Schedule 1 to the TAA 1953). This allows the Commissioner to minimise compliance costs for employers by providing a variety of options for registration, such as an online process or by telephone. *[Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 2, item 4, subsection 16-146(2) of Schedule 1 to the TAA 1953]*

1.40 The approved form also allows the Commissioner to specify the content of the registration application (refer section 388-50 of Schedule 1 to the TAA 1953). The approved form may require employers to provide information relating to the entity's employment, or proposed employment, of working holiday makers. *[Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 2, item 4, paragraph 16-147(1)(c) of Schedule 1 to the TAA 1953]*

1.41 This will allow the Commissioner to collect and derive employment data and statistical information. For example, the Commissioner may collect data such as the geographical location of working holiday maker employers and be able to determine the number of working holiday makers working in different sectors of the economy.

1.42 The approved form for the registration application also requires the entity to make a declaration to the Commissioner, stating that:

- if the entity is carrying on a business, the entity has a genuine business requirement to employ one or more working holiday makers (such as a labour shortage);
- the entity agrees to comply with the requirements of the *Fair Work Act 2009* in relation to its employment of any individual who is a working holiday maker; and
- the entity agrees to check that any individual it employs as a working holiday maker holds a visa that qualifies that person to be a working holiday maker.

[Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 2, item 4, paragraph 16-147(1)(b) and subsection 16-147(2) of Schedule 1 to the TAA 1953]

1.43 Where the entity is not carrying on a business but still employing working holiday makers, the entity does not have to declare that the employment is necessary for a genuine business requirement. This could be the case where the employer has employed domestic workers, such as household staff.

1.44 Employers can check a person's visa details by registering for the Department of Immigration and Border Protection's free, online system (Visa Entitlement Verification Online). Alternatively, employers can ask their prospective employee to send their visa details directly to them using the Visa Entitlement Verification Online email function.

1.45 The Commissioner must only register an entity as a registered working holiday maker employer if the entity has in the approved form:

- applied for registration as a registered working holiday maker employer;
- made a declaration to the Commissioner; and
- given to the Commissioner information relating to the entity's employment, or proposed employment, of working holiday makers.

[Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 2, item 4, subsection 16-147(1) of Schedule 1 to the TAA 1953]

1.46 An administrative penalty for false and misleading statements under section 284-75 of Schedule 1 to the TAA 1953 applies if an entity makes a false or misleading statement in its registered working holiday maker employer registration application. This includes providing incorrect information and making a false declaration. The penalty ranges from 20 penalty units for statements that are false or misleading because of a failure to take reasonable care to 60 penalty units if it was due to an intentional disregard of a taxation law.

Notification of the Commissioner's decision and the public register

1.47 The Commissioner must, within 30 days of an entity making its application, notify the entity whether it has been registered as a registered working holiday maker employer and, if it has been registered, the date the registration takes effect. The Australian Business Registrar is required to specify the day on which the registration takes effect on the Australian Business Register. These amendments allow the Australian Business Registrar to make such information publicly available, making it easy for working holiday makers and others to check the registration status of a potential employer. *[Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 2, items 1 and 4, paragraph 26(3)(j) of A New Tax System (Australian Business Number) Act 1999 and subsections 16-147(3), (4), (5) of Schedule 1 to the TAA 1953]*

1.48 If the entity making an application has an Australian Business Number (ABN), the Commissioner is deemed to have notified an entity of its registration as a registered working holiday maker employer and the date of effect of the registration by having the Australian Business Registrar enter this information on the Australian Business Register. If the entity does not have an ABN, the Commissioner will notify the entity by other means (for example in writing, by telephone or electronically). *[Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 2, item 4, subsections 16-147(4), (5), (6) and (7) of Schedule 1 to the TAA 1953]*

1.49 If the entity making an application does not hold an ABN, the entity's registration status will not be made publicly available. The amendments do not require such entities to obtain an ABN.

1.50 If an entity is dissatisfied with the Commissioner's decision whether to register the entity, then it may object under Part IVC of the TAA 1953. *[Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 2, item 5, table item 62 in section 20-80 of Schedule 1 to the TAA 1953]*

Effect of registration on rates of withholding

1.51 Section 15-25 of Schedule 1 to the TAA 1953 allows the Commissioner to determine rates of PAYG Withholding to be applied to payments made by employers to employees. The PAYG Withholding schedules may deal differently with different payments and circumstances of recipients of payments.

1.52 These amendments require the Commissioner to have regard to whether an employer is a registered working holiday maker employer when making a withholding schedule. [*Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 2, item 3, paragraph 15-30(fa) in Schedule 1 to the TAA 1953*]

1.53 The Commissioner is expected to exercise his power to make PAYG Withholding schedules to provide different treatment based on whether an employer of a working holiday maker is registered as a registered working holiday maker employer, such that:

- if an employer is registered as a working holiday maker employer with the Commissioner — the amount the employer is required to withhold from their withholding payments to working holiday maker employees is worked out based on the rates of income tax that apply to income derived by working holiday makers; or
- if an employer is not registered as a working holiday employer with the Commissioner — the amount the employer is required to withhold from their withholding payments to working holiday maker employees is worked out as if the rate of income tax for the employee's taxable income less than \$87,001 is 32.5 per cent. Standard rates of withholding apply for taxable income in other income brackets.

1.54 The rates of income tax that the Commissioner applies in assessing the working holiday maker's taxable income (being their assessable income derived in Australia while they are a working holiday maker less related deductions) are the same, regardless of whether their employer is registered as a registered working holiday maker employer. Following the assessment of the working holiday maker's taxable income on lodgement of their tax return, the Commissioner refunds any excess PAYG Withholding amount, that is, any amount that is not required to cover the working holiday maker's income tax liability.

1.55 Employers that are registered as registered working holiday maker employers are able to apply reduced PAYG Withholding rates to payments made to their working holiday maker employees compared to the rates that would apply if the employer was not registered. This concessional treatment is designed to provide additional incentives for an employer to register as a registered working holiday maker employer, as access to this withholding treatment may result in them being considered as more attractive employers by working holiday makers.

1.56 An entity that fails to withhold at the correct rate may be liable for an administrative penalty (section 16-25 of Schedule 1 to the TAA 1953).

Cancellation of registration

1.57 The Commissioner may cancel an entity's registered working holiday maker employer registration if the entity advises the Commissioner in the approved form that it does not employ, and does not intend to employ, any individual who is a working holiday maker.
[Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 2, item 4, paragraph 16-148(1)(a) of Schedule 1 to the TAA 1953]

1.58 The Commissioner may also cancel an entity's registered working holiday maker employer registration if the Commissioner is satisfied that the entity or any entity related to the employer is not a fit and proper person. Entities related to the registered working holiday maker employer are:

- if the entity is a partnership — a partner;
- if the entity is a company (including where a company is acting in the capacity of a trustee of a trust) — any director, shareholder or employee of the company who participates in the management or control of the company; or
- if the entity is a trustee of a trust — any entity who controls the trustee, including an entity who can appoint trustees who are most likely to manage the trust in the manner desired by the entity.

[Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 2, item 4, paragraph 16-148(1)(b) of Schedule 1 to the TAA 1953]

1.59 The Commissioner must notify an entity registered as a registered working holiday maker employer if the Commissioner is considering whether it, or an entity related to it, is a fit and proper person. The Commissioner must also give the entity the opportunity to make submissions on the matter within a period of 28 days of the Commissioner giving the entity that notice (submission period). *[Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 2, item 4, subsection 16-148(3) of Schedule 1 to the TAA 1953]*

1.60 In considering whether an entity is a fit and proper person the Commissioner must have regard to:

- whether a court has made a finding, in proceedings commenced by the Fair Work Ombudsman, that an entity has contravened the *Fair Work Act 2009*;
- whether the entity has been convicted of an offence for failing to withhold PAYG Withholding amounts; and
- any relevant information the entity has provided in submissions to the Commissioner during the submission period.

[Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 2, item 4, subsection 16-148(4) of Schedule 1 to the TAA 1953]

1.61 The Commissioner is not limited to these matters and may have regard to other matters in making a decision.

1.62 The Commissioner must, having regard to the reason for the cancellation of an entity's registered working holiday maker employer registration, determine a period of suspension, starting when the cancellation takes effect. During the period of suspension the entity cannot apply for registration as a registered working holiday maker employer. A period of suspension may be appropriate, for example where the entity has been found liable for an offence under the *Fair Work Act 2009* or for failing to withhold PAYG Withholding amounts under section 16-25 of Schedule 1 to the TAA 1953. *[Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 2, item 4, subsection 16-148(5) of Schedule 1 to the TAA 1953]*

1.63 The cancellation of an entity's registered working holiday maker employer registration takes effect on the day determined by the Commissioner. The Commissioner must notify the entity of the cancellation, the date the cancellation takes effect, and, if a period of suspension applies, that period. The Australian Business Registrar is required to specify the day on which the cancellation of the registration takes effect on the Australian Business Register. These amendments allow the Australian Business Registrar to make such information publicly available. *[Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 2, items 1 and 4, subsections 16-148(2), (6), (7), and (8) of Schedule 1 to the TAA 1953 and paragraph 26(3)(jd) of A New Tax System (Australian Business Number) Act 1999]*

1.64 If an entity is dissatisfied with the Commissioner's decision to cancel its registration as a registered working holiday maker employer or the period of suspension provided by the Commissioner then it may object under Part IVC of the TAA 1953. *[Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 2, item 5, table item 63 of section 20-80 of Schedule 1 to the TAA 1953]*

Basis of registration

1.65 For the avoidance of doubt, registration under these amendments is subject to cancellation (as described above), and future modification or extinguishment, by or under later legislation, without compensation. *[Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 2, item 4, subsection 16-147(8)]*

Allowing the Commissioner to provide information to the Fair Work Ombudsman

1.66 The disclosure of information by taxation officers of the taxation affairs of entities is prohibited, except in certain circumstances. Those exceptions have regard to the principle that disclosure of information should be permitted only if the public benefit from the disclosure outweighs the entity's right to privacy.

1.67 The exceptions from the prohibition on the disclosure of information will be broadened to permit taxation officers, on behalf of the Commissioner, to be able to disclose information that is for the purpose of ensuring an entity's compliance with the *Fair Work Act 2009* to the Fair Work Ombudsman. This extends the current exception under which only information pertaining to an entity's actual or reasonably suspected non-compliance with a taxation law can be disclosed by taxation officers to the Fair Work Ombudsman. *[Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 4, item 1, table item 5 in subsection 355-65(8) of Schedule 1 to the TAA 1953]*

1.68 This new disclosure recognises the role of the Fair Work Ombudsman in monitoring, inquiring into, investigating and enforcing compliance with relevant Commonwealth workplace laws.

1.69 The Commissioner may provide information to the Fair Work Ombudsman where breaches of legislation that the Fair Work Ombudsman administers occur.

1.70 The ability of the Fair Work Ombudsman to identify and penalise breaches of Fair Work legislation provides greater protection to individuals in employment, in particular working holiday maker employees. Such employees may find themselves in a vulnerable position given their likely limited knowledge of Australian workplace laws and likelihood of having limited access to social support networks in Australia.

1.71 Information held by the Commissioner may assist the Fair Work Ombudsman in pursuing action against employers who are not complying with their obligations under the *Fair Work Act 2009*.

Commissioner reporting to the Treasurer on working holiday makers

1.72 The Commissioner will report annually to the Minister about the employment of working holiday makers, including statistics and information the Commissioner derives from the employer register. The Minister is required to table the report in each House of Parliament within 15 sitting days of that House after the day on which the Minister receives the report. [*Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 3, item 3, section 352-25 of Schedule 1 to the TAA 1953*]

1.73 The working holiday maker report will provide valuable information to stakeholders and Government, to ensure that they are better informed. The report will increase transparency about the industries that employ working holiday makers, including the regions and sectors they are employed in.

1.74 The Commissioner will provide an annual report for a financial year as soon as practicable after the 30 June. The amendment does not prescribe a period within which the Commissioner must publish the information. [*Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 3, item 3, subsection 352-25(1) of Schedule 1 to the TAA 1953*]

1.75 It is envisaged that the Commissioner will include aggregate statistical information that the Commissioner sources from income tax returns lodged by working holiday makers in the report. Therefore the report will be released once most working holiday makers have lodged

and had their income tax assessments issued and the Commissioner has had time to compile the aggregate statistical data that the Commissioner is required to include in the working holiday maker report.

Changes to visa application fees and passenger movement charge

1.76 The visa application fee for Subclass 417 (Working Holiday) visas and Subclass 462 (Work and Holiday) visas is reduced from \$440 to \$390 by amending the *Migration Regulations 1994*. [*Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 1, item 1, paragraphs 1224A(2)(a) and 1225(2)(a) of Schedule 1 to the Migration Regulations 1994*]

1.77 The reduction in these visa application fees recognises the importance to the Australian economy of working holiday makers. Lowering the application cost for these visas will make Australia a more attractive destination for working holiday makers.

1.78 The *Passenger Movement Charge Act 1978* is amended to increase the rate of the passenger movement charge imposed by the Act from \$55 to \$60. [*Passenger Movement Charge Amendment Bill 2016, Schedule 1, item 1, Passenger Movement Charge Act 1978, section 6*]

1.79 The increase in the rate of the charge helps ensure that the package of reforms does not have an adverse impact on the Budget.

Consequential amendments

1.80 The Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016 makes consequential amendments to the tax rate threshold that applies to working holiday makers and to an example contained in the *Income Tax Rates Act 1986* of what rate of income tax applies to working holiday makers to substitute \$87,000 in place of \$80,000. The amendments are contingent on the commencement of the amendment in the income tax rates threshold from \$80,000 to \$87,000 contained in the Treasury Laws Amendment (Income Tax Relief) Bill 2016. [*Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 1, items 9 to 11, table items 2 and 3 of clause 1 of Part III of the Income Tax Rates Act 1986*]

1.81 Schedule 3 to the Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016 includes amendments to create a new Subdivision 352-C and consequential amendments to headings and guide material for Division 352 of Schedule 1 to the TAA 1953. [*Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 3, items 1 to 3, heading to Division 352, section 352-1 and Subdivision 352-C of Schedule 1 to the TAA 1953*]

Commencement, application and transitional provisions

Commencement

1.82 The provisions in the Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016 generally commence on the date of Royal Assent. *[Section 2 of the Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016]*

1.83 The provisions in Schedule 1 of the Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016 (which relates to the decrease in visa application charges) and in the Passenger Movement Charge Amendment Bill 2016 (which increases the passenger movement charge) commence on the later of:

- 1 July 2017; and
- the day that the Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016 commences.

[Section 2 of the Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016; section 2 of the Passenger Movement Charge Amendment Bill 2016]

1.84 However, these provisions do not commence at all if the Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016 does not commence. *[Section 2 of the Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016; section 2 of the Passenger Movement Charge Amendment Bill 2016]*

1.85 The provisions in Schedule 2 of the Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016 (which relates to the registration of employers of working holiday makers), and in the Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2016, commence at the same time that the Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016 commences. *[Section 2 of the Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016; section 2 of the Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2016]*

Application

1.86 The amendments made by Part 1 of Schedule 1 to the *Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016* (which change the income tax rates that apply to working holiday makers) apply in relation to assessable income derived by working holiday makers, less related income tax deductions, on or after 1 January 2017. [*Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 1, item 8*]

1.87 The consequential contingent amendments made by Part 2 of Schedule 1 to the *Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016* (which relate to the increase in the \$80,000 tax threshold to \$87,000) apply to the 2016-17 year of income and later income years. [*Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 1, item 12*]

1.88 The amendments made by Schedule 1 to the Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016 (which relate to the decrease in visa application charges) apply to an application for a visa made on or after the commencement of that schedule — that is the later of:

- 1 July 2017; and
- the day Part 1 of Schedule 1 to the *Income Tax Rates Amendment (Working Holiday Maker Reform) Act 2016* commences.

[*Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 1, item 2; Part 59; clause 5901 of Schedule 1 to the Migration Regulations 1994*]

1.89 The amendments made by Schedule 2 to the Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016 (which relate to the registration of employers of working holiday makers) apply in relation to an amount the entity must pay to the Commissioner under subsection 16-70(1) in Schedule 1 to the TAA 1953 if the requirement to withhold the amount arises on or after 1 January 2017. [*Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 2, item 6*]

1.90 The amendments made by Schedule 4 to the Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016 (which relate to the Commissioner providing information to the Fair Work Ombudsman) apply in relation to disclosures of information on or after 1 January 2017 (whether the information was acquired before, on or after that day). [*Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016, Schedule 4, item 2*]

1.91 The amendment made by the Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2016 applies to a departing Australia superannuation payment made on or after 1 July 2017 to a person where the payment includes amounts attributable to superannuation contributions made when the person was a working holiday maker. *[section 2 of the Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2016]*

1.92 The amendments made by the Passenger Movement Charge Amendment Bill 2016 apply in relation to the departure of persons from Australia on or after the commencement of the Bill — that is the later of:

- 1 July 2017; and
- the day Part 1 of Schedule 1 to the Income Tax Rates Amendment (Working Holiday Maker Reform) Act 2016 commences.

1.93 However, the amendments do not apply if:

- the person departs using a ticket or equivalent authority; and
- the ticket or equivalent authority was sold or issued before the above time.

[Passenger Movement Charge Amendment Bill 2016, Schedule 1, item 2]

Chapter 2

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016

2.1 This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

2.2 This Bill applies a 19 per cent income tax rate to assessable income derived by working holiday makers on amounts up to \$37,000, with ordinary income tax rates applying for income exceeding this amount.

Human rights implications

2.3 This Bill does not engage any of the applicable rights or freedoms.

Conclusion

2.4 This Bill is compatible with human rights as it does not raise any human rights issues.

Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016

2.5 This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

2.6 This Bill:

- helps protect working holiday makers from unfair employment arrangements by allowing the Commissioner to disclose information that is relevant to ensuring an entity's compliance with the *Fair Work Act 2009* to the Fair Work Ombudsman;
- requires the Commissioner to give the Treasurer, for presentation to the Parliament, a report on working holiday makers, which includes statistics and aggregated information derived from the register;
- requires employers of working holiday makers to register with the Commissioner, which allows them to withhold tax at 19 per cent in respect of working holiday makers; and
- reduces the working holiday maker visa application charge from \$440 to \$390.

Human rights implications

Disclosure of information to the Fair Work Ombudsman

2.7 Certain amendments made by Schedule 4 of this Bill engage the prohibition on arbitrary or unlawful interference with privacy contained in Article 17 of the International Covenant on Civil and Political Rights.

2.8 The Schedule contains amendments that broaden the Australian Taxation Office's (ATO) powers to disclose protected information to the Fair Work Ombudsman for the purpose of ensuring an entity's compliance with the *Fair Work Act 2009*.

2.9 The amendments are compatible with the prohibition, as they are not arbitrary or unlawful. In addition, they are aimed at a legitimate objective and constitute an effective and proportionate means of achieving that objective.

2.10 The United Nations Human Rights Committee has stated, in their General Comment Number 16, that:

‘unlawful means that no interference can take place except in cases envisaged by the law. Interference authorized by States can only take place on the basis of law, which must itself comply with the provisions, aims and objectives of the Covenant [the International Covenant on Civil and Political Rights]’; and

‘the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances’.¹

2.11 The objectives of these amendments are to improve the Fair Work Ombudsman’s ability to enforce compliance with the *Fair Work Act 2009*.

2.12 The *Fair Work Act 2009* provides an important framework for workplace relations in Australia, which includes establishing minimum employment conditions for employees. One of the Fair Work Ombudsman’s key functions is to promote harmonious and cooperative workplace relations and compliance with the *Fair Work Act 2009* through education, assistance and advice and, where necessary, undertaking enforcement activities, such as investigation, issuing compliance notices and initiating court proceedings. By enhancing the Fair Work Ombudsman’s ability to enforce compliance with the *Fair Work Act 2009*, these amendments are aimed at a legitimate objective.

2.13 In Australia, the main protection for taxpayer confidentiality is provided by a general prohibition on the disclosure of taxpayer protected information by ATO officers (see Division 355 of Schedule 1 to the TAA 1953). The ATO has an exception to this general prohibition for certain records or disclosures to the Fair Work Ombudsman. Currently, the ATO can only disclose to the Fair Work Ombudsman the fact of an entity’s actual or reasonably suspected non-compliance with a taxation law and the disclosure must be for the purpose of ensuring the entity’s compliance with the *Fair Work Act 2009* (refer table item 5 in subsection 355-65(8) of Schedule 1 to the *Taxation Administration Act 1953*).

¹ United Nations Human Rights Committee, *CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 8 April 1988, available at: <http://www.refworld.org/docid/453883f922.html>.

2.14 These amendments broaden this exception to ensure that the ATO can provide records or make disclosures to the Fair Work Ombudsman for the purpose of ensuring an entity's compliance with the *Fair Work Act 2009*. The amendments constitute an effective and proportionate means of achieving these objectives, as the relevant records or disclosures are limited to this purpose.

Data collected as part of registration process

2.15 As part of the registration process, an employer may be required to provide information to the Commissioner relating to their employment of working holiday makers. These amendments may engage the prohibition on arbitrary or unlawful interference with privacy contained in Article 17 of the International Covenant on Civil and Political Rights to the extent that the amendments allow the collection of protected information relating to natural persons. The data will not be made public but may be reflected in the Commissioner's reports to Parliament. However, any data reflected in the Commissioner's report will not identify particular individuals.

2.16 These amendments are aimed at a legitimate objective of improving the government's ability to monitor trends, recognise the benefits that working holiday makers bring to Australia, and take these into account in government decision making. The Commissioner also has safeguards in place to ensure that any protected information that is collected will be held securely. To the extent this limits the right to privacy for individuals, the limitation is reasonable, necessary and proportionate to a legitimate objective

Requiring employers of working holiday makers to register

2.17 Article 6 of the International Covenant on Economic, Social and Cultural Rights provides for the right to work. This specifically provides that:

The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2.18 The United Nations Committee on Economic, Social and Cultural Rights has stated that the right to work in Article 6 includes elements of availability, accessibility, acceptability and quality of work. It

is both an individual and a collective right and implies a right not to be unfairly deprived of employment.² While not legally binding, the views of United Nation treaty bodies (committees) provide guidance to State parties on the interpretation of obligations under a treaty and, in Australia's view, should be considered in good faith.

2.19 Article 7 of International Covenant on Economic, Social and Cultural Rights provides for just and favourable conditions of work. The right to just and favourable conditions of work encompasses a number of elements, including, inter alia, remuneration which provides all workers, as a minimum, with fair wages and equal remuneration for work of equal value without distinction of any kind; and safe and healthy working conditions.

2.20 The Bill may limit the right to work if, for example, it has the unintended effect of dissuading employers from employing working holiday makers because they now need to register as working holiday maker employers with the Commissioner. To the extent this limits the right to work for workers, the limitation is reasonable, necessary and proportionate to a legitimate objective.

2.21 The impost on the employer of registration is justifiable and reasonable, especially when taking the benefit of that registration and promoting the right of work for holiday makers into account. Registration for the employer will generally be a simple, once-off obligation, to be undertaken at the time that an employer first employs working holiday makers. The legitimate objective of the registration requirement is to enhance the protection available to working holiday makers from employers who breach provisions of the *Fair Work Act 2009* by ensuring that such employers are readily available and can be better monitored to ensure that they comply with their obligations.

Remaining provisions of this Bill

2.22 The remaining provisions of this Bill do not engage human rights.

Conclusion

2.23 The new information disclosure requirements are consistent with Article 17 of the International Covenant on Civil and Political Rights on the basis that its engagement of the right to privacy will neither be

² Committee on Economic, Social and Cultural Rights, General Comment No. 18, 'The Right to Work' (24 November 2005), paras 6, 12.

unlawful (including by reason of these amendments) nor arbitrary. To this extent, the Bill complies with the provisions, aims and objectives of the International Covenant on Civil and Political Rights.

2.24 The employer registration requirement is consistent with Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights because it is reasonable, necessary and proportionate to a legitimate objective of enhancing protections for working holiday makers from employers who breach provisions of the *Fair Work Act 2009*. To this extent, the Bill complies with the provisions, aims and objectives of the International Covenant on Economic, Social and Cultural Rights.

Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2016

2.25 This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

2.26 This Bill increases the rate of the departing Australia superannuation payments tax to 95 per cent for working holiday makers.

Human rights implications

2.27 This Bill does not engage any of the applicable rights or freedoms.

Conclusion

2.28 This Bill is compatible with human rights as it does not raise any human rights issues.

Passenger Movement Charge Amendment Bill 2016

2.29 This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

2.30 This Bill increases the passenger movement charge from \$55 to \$60.

Human rights implications

2.31 This Bill does not engage any of the applicable rights or freedoms.

Conclusion

2.32 This Bill is compatible with human rights as it does not raise any human rights issues.

Chapter 3

Regulation impact statement

Background

The Working Holiday Maker (WHM) program

3.1 The Working Holiday Maker (WHM) program comprises the Working Holiday (subclass 417) and the Work and Holiday (subclass 462) visas, which are issued by the Department of Immigration and Border Protection. The visas allow young adults aged 18 to 30 from eligible partner countries to work in Australia while having an extended holiday. Work in Australia must not be the main purpose of the visa holder's visit.

3.2 WHMs on 417 and 462 visas can stay and work in Australia for up to 12 months on their first visa. WHMs on 417 visas can apply for a second year visa. To be eligible for a second year visa, participants must work for three months in specified industries in regional Australia. Pending the necessary legislation coming into effect, holders of 462 visas who undertake three months work in either the agriculture or hospitality industries in northern Australia will also be eligible to apply for a second year visa.

Tax treatment of WHMs

3.3 Australia imposes different rates of income tax for individuals who are residents and non-residents for tax purposes. This has been a long-standing feature of the tax system; the tax-free threshold was removed for non-residents in 1982. Tables 1 and 2 below demonstrate the difference in tax rates for residents and non-residents for tax purposes.

Table 1: Resident tax rates for 2016-17

<i>Taxable income</i>	<i>Tax on this income</i>
\$0 - \$18,200	Nil
\$18,201 – \$37,000	19c for each \$1 over \$18,200
\$37,001 – \$80,000 (\$87,000)	\$3,572 plus 32.5c for each \$1 over \$37,000
\$80,001 (\$87,001) – \$180,000	\$17,547 plus 37c for each \$1 over \$80,000 (\$87,000)
\$180,001 and over	\$54,547 plus 45c for each \$1 over \$180,000

Table 2: Non-resident tax rates for 2016-17

<i>Taxable income</i>	<i>Tax on this income</i>
\$0- \$80,000 (\$87,000)	32.5c for each \$1
\$80,001 (\$87,001) - \$180,000	\$26,000 plus 37c for each \$1 over \$80,000 (\$87,000)
\$180,001 and over	\$63,000 plus 45c for each \$1 over \$180,000

3.4 Tables 1 and 2 do not include the Medicare levy of two per cent (non-residents are not required to pay Medicare levy), or the Temporary Budget Repair Levy – this levy is payable at a rate of two per cent for taxable incomes over \$180,000. The \$80,000 threshold is increasing to \$87,000 for the 2016-17 financial year; the tax paid calculation is based on the \$80,000 threshold.

3.5 At present, WHMs self-assess their residency status for tax purposes (which may differ from residency status under immigration law). WHMs who satisfy the tax residency criteria receive the benefit of the tax free threshold and the Low Income Tax Offset, meaning they do not pay any tax until their income exceeds \$20,542. In contrast, WHMs who are non-residents for tax purposes are taxed at 32.5 per cent from their first dollar of income.

3.6 Tax residency law is not straight-forward, and Australian Tax Office (ATO) compliance activity has identified that many WHMs are currently incorrectly assessing themselves as residents for tax purposes. In particular, many WHMs have been relying on their presence in Australia for six months as sufficient to be an Australian tax resident. Administrative Appeals Tribunal (AAT) decisions that were handed down in 2015 clarified the law. The AAT cases confirmed that applying the ‘183 day’ test alone was not sufficient, and that an assessment of the full facts and circumstances must be applied to ascertain residency status.

3.7 The AAT decisions mean that most transient WHMs do not satisfy the tax residency tests and should be taxed as non-residents. However, WHMs that stay in one place and establish ties with their local community may be considered tax residents under the existing law, notwithstanding the fact that holidaying is the primary purpose for their visit.

3.8 The ATO’s compliance activities are hindered by a lack of an employer registration process for WHMs, the short term nature of many WHM jobs and data limitations.

3.9 Australia's non-resident tax rate of 32.5 per cent from the first dollar of income is much higher than comparable destination countries for WHMs (Table 3).

Table 3: International comparison of WHM tax rates

Tax rates for WHMs – international comparisons					
	Australian resident	Australia (non-resident WHM)	Canada	New Zealand	United Kingdom
Tax-free threshold	\$18 200 (\$20 542 with Low Income Tax Offset)	No	CA\$11 327 ^a	No	GB£4 921
First marginal tax rate (%)	19	32.5	20.05 ^b	10.5	20

^a A non-resident may claim the 'basic personal amount' if all or substantially all (that is, 90%) of their income for the year is included in their taxable income in Canada.

^b Canada levies Federal and Provincial income taxes. The rate above combines the first tax rate at the Federal level (15 per cent) and for Ontario (5.05 per cent).

3.10 However, while Australia's headline tax rate for non-residents is higher than comparable WHM destination countries, our minimum wage is internationally competitive – higher than New Zealand, Canada and the United Kingdom (see Section 4).

The 2015-16 Budget announcement

3.11 The Australian Government announced in the 2015-16 Budget that from 1 July 2016, all WHMs would be treated as non-residents for tax purposes, and taxed on the same basis as non-residents at 32.5 per cent from their first dollar of income up to \$80,000 (\$87,000 after the threshold change was announced in the 2016-17 Budget). The change was designed to ensure greater compliance with the tax laws and align WHMs with other individuals treated as non-residents for tax purposes. The measure was estimated to raise \$540 million over the then forward estimates (2015-16 to 2018-19). During the 2016 election campaign, the Government deferred the commencement of the 2015-16 Budget measure to 1 January 2017.

WHMs as a source of labour

3.12 While not the original intention, the WHM program has been acknowledged as being a strong contributor of supplementary labour, particularly to the tourism and agriculture industries which are heavily reliant on seasonal labour.

Table 4: Visa numbers granted

	<i>WHM 417 visa</i>	<i>WHM 462 visa</i>
2005-06	114,693	751
2006-07	134,993	1,812
2007-08	154,342	3,488
2008-09	187,907	6,409
2009-10	175,746	7,422
2010-11	185,480	7,442
2011-12	214,644	8,348
2012-13	249,231	9,017
2013-14	229,378	10,214
2014-15	214,830	11,982
2015-16	195,673	18,910

3.13 Over the past four years, the WHM program has contracted by about 45,000 – a decline of 17 per cent. WHM numbers peaked in 2012-13 and have come back to 195,000 in 2015-16.

Table 5: WHM visa application charges

<i>2008-09</i>	<i>2009-10</i>	<i>2010-11</i>	<i>2011-12</i>	<i>2012-13</i>	<i>2013-14</i>	<i>2014-15</i>	<i>2015-16</i>	<i>2016-17</i>
\$195	\$230	\$235	\$270	\$280	\$365	\$420	\$440	\$440

3.14 Another factor that may influence visa numbers is age restrictions. As noted earlier, WHMs coming to Australia must be aged between 18 and 30 years old whereas in New Zealand, for select countries, the age limit is 35.

3.15 The tourism and agriculture sectors face difficulties in recruiting local labour for available job openings, with many stakeholders noting the labour shortages that currently exist across both sectors. Recruitment difficulties are seen to be exacerbated by the seasonal and short-term nature of many job opportunities, the fact that they are often located in remote areas, and that the jobs can be for unskilled labour in tough conditions.³ Employers also face high fixed costs (e.g. in engaging and

³ Deloitte 2016, *Independent stakeholder engagement on the Working Holiday Maker Visa review*, Report for the Department of Agriculture and Water Resources, Deloitte Touche Tohmatsu, September 2016.

training new staff) given that current visa conditions generally limit WHMs to a maximum period of six months' work with any one employer.

1. What is the policy problem you are trying to solve?

3.16 Recent AAT decisions have established that, under the existing law, most WHMs are non-residents for tax purposes and therefore required to pay 32.5 per cent tax from the first dollar of income. However, not all WHMs are classified as non-residents for tax purposes. Those who stay in the one place and establish ties to the community may be classified as residents. This disadvantages WHMs that are transient compared to WHMs that stay in one place. In addition, WHMs tend to incorrectly self-assess as residents.

3.17 Taxing WHMs at the 32.5 per cent tax rate has led to concerns, particularly in the agriculture and tourism industries, for which WHMs are a vital source of labour, that WHMs will choose to visit other countries over Australia.

3.18 Australia seeks to remain an attractive destination for WHMs, but the current tax treatment of WHMs threatens this goal.

3.19 Further to the tax issues identified above, there are concerns about the exploitation of WHMs, including through illegal labour hire practices and non-compliance with laws and regulations. It is viewed that that WHMs are susceptible to exploitation by unscrupulous operators. Such operators include growers, labour hire companies and accommodation providers such as backpacker hostels. Although these are seen as being the exception, there is wide recognition that such operators exist. Some unscrupulous operators have been reported as only paying part of a salary to their workers, or paying no superannuation or taxes. If a worker complained or did not cooperate with them, they would not get work or would be sacked without notice.⁴

3.20 Concerns have also been raised that a visa condition, which generally requires WHMs to change employer after six months, is not internationally competitive with comparable destinations such as Canada, New Zealand and the United Kingdom. The policy rationale behind this condition was that WHMs should holiday in, and travel around, Australia rather than undertake long term employment.

⁴ Deloitte 2016, *Independent stakeholder engagement on the Working Holiday Maker Visa review*, Report for the Department of Agriculture and Water Resources, Deloitte Touche Tohmatsu, September 2016.

2. Why is government action needed?

3.21 Without legislative change, the AAT decisions, which imply that the majority of WHMs would be treated as non-residents for tax purposes and required to pay 32.5 per cent tax from the first dollar of income, will apply as the default position for administering the current tax law.

3.22 Legislation is required to ensure that all WHMs are taxed on a consistent basis, at a rate that ensures that Australia is an attractive destination for WHMs, given their role in providing seasonal labour.

3. What policy options are you considering?

3.23 The following policy options have been considered:

Option 1

Retain the current law as clarified by the AAT decisions. Transient WHMs would be considered non-residents for tax purposes and therefore taxed at 32.5 per cent from their first dollar of income, however, WHMs who stay in the one place and establish ties to the community, would be classified as residents.

Option 2

3.24 All WHMs would be treated as non-residents for tax purposes, and taxed at 32.5 per cent from their first dollar of income up to \$87,000 (implementation of the 2015-16 Budget measure).

Option 3

3.25 From 1 January 2017, the income tax rate for all WHMs would be 19 per cent from the first dollar earned up to \$37,000 (ordinary marginal rates to be applied from \$37,001 onwards).

Table 6: WHM tax rates from 1 January 2017

<i>Taxable income</i>	<i>Tax on this income</i>
\$0 - \$37,000	19c for each dollar over \$0
\$37,001 - \$80,000 (\$87,000)	\$7,030 plus 32.5c for each \$1 over \$37,000
\$80,001 (\$87,001) - \$180,000	\$21,005 plus 37c for each \$1 over \$80,000 (\$87,000)
\$180,001 and over	\$58,005 plus 45c for each \$1 over \$180,000

The \$80,000 threshold is increasing to \$87,000 for the 2016-17 financial year; the tax paid calculation is based on the \$80,000 threshold.

3.26 In order to implement option 3, employers of WHMs would need to register with the ATO to be entitled to withhold at the 19 per cent tax rate.

- Employers of WHMs who do not register with the ATO would be required to withhold at the 32.5 per cent rate from the first dollar of income and may be subject to ATO penalties.
- If an employer withholds at the 32.5 per cent rate, WHMs would have access to the 19 per cent rate on lodgement of their tax return.
- \$10 million in additional funding would be provided to the ATO and the Fair Work Ombudsman (FWO) to establish the employer register, assist with ongoing compliance initiatives and address workplace exploitation of WHMs.

Option 4

3.27 Reduce Australia's WHM (417 and 462) visa application charge by \$50 to \$390 from 1 July 2017.

Option 5

3.28 Allow WHMs to stay with one employer for up to 12 months, as long as the second six months is worked in a different region.

Option 6

3.29 Provide funding of \$10 million to Tourism Australia to support a global youth-targeted advertising campaign.

3.30 A further option considered was increasing the age limit for WHM (417 and 462) visas from 30 to 35 years. However, a final decision for this option is yet to be made and as such, this RIS does not include any impact analysis of this option.

Revenue raising measures

3.31 In order to make it broadly budget neutral the following revenue raising options were considered:

- From 1 July 2017, increase the Passenger Movement Charge by a one-off amount of \$5, from \$55.
- Increase the rate of tax on the Departing Australia Superannuation Payment for WHMs to 95 per cent, also effective 1 July 2017. It is currently 38 per cent for the taxed elements and 47 per cent for untaxed elements (including the Temporary Budget Repair Levy).

3.32 As these options are for revenue raising purposes, impact analysis is not required in this RIS.

4. What is the likely net benefit of each option?

Option 1: Current law (as clarified by AAT decisions)

3.33 This option would not involve legislative change.

3.34 The current legislation requires consideration of a variety of factors when determining an individual's residency status; this uncertainty creates compliance costs for individuals attempting to determine their status. WHMs that move around are likely to be non-residents for tax purposes and face a 32.5 per cent marginal tax rate from the first dollar earned. Stakeholders have suggested this may make Australia an unattractive destination for potential WHMs. As a consequence, it may be more difficult for the tourism and agriculture sectors to find sufficient labour for their seasonal work. In addition, there would be a differential tax treatment between WHMs who move around and those who stay in one place.

3.35 There would also remain a significant risk of non-compliance, from WHMs incorrectly self-assessing themselves as tax residents.

***Option 2: 32.5 per cent tax rate applied to all WHMs up to \$87,000
(ordinary marginal rates to be applied from \$87,001 onwards)***

Benefits

3.36 This proposal would remove the current uncertainty around the tax treatment of WHMs. It would also remove the differential tax treatment between WHMs who move around and those who stay in one place.

3.37 At the time of the 2015-16 Budget it was estimated that this proposal would increase revenue by \$540 million over the then forward estimates.

Costs

3.38 Taxing all WHMs as non-residents may decrease Australia's attractiveness as destination for potential WHMs.

3.39 WHMs are a vital source of labour to Australia, particular to the tourism and agriculture industries which make important contributions to the Australian economy and are expected to be drivers of future economic growth.⁵ Therefore this proposal could limit the seasonal labour supply that these industries depend on.

3.40 The estimated additional one-off compliance cost for an existing employee affected by the proposal is around \$44. The one-off compliance cost includes the costs of time taken to learn about the change, evaluate how it will affect them and fill out a new withholding declaration form to submit to all their current employers. Many WHM visa holders seek and find employment through employment agencies that often assist individuals in meeting their compliance obligations. New WHMs, who are affected by the proposal will have to interact with the income tax system in a manner similar to current arrangements and will therefore face no additional compliance costs. The estimated overall increase in compliance costs for all WHMs is around \$3.8 million, which only includes initial non-ongoing implementation compliance costs (as there are no ongoing compliance costs).

⁵ Deloitte 2016, *Independent stakeholder engagement on the Working Holiday Maker Visa review*, Report for the Department of Agriculture and Water Resources, Deloitte Touche Tohmatsu, September 2016.

3.41 The estimated increase in compliance costs for all affected employers as a result of the proposal is around \$1.1 million in initial non-ongoing implementation compliance costs and around \$1.6 million in ongoing compliance costs a year. The one-off compliance cost includes the costs of time taken to learn about the change, evaluate how it will affect them, and process withholding declarations from affected employees (initially there may be many WHMs providing new withholding declarations to their employers). They will need to explain the change to affected employees. On an ongoing basis the main compliance costs relate to recordkeeping.

Net Benefits

3.42 Although this proposal would clarify the tax treatment of WHMs and remove the inconsistent treatment, it is expected that these benefits do not outweigh the cost of Australia potentially losing its attractiveness as a destination for potential WHMs.

Regulatory Burden Table

Table 7: Regulatory Burden Estimate Table

<i>Average annual regulatory costs (from business as usual)</i>				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$1.7	n/a	\$0.4	\$2.1

The above table averages the implementation costs over a 10 year period, as assessed at the time of the 2015-16 Budget decision. The annual figure of \$1.7 million for business is calculated by adding the annual ongoing cost of \$1.6 million to one tenth of the implementation cost of \$1.1 million. The annual figure of \$0.4 million for individuals is calculated by taking one tenth of the implementation cost of \$3.8 million.

Option 3: 19 per cent tax rate applied to all WHMs up to \$37,000 (ordinary marginal rates to be applied from \$37,001 onwards)

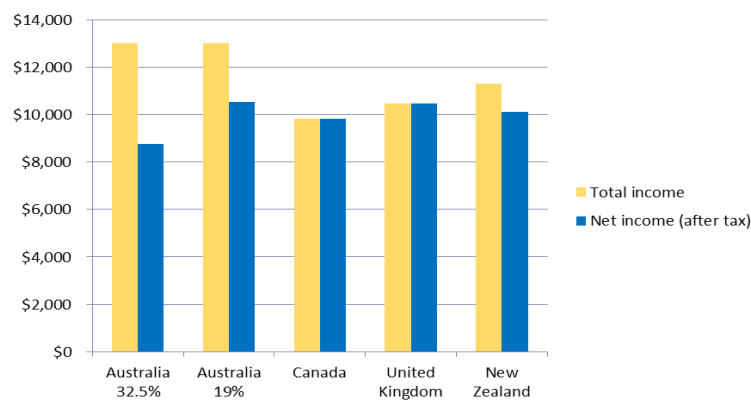
Benefits

3.43 This proposal will clarify the uncertainty around the tax rate that WHMs face. Providing WHMs with a tax rate lower than for nonresidents will improve Australia’s international competitiveness for backpackers. This will provide workers for the seasonal and temporary jobs in agriculture and tourism and support small businesses who engage seasonal

labour. The labour supply of both regional and metropolitan seasonal workers is expected to increase.

3.44 A tax rate of 19 per cent, based on purchasing power parity (PPP) adjusted exchange rates, results in a competitive level of after-tax income (at the minimum wage), as shown in Figure 1 below. Additionally, a tax rate of 19 per cent provides simplicity since it is the same rate as the lowest tax rate for residents.

Figure 1: International comparison of total income and net income (average per WHM, Purchasing Power Parity adjusted exchange rate) for popular working holiday destinations⁶



3.45 WHMs contribute to the economy and form an important part of the seasonal labour market. WHMs not only fill roles in the agriculture and tourism sectors that are unlikely to otherwise be filled; they also spend significant amounts of money while in Australia. This consumption is viewed as particularly significant in remote areas across Australia.

3.46 A lack of data on the travel patterns of WHMs, including the occupations in which they work and the geographical distribution of their work, make it difficult to undertake robust assessments of the impacts of the tax on Australian industry. There is a view that anecdotal evidence is typically the only evidence available.⁷ As such, the expected impacts on WHM arrivals and labour supply have not been quantified.

⁶ Treasury, from publicly available data.

⁷ Deloitte 2016, *Independent stakeholder engagement on the Working Holiday Maker Visa review*, Report for the Department of Agriculture and Water Resources, Deloitte Touche Tohmatsu, September 2016.

3.47 There are two key benefits to the registration process. Registration will ensure only employers of WHMs will have the ability to withhold at the 19 per cent rate. In addition, the register will provide valuable data on who employs WHMs, what sectors they are engaged in and where the employers are located. This should help address data problems when trying to assess the impact of government policies. The register will be made public to allow WHMs to identify whether a prospective employer is registered (and can withhold tax at the 19 per cent rate).

3.48 Additional funding will enable the FWO to undertake further compliance activities to ensure employers of WHMs are compliant with the *Fair Work Act 2009* and other Australian workplace laws. This will work to protect WHMs and may contribute towards making Australia a more attractive destination for WHMs.

3.49 Additional compliance resources are expected to increase the number of cases FWO can take to court. Employers found to be not complying with the *Fair Work Act 2009* and Australian workplace laws could be deregistered following a court order.

3.50 The ATO will establish the register to support compliance activities undertaken by various agencies, including the FWO. The register will also provide data on the work activities of WHMs, while imposing a low compliance burden on employers.

3.51 The ATO will use the updated Tax File Number (TFN) declaration form and data matching activities to ensure the 19 per cent rate is only being accessed by WHMs working for registered employers. It will also allow the ATO to advise employers if an individual employee is ineligible to receive the benefits of the 19 per cent withholding.

3.52 These reporting requirements will create an incentive for employers to register in order to attract WHMs. The ATO will report annually on WHMs along the lines of the Agricultural Land Register.

3.53 A range of penalties could be applied to employers by the ATO for breaches of the tax laws, including failing to register. Employers could also be deregistered by the ATO or by Court order following action by the FWO in relation to breach of employment conditions. The ATO will leverage off existing interactions with government agencies to identify WHM taxpayers and ensure that they are taxed at the correct rate.

3.54 This measure provides WHMs who would be considered non-residents under the AAT ruling with a lower tax rate. As such, it should encourage tax compliance on behalf of both the employer and the WHM. A lower rate provides less incentive for WHMs to claim to be residents when completing employment declarations. It also provides less incentive for employers to pay WHMs outside the tax system.

Costs

3.55 Registration for employers who currently employ WHMs will be simple and easy, and can be done by answering a few questions by phone, email or online. For new employers of WHMs, this requirement will be incorporated as part of existing ATO employer withholding registration. This will limit the compliance costs that businesses face.

3.56 Employers and WHMs will need to become familiar with the new tax rate and conditions associated with registration. Employers will also be required to update record-keeping systems to ensure the new rates are applied. WHMs will also need to learn about the conditions associated with employer registration and how to determine whether their employer is registered. This will be low cost for them since it is proposed to be available on the Australian Business Register.

3.57 Regarding ongoing compliance costs, WHMs will need to determine whether their employer is still a registered employer.

3.58 This proposal is expected to result in a low overall compliance cost impact, comprising a low implementation impact and a low increase in ongoing compliance costs.

3.59 The Government's proposal to provide an additional \$10 million funding to the ATO and the FWO for compliance initiatives and to address workplace exploitation of WHMs will have no compliance cost as enforcement of the law is not a compliance impost.

3.60 The cost to Budget of the lower tax rate is estimated to be \$300 million over the forward estimates.

Net Benefit

3.61 The recommended policy package includes this option and the option to increase the rate of tax on the Departing Australia Superannuation Payment for WHMs to 95 per cent. It is expected that the combined impact of lowering the marginal tax rate to 19 per cent and imposing a tax rate of 95 per cent on WHMs superannuation balances when they depart Australia will deliver net benefits to WHMs, which will

make Australia a more attractive working holiday destination relative to the status quo.

3.62 Superannuation does not assist WHMs with ongoing costs during their working holiday in Australia because it can only be claimed (and thus spent) after a WHM leaves Australia via a Departing Australia Superannuation Payment. In contrast, the rate of income tax is an important factor in a potential WHM's decision on where to visit. This is because a lower income tax rate means more money in hand to spend during their holiday in Australia. A 19 per cent tax rate will offer a lower tax rate for most WHMs, relative to the status quo (existing law as clarified by the AAT). As such, it is expected that the number of WHMs will increase as will the number of hours they spend working.

3.63 It is estimated that there are currently around 55,000 employers employing WHMs. These businesses will predominantly bear the cost of complying with the new tax rates and reporting requirements. It is expected that there will be an average compliance cost of \$264 per business for implementation with no ongoing costs. These costs are likely to be small relative to the benefits these businesses accrue from the expected increased labour supply.

3.64 For WHMs, the compliance costs are expected to be \$22 each up front and an annual ongoing cost of \$5 per individual. It is expected these will be insignificant relative to the benefits of the certainty that this proposal will provide and lower tax rate they can access, relative to those faced by non-residents.

Compliance cost impact

3.65 Using the regulatory burden measurement framework, it has been estimated that the measure will increase compliance costs by an average of \$2.9 million per annum.

3.66 These annual compliance costs were calculated by distributing the expected implementation costs over a ten year period and adding that to the annual ongoing compliance cost.

Table 8: Regulatory Burden Estimate Table

<i>Average annual regulatory costs (from business as usual)</i>				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$1.4	\$0.06	\$1.4	\$2.9

The above table averages the implementation costs over a ten year period.

Option 4: Reduce Australia's WHM (417 and 462) visa application charge by \$50 to \$390 from 1 July 2017

Benefits

3.67 Decreasing the visa application fee is expected to add to Australia's attractiveness as a destination for WHMs. The cost of applying for a visa contributes to the upfront cost of a working holiday. WHMs coming to Australia help address the agriculture and tourism sectors' demand for itinerant workers and provide a seasonal labour supply for regional and metropolitan employers.

3.68 As noted in Table 5, the WHM visa application charge has increased from \$195 in 2008-09 to \$440 in 2015-16. The largest of these increases took place in 2013-14 when the visa application charge was increased by \$85. Reducing this charge by \$50 (to \$390) from 1 July 2017 will return the real cost of the application charge to about the same level it was in 2013-14.

Costs

3.69 The cost to the Budget is estimated to be \$30 million over the forward estimates. This proposal is not expected to impose additional regulatory burdens since it is purely a price change.

Net Benefit

3.70 Decreasing the visa application fee is expected to add to Australia's attractiveness as a destination for WHMs. WHMs will pay tax and stimulate economic growth through both their consumption and employment. This benefit is expected to be greater than the fiscal cost of decreasing the cost of visa application.

Option 5: Allow WHMs to stay with one employer for up to 12 months, as long as the second six months is worked in a different region

Benefits

3.71 This proposal will benefit WHMs by providing them with more flexibility in the kind of employment they can undertake in Australia. This flexibility could increase the amount of time that some WHMs spend in Australia. WHMs spending more time in Australia will give them more time to contribute to the economy and form a vital part of the seasonal labour market.

3.72 Employers are expected to bear the greatest benefits of this proposal. By expressly allowing WHMs to stay with one employer for up to 12 months, as long as the second six months is in a different region, employers will be able to retain staff for longer periods of time. This change will reduce the cost to employers in training their workers. This leads to a compliance saving. Additionally, allowing employers to stay with one employer for longer will allow these workers to gain experience and become more productive.

3.73 The compliance saving is calculated by assuming that employers will train 5,000 fewer employees each year. It is estimated that this will reduce training by 20 hours per an employee at a cost of \$65.45 per hour (this includes wage and non-wage costs). This has a total compliance saving of \$6.5 million.

3.74 Providing WHMs with the choice to stay with an employer they know and trust for 12 months would reduce the risk of exploitation, as the WHMs would not need to take the risk of changing jobs to work for a potentially unscrupulous employer.

Costs

3.75 There are no additional costs from this policy option.

Net Benefit

3.76 Since there are no additional costs, the net benefit is positive. This change should assist employers by decreasing the need to train new workers. It should assist WHMs by providing them more flexibility and making it easier for them to stay in Australia longer.

3.77 This option balances the benefits to employers and WHMs with the primary purpose of the WHM visa program, which is to holiday in Australia while undertaking work.

Table 9: Regulatory Burden Estimate Table

<i>Average annual regulatory costs (from business as usual)</i>				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	(\$6.5)	n/a	n/a	(\$6.5)

Option 6: Increased funding for a Tourism Australia advertising campaign*Benefits*

3.78 An advertising campaign specifically targeting potential WHMs is expected to be effective in increasing the number of WHMs coming to Australia. By increasing global youths' understanding of the opportunities of simultaneously working and holidaying in Australia, it is expected that Australia will become a more attractive destination for potential WHMs.

3.79 Increasing the number of WHMs coming to Australia will help address the agriculture and tourism sectors' demand for itinerant workers.

Costs

3.80 The cost to the Budget will be the \$10 million provided to Tourism Australia. The proposal is not expected to impose additional regulatory burdens on businesses or individuals since it is primarily a Government initiative.

Net Benefit

3.81 The money spent on the advertising campaign is expected to attract more WHMs, which will help meet Australia's demand for seasonal workers. These workers will both pay tax and stimulate economic growth through both their consumption and employment. This benefit is expected to be greater than the fiscal cost of the advertising campaign.

Revenue raising measures

3.82 There are two revenue raising measures to offset the budgetary cost of the above changes.

3.83 The revenue raising measure of a one-off increase to the Passenger Movement Charge of \$5 is estimated to raise \$260 million over the forward estimates. There is expected to be no compliance costs for this one-off price change.

3.84 The measure to increase the tax on WHMs' superannuation payments when they leave Australia to 95 per cent, from 1 July 2017, is estimated to raise \$105 million over the forward estimates. This is expected to result in a low overall compliance cost impact, comprising a small implementation cost for business.

3.85 This change is consistent with the objective of superannuation, which is to support Australians in their retirement, not to provide additional funds for WHMs when they leave Australia.

Table 10: Financial impact of the best options, showing that the package offsets all fiscal costs (underlying cash balance \$m)

<i>Option</i>	<i>Total FE</i>
19 per cent tax rate applied to all WHMs	-300.0
Compliance for WHM employer register	-10.0
Lower visa application fees for WHMs	-30.0
Tourism Australia advertising campaign	-10.0
Increase the Passenger Movement Charge by \$5.00	260.0
Increase the tax on WHMs' superannuation payments when they leave Australia to 95 per cent	105.0
Total	15.0

Note that the fiscal impact of options 3 and 4 and the revenue raising measures are made with respect to 2015-16 Budget measure.

3.86 For all reporting periods, the Treasury portfolio has reported net compliance cost reductions and there is no reason why the portfolio will not continue to deliver on its red tape reduction targets this year, in line with the Government's regulatory reform agenda.

5. Who will you consult about these options and how will you consult them?

3.87 Since the 2015-16 Budget decision, significant consultation has been undertaken with stakeholders in both industry and Government. This consultation has informed the development of the policy options considered in this Statement.

3.88 In February 2016, Australia's tourism ministers held a Tourism Ministers Meeting and discussed the importance of backpackers to respective jurisdictions. All jurisdictions discussed the changes to the WHM taxation arrangements, noting concerns that the 32.5 per cent tax rate might affect WHM visitation, and the viability of tourism businesses reliant on WHMs, particularly in regional Australia. The then Minister for Tourism and International Education agreed to engage his ministerial colleagues, the Minister for Immigration and Border Protection, the Minister for Employment, and the Treasurer on WHM issues.

3.89 In March 2016, a round of industry consultations with representatives from the agriculture and tourism sectors was held in Sydney. The meeting was chaired by the then Minister for Tourism and International Education, who was joined by the Assistant Minister for Agriculture and Water Resources and Assistant Minister to the Deputy Prime Minister.

3.90 During the 2016 election campaign, the Government agreed to review the 2015-16 Budget decision on WHMs. As part of this, Deloitte facilitated an independent stakeholder engagement exercise, which included workshops in each of Australia's State and Territory capitals, with 88 participants attending either in person or via telephone conference.⁸

3.91 A broad range of participants were invited, consisting of representatives from:

- the tourism sector, including all major industry associations, tourism industry councils, youth travel organisations and state tourism organisations;
- the agriculture sector, including the national and various state farmers federations, and product-level industry associations;
- unions; and
- labour hire companies.⁹

⁸ Deloitte 2016, *Independent stakeholder engagement on the Working Holiday Maker Visa review*, Report for the Department of Agriculture and Water Resources, Deloitte Touche Tohmatsu, September 2016.

⁹ Deloitte 2016, *Independent stakeholder engagement on the Working Holiday Maker Visa review*, Report for the Department of Agriculture and Water Resources, Deloitte Touche Tohmatsu, September 2016.

3.92 The Department of Agriculture and Water Resources ran an online submission process and survey, with all submissions and their attachments passed onto Deloitte for consideration. Responses were received from a wider range of stakeholders than in the stakeholder engagements, including individual travellers, businesses, and other interested organisations outside the agriculture and tourism sectors.¹⁰ The stakeholder feedback was summarised into a report by Deloitte, which was provided to Government to help frame the proposed package.¹¹ The report is available on the Department of Agriculture and Water Resources' website.

- These stakeholders' views, summarised below, have been considered in formulating the policy options: Stakeholders overwhelmingly expected the numbers of WHMs to fall as a result of the proposed 2015-16 Budget changes (i.e. to tax WHMs at the 32.5 per cent rate from the first dollar earned) and stated that anecdotal evidence suggested numbers were already declining as a result. There were very high rates of strong agreement with this view from all groups of respondents to the online survey.
- A large number of stakeholders pointed to a recent survey by Dr Jeff Jarvis (YHA Australia 2016) of WHMs indicating how they would alter their travel plans if they faced the higher tax rates. This survey reported that around 60 per cent of WHMs indicated they would not travel to Australia if the higher tax rate was in place.
- Stakeholders viewed that WHMs are well-informed of wages and tax rates, as well as the proposed changes announced in the 2015-16 Budget.
- Stakeholders considered that international markets could use Australia's higher tax rates as a way to market their destinations to WHMs.

¹⁰ Deloitte 2016, *Independent stakeholder engagement on the Working Holiday Maker Visa review*, Report for the Department of Agriculture and Water Resources, Deloitte Touche Tohmatsu, September 2016.

¹¹ Deloitte 2016, *Independent stakeholder engagement on the Working Holiday Maker Visa review*, Report for the Department of Agriculture and Water Resources, Deloitte Touche Tohmatsu, September 2016.

- Stakeholders noted that regardless of whether financial concerns entered into the decision to participate in the WHM program, after-tax earnings were a determinant of how long WHMs were financially able to stay in Australia.
- The agriculture and tourism sectors proposed a flat tax rate for WHMs in the range of 15 to 19 per cent, with no tax free threshold. A rate of 19 per cent was proposed by the National Farmers' Federation and the Australian Dairy Industry Council. A lower tax rate was also supported by the Australian Council of Trade Unions and the vast majority of submissions from WHMs.
- Many stakeholders, such as the Australian Hotels Association, noted that labour shortages currently exist across both the agriculture and tourism sectors. Recruitment difficulties are seen to be exacerbated by the seasonal and short-term nature of many job opportunities, the fact that they are often located in remote areas, and the jobs can be for unskilled labour in tough conditions.
- WHMs are seen as being mobile, flexible, willing to 'give things a go' and sometimes more productive than local workers (due to prior work experience or tertiary education). This makes them a key source of labour for jobs that can be difficult to recruit for locally.
- Some stakeholders were concerned that the tax would disproportionately disadvantage regional Australia compared to metropolitan areas, as WHMs would have reduced incentive to travel outside of major cities to reduce the costs of their trip.
- Many stakeholders indicated a desire to access greater numbers of WHMs by expanding visa eligibility and removing some of the limits currently present, such as increasing the time a WHM can work with one employer. These stakeholders include the National Farmers Federation, the Tourism Accommodation Association, Restaurant and Catering Australia and United Why.
- Many stakeholders noted the relatively high visa costs for the Australian program, currently at \$440. It was also noted that the cost of the visa had increased at a relatively fast rate in recent years.

- General consensus among stakeholders was that WHMs should not be paid superannuation if they have no intention to use it for its intended purpose to fund retirement savings. Some stakeholders indicated that refunding superannuation contributions to Government could be an alternative to raising the tax. However, a high proportion of WHMs surveyed thought they should have access to their superannuation when they depart Australia.
- The Australian Tourism Export Council recommended a targeted global youth campaign to address the negative sentiment surrounding the 2015-16 Budget measure.

6. What is the best option from those you have considered?

- 3.93 The best option is to implement policy options 3 to 6 as a package.
- 3.94 This package is estimated to decrease the regulatory burden of by \$3.6 million.
- 3.95 The following revenue raising options will also be implemented:
- Increase the non-exempt passenger movement charge by \$5 (from \$55 to \$60) from 1 July 2017.
 - Increase the rate of tax on the Departing Australia Superannuation Payment to 95 per cent from 1 July 2017.
- 3.96 This will allow the WHM package to be broadly budget-neutral.

7. How will you implement and evaluate your chosen option?

- 3.97 Options 3, 4 and 6 will be implemented through a legislative package, which will also include the two revenue raising options.
- 3.98 One challenge is to make sure employers are aware of the new withholding arrangements for WHMs, and also the new registration arrangements. The ATO will develop a communication strategy to inform businesses of the new rules and their obligations.
- 3.99 The ATO will leverage off existing interactions with government agencies, WHMs and their employers to ensure that:
- WHMs are advised of their tax status;

- employers register and withhold tax at the correct rate; and
- WHMs are taxed at the correct rate of tax when they lodge their income tax return.

3.100 This will be achieved by using information from sources such as a TFN application, TFN declaration, PAYG payment summaries and the income tax return itself.

3.101 The ATO will develop a simple registration process for employers who need to withhold tax from WHMs. Information as to who is a registered employer for this purpose will be publicly available. This will incentivise employers to register in order to attract WHMs, since unregistered employers will be required to withhold at the 32.5 per cent rate from the first dollar of income. The register will assist with enforcing compliance and will provide data that can be used to help inform future policy related to WHMs.

3.102 These actions would address the risk that WHMs self-assess as residents for tax purposes and be taxed at the incorrect rate.

3.103 There is a risk that potential WHMs will not be aware of the new tax rate and as such consider Australia an unattractive working holiday destination. The Tourism Australia advertising campaign should assist in addressing this challenge by providing an opportunity to inform potential WHMs of Australia's competitiveness as a working holiday destination.

3.104 In implementing Option 5, the Department of Immigration and Border Protection will update policy guidance documents and communications materials to reflect that a WHM can work for the same employer for up to 12 months, as long as the second six months is worked in a different region.

3.105 Relevant Government agencies will undertake ongoing monitoring and reporting of the effectiveness of the measures. This includes an annual report that the ATO will prepare for Parliament on WHMs.

3.106 Given the limited data on WHMs, the employer register and associated reporting will provide useful data on the WHM sector. This will assist future policy development and evaluation in this area.

8. Status of the Regulation Impact Statement

3.107 Treasury prepared a RIS for early assessment of the 2015-16 Budget measure to increase the tax rate on all WHMs to 32.5 per cent from the first dollar of income. No early assessment RIS was prepared for options 3 to 6. This final assessment RIS has been prepared for the final decision.

