

BARWON

COMMUNITY LEGAL SERVICE

Temporary Work Visa Project

Final Report

October 2018 - March 2020



1. Background and Purpose

On 12 July 2018, Minister for Industrial Relations, Natalie Hutchins announced funding for the Temporary Work Visa Project. In partnership with Victoria Legal Aid; JobWatch, Goulburn Valley Community Legal Centre (GVLC) and Barwon Community Legal Service (BCLS) were selected to deliver the program. Grant funding was allocated to each centre to invest in lawyers and legal education in key regional areas over two years, to make temporary visa workers aware of their workplace rights and to enable them to enforce these rights.

JobWatch was appointed to take a lead coordinating role in the running of the project and an MOU between them and GVCLC and BCLS was entered into on 14 September 2019. The agreed project delivery dates were 1 October 2018 to 31 March 2020. The objectives of the project to be delivered by the partnership were:

1. Increase awareness of temporary visa workers of their workplace rights and to enable them to enforce those rights;
2. Continue to attract workers from other countries to regional Victoria and ensure that Victoria is viewed as a place that respects and protects the work rights of international workers;
3. Increase the experience and capacity of community legal centres to provide employment law advice and assistance to temporary visa holders.

The primary target for the project was noted as working holiday makers (Visas 417 and 462), with some flexibility to provide services to other temporary visa holders, including international students.

In October 2018, BCLS appointed 2 lawyers (total 1 full-time equivalent) to deliver the project. Following the resignation of one of the lawyers in December 2018 and initial challenges in engaging prospective clients, BCLS revised their approach and from April 2019 appointed a 0.4 FTE project worker to work with the current 0.6 FTE lawyer by focussing on community engagement activities.

This report focuses on the work the BCLS team undertook during the project period in order to contribute to the broader project goals. At the time of writing Jobwatch is coordinating the final report to the funding body as well as engaging an external consultant to undertake a formal evaluation of the project, its methodologies and outcomes.



2. Our region

For the purposes of the Temporary Work Visa project, BCLS was contracted to provide services to communities across the Barwon South West region (see map below).

The region extends from the tip of the Queenscliff Heads to the border of South Australia and is home to Victoria's largest regional city, Geelong. Other major towns in the region include Aireys Inlet, Anglesea, Apollo Bay, Camperdown, Colac, Geelong, Hamilton, Lorne, Port Campbell, Port Fairy, Portland, Torquay and Warrnambool.

Map of Barwon South West Region



3. BCLS Activity

Research

Barwon Community Legal Service was selected as a project partner on the basis of the region containing a number of industries that utilise significant numbers of temporary workers. These industries were believed to include meat processing, dairy farming, horticulture and hospitality/tourism operations.

Given the lack of available data at the time, the assumption was made that given the significant presence of 'identified industries' there would also be a significant presence of target workers who would benefit from the project. The expectation was that through the course of the project BCLS would verify these assumptions and develop data.

In the initial stages of the project, the BCLS team undertook a range of research activities which ultimately indicated that the demand for working holiday maker visa related legal assistance in this region is far less than anticipated. The reasons for this were many and varied.

- Barwon South West is not a targeted destination for backpackers. The official Harvest Trail guide published by the Australian Government does not feature any work opportunities within our region.
- Dairy Farmers occasionally employ backpackers, however only take on 1-2 at a time. The work is not seasonal and therefore farm hands are required all year round. Dairy farmers prefer experienced staff with the capacity to stay for extended periods. Those who do employ backpackers have a reputation for treating their staff well – many farms have fresh milk contracts with major supermarkets and are therefore heavily audited.
- There are just 7 backpacker hostels across the region and many of them host equal numbers of domestic visitors as they do international visitors. None of the hostels have any formal arrangements with labour hire companies.
- Meat processing factories across the region are known to employ overseas workers, however very few employ working holiday makers.
- MADEC who is the contracted provider of Harvest Labour Services reported that there were just 3 vacancies for backpackers advertised in the Barwon South West Region in 2018/19.

BCLS research was verified by data from the Australian Tax Office which showed that of the 6,000 businesses in Victoria who employ Working Holiday Makers, just 281 operate in the Barwon South West region. ATO data also suggested that just 600-650 individual working holiday makers were employed in the region in a single year (2016/17).



Community and Stakeholder Engagement

In order to understand how to best engage the target audience the BCLS team undertook a mapping exercise (refer Appendix One) which outlined the potential engagement points of the target audience (backpackers). This provided the basis for the organisations and groups to which marketing and promotional activities were targeted.

To try and build an understanding of issues facing working holiday makers in our region, a client survey was developed via survey monkey. The survey was promoted via social media as well as through international students' networks via Study Geelong and The Gordon International. The survey was open for three weeks and an incentive to participate was offered. Despite best efforts just two survey respondents were received, highlighting the ongoing challenge of engaging the target cohort in relation to legal concerns.

BCLS also chose to undertake a survey of backpacker hostels in the region to learn more about the role they play in connecting visitors to employment opportunities. Three out of the 7 hostels completed the survey with only 2 reporting that they host backpackers. It was noted that many of the hostels provide accommodation for an equal number of domestic visitors as international visitors. The Warrnambool hostel reported that they play an active role in supporting farmers to connect with backpackers, however declined offers to have BCLS attend to run an information session, noting most of the workers that pass through are well educated about their rights.

A number of stakeholder engagement meetings were conducted throughout the project largely focussed on identifying potential referral pathways or engagement points as well as better understanding the industries identified as potentially employing large volumes of workers. A consistent theme from many agencies was that backpackers were not a group that they specifically worked with. As an example, the Visitor Information Centres advised that they rarely see backpackers at their Centres and were therefore reluctant to display any of our promotional collateral.

Through discussions with The Gordon TAFE and Study Geelong, BCLS did identify the need for additional legal assistance for international students. Whilst students at Deakin University have access to services via Deakin's Student Legal Service, there are many other students attending TAFE and private colleges requiring assistance to understand their work rights. As part of this project, BCLS were able to deliver a range of Community Legal Education sessions to international students. Attendance at sessions ranged from 6 to 35 people.



Marketing & Promotion

In May 2019, BCLS launched a social media campaign via facebook entitled 'The Informed Backpacker'. The page attracted over 60 followers over the life of the project, though direct engagement via messaging was limited, with only a handful of enquiries received. The page was used primarily to share information about work rights directly relevant to temporary visa holders.

By establishing the social media page, BCLS identified that there a significant number of other pages, groups and businesses set up to 'help' backpackers. Together with the ability for backpackers and the general community to provide advice on social media, it is quite difficult to identify a single source of truth in relation to work rights. This will be an important consideration for JobWatch and any other agencies working with this cohort in the future.

The broader project team (JobWatch and GVCLC) collaborated on a joint brochure promoting services available. In addition, the Migrant Workers Centre provided a number of translated brochures relating to rights in the workplace. These brochures were displayed in the BCLS foyer and distributed to several referring agencies and community services.

In August 2019, BCLS utilised our regular radio spot "Without Prejudice" on the The Pulse 94.7's Mitchell's Front Page program to present a segment about Employment Law and the rights of working holiday makers. You can listen to the segment [here](#). Whilst data is not available about the audience reach for this specific program it is worth noting that in an average week 209,000 people listen to community radio in regional Victoria (Source: *The Pulse*)

In late 2019, BCLS developed a region-specific promotional campaign that included a targeted set of marketing collateral (Posters, postcards and business cards), Community Billboard signage (See photo) and a Television Commercial and Social Media campaign through Channel 31. The Marketing Collateral was mailed out to the 69 Caravan Parks and Hostels in the Barwon South West Area. Four Community Billboards were erected in key locations in the region for an 8-week period during peak tourist season (Dec-Jan). Similarly, the Television Commercial ran twice per day on Channel 31 for 4 weeks and a sponsored social media campaign was also run concurrently. Despite our best efforts, none of these activities resulted in a spike in enquiries.



BCLS also ran a brief campaign encouraging workers to 'Check Your Pay' which provided the opportunity for individuals to upload a copy of their payslip to our website for review by our Employment Lawyer. This service was promoted via our website and on social media, however there was minimal uptake.

Staff Capacity Building Activities

In September 2018, JobWatch ran an introductory training program for four of the BCLS' lawyers in order to prepare for the delivery of the Temporary Visa project. Additional training was provided to a further four lawyers in October 2018.

Meetings of project staff were initially scheduled quarterly and were planned to be rotated through each region. Whilst these meetings only occurred infrequently, they provided an opportunity to share learnings from casework and ultimately build our understanding of the challenges faced by temporary visa holders.

BCLS staff regularly engaged in updates about the project, through both staff meetings and specific project briefings. A screening of the documentary '21 Days' was a highlight, illustrating to staff the complexities of temporary work visa holder exploitation and why access to legal assistance is so important.

JobWatch has undertaken regular surveys of lawyers to measure changes to their knowledge of employment law as well as their confidence and capacity to refer to specialist services such as JobWatch. At the time of writing the final survey is underway and the results of this work should be available in JobWatch's final project report.



3. Legal Assistance

Over the course of the project, BCLS assisted twenty-eight clients with employment law advice and case work. Of these twenty-eight cases, just 7 files were opened. The remaining 21 cases were advice only.

An Employment Law clinic was scheduled and widely promoted however the uptake was minimal. Clinics were trialled outside of business hours as well as making appointments available during business hours with no notable difference in attendance.

The majority of clients seen by BCLS were international students from Deakin University and The Gordon TAFE. There were no working holding visa holders that sought assistance. A small number of Australian workers were also assisted through this project.

The most common legal query was in relation to underpayments which is a major issue for international students. Many international students are happy to accept whatever pay is offered without realising that they may be underpaid. Underpayment cases were not restricted to a single industry with employers ranging from Government departments to restaurants and medical clinics. Only four unfair dismissal enquiries were received.

Case Study: Recovering Lost Wages

Since 15 January 2017, our client worked for a education company as a tutor to high school students, on a casual basis at a Level 3 classification. Between 15 January 2017 and 20 October 2019, our client was paid wages at various rates, however all rates were below the pay rates set out in the Miscellaneous Award 2010.

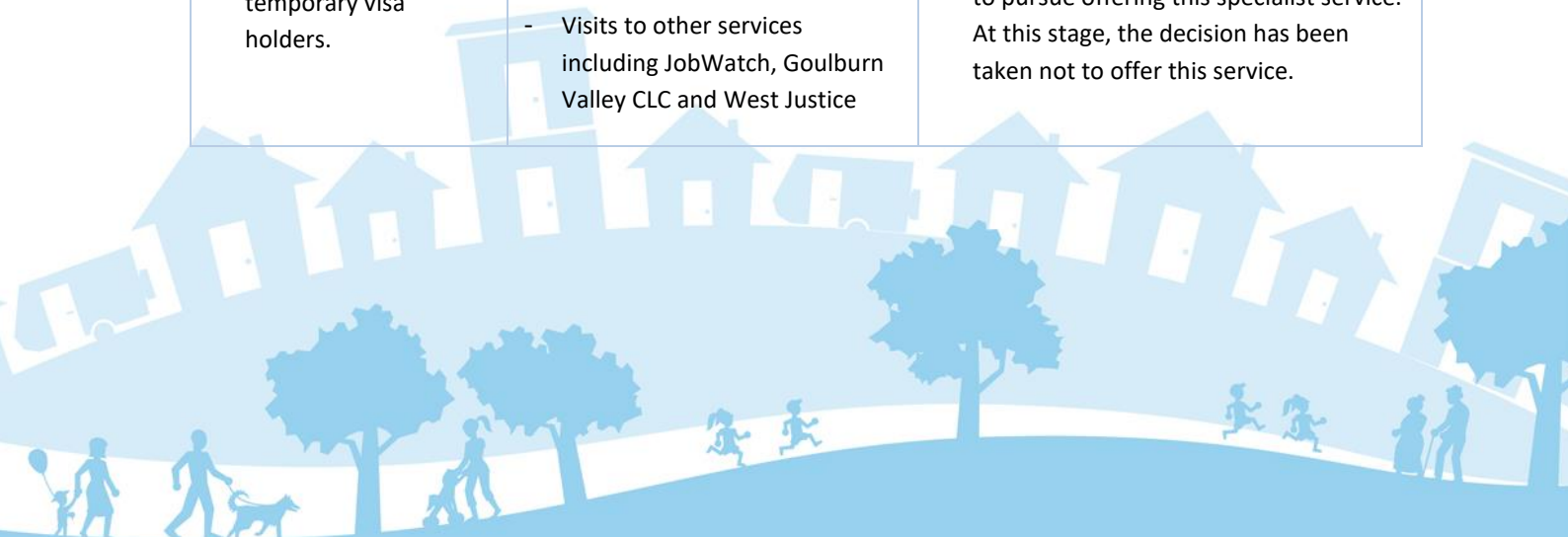
The BCLS lawyer analysed payslips and bank accounts and identified an underpayment of almost \$10,000. A letter of demand was issued to the employer and after several emails, letters and negotiations with legal representatives, the matter was settled and the full amount of lost wages was paid to our client.



5. Project Outcomes

A summary of the outcomes achieved by BCLS over the course of this project can be found in the table below.

Objective	Activities	Outcomes
1. Increase awareness of temporary visa workers of their workplace rights and to enable them to enforce those rights	<ul style="list-style-type: none"> - Marketing and Promotion campaigns - Stakeholder meetings with referring partners - Delivery of Community Legal Education Sessions - Provision of Legal Assistance. 	<ul style="list-style-type: none"> - Increased exposure for BCLS through marketing and promotional campaign - Understanding that work rights is not a presenting issue for many people accessing other relevant community services. - 6 CLE sessions delivered - 28 advices, 21 advices, 7 casework files
2. Continue to attract workers from other countries to regional Victoria and ensure that Victoria is viewed as a place that respects and protects the work rights of international workers	<ul style="list-style-type: none"> - Research to identify local industries which utilise temp work visa holders for labour. - Stakeholder Meetings to identify barriers to attracting workers to region 	<ul style="list-style-type: none"> - Confirmation that Barwon South West does not attract a significant volume of working holiday makers due to a lack of appropriate work opportunities. - Improved knowledge of industry – e.g. Meat industry utilises overseas workers but few WHMs. Dairy industry seeks long term WHMs and only 1 per season.
3. Increase the experience and capacity of community legal centres to provide employment law advice and assistance to temporary visa holders.	<ul style="list-style-type: none"> - BCLS staff participated in training by JobWatch as well as project briefings - BCLS Lawyer attended Employment Law professional development activities - Visits to other services including JobWatch, Goulburn Valley CLC and West Justice 	<ul style="list-style-type: none"> - BCLS staff have an improved capacity to refer employment law cases to JobWatch - BCLS staff have increased knowledge of complexities of employment law allowing an informed strategic decision to pursue offering this specialist service. At this stage, the decision has been taken not to offer this service.



6. Key Learnings

Barriers to engagement

Despite the confirmed lack of temporary work visa holders in our region, the feedback in relation to why individuals do not report or seek legal help is similar to those reported in other regions and includes:

- Fear of having visa revoked
- Need to maintain employment as a source of income
- Cultural expectations to keep quiet – particularly in family business; and
- Lack of understanding about the legal system – perception that making an enquiry will result in immediate action

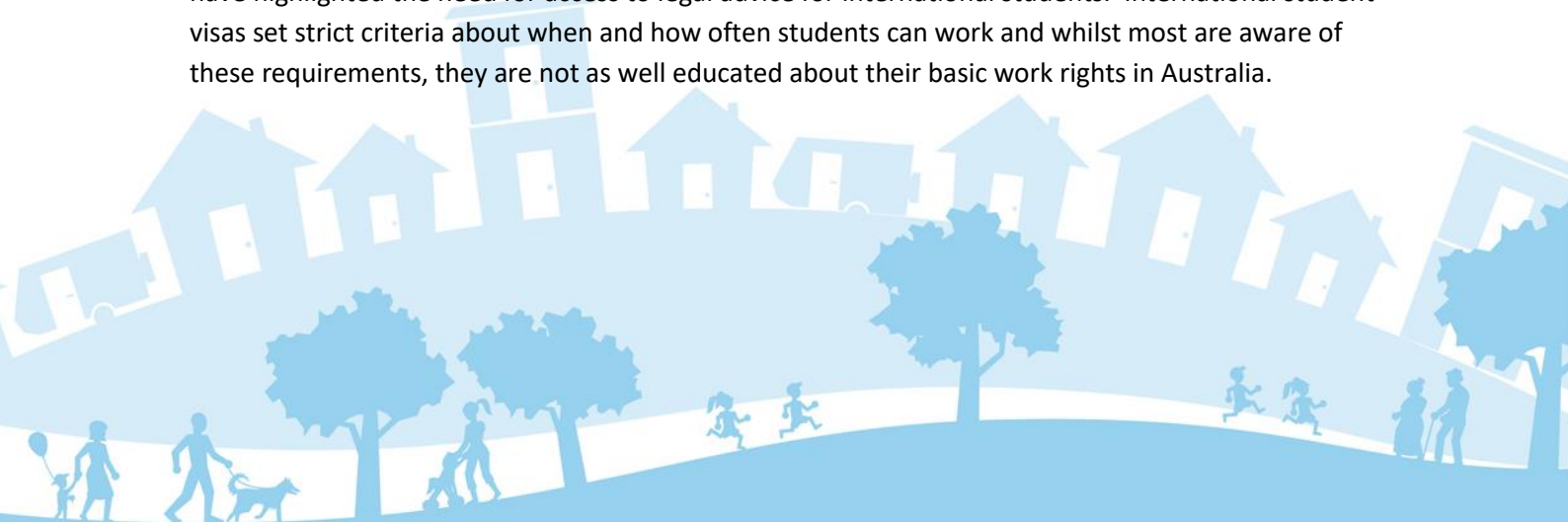
Consistent Messaging

Over the course of this project it became apparent that there is not one single reliable source of information targeted directly at working holiday makers or other temporary work visa holders. There is a breadth of unreliable and inaccurate information available across a range of sources including labour hire companies, backpacker hostels, tourist information and even migration services. The emergence of social media as a job searching tool also provides the opportunity for many fellow working holiday makers to provide advice and suggestions in regards to their work rights.

A strategy that was suggested was for work rights information and details of where to access help be distributed by the Department of Home Affairs at the time of visas being issued. Unfortunately attempts to provide this feedback directly to the Department were unsuccessful. Similarly, attempts to partner with the Fair Work Ombudsman to promote our free services were restricted by their unwillingness to be seen to be promoting community organisations.

International Students

Our CLE activities with Study Geelong and The Gordon, along with our work at Deakin University have highlighted the need for access to legal advice for international students. International student visas set strict criteria about when and how often students can work and whilst most are aware of these requirements, they are not as well educated about their basic work rights in Australia.



Identifying Dodgy Employers

One of the ongoing challenges for working holiday makers is how they identify legitimate employers. The introduction of the Working Holiday Maker Employer Registration Scheme in 2016 required all employers of working holiday makers to register with the Commissioner of Taxation in order to withhold tax at the new rate of 15 per cent. Ideally information about employers who have registered would be made publicly available and would be a great starting point for working holiday makers to check the validity of their employer.

Unfortunately, data sharing arrangements between key agencies currently restrict access to this information. The Federal Government's 'Report of the Migrant Worker's Taskforce 2019' noted that whilst initially the information was going to be made available to the public, the legislation was changed following debate in the Senate over privacy concerns.

Project Governance and Design

BCLS entered into this project on the basis of being able to assist the broader community by identifying business and industry that exploit vulnerable workers. Unfortunately, our early research uncovered that our assumptions about the volume of temporary visa holders in the region was proved to be unsubstantiated.

In light of this updated information, BCLS took into consideration various options for re-framing our approach including sub-contracting services to another region and targeting international students, before eventually determining it was best to return a portion of funding that was unused to JobWatch.

Ideally the project partners would have had an opportunity to work on some joint strategies and activities and funds could have been re-distributed in this way. With each region experiencing different challenges and focusing their efforts on priority cohorts of most relevance to them, we were unable to pursue any joint projects or pieces of work.



Appendix One: Client Journey Map

Mapping of Backpacker Engagement Points



Pre Departure

Migration Agents

Working Holiday Support Groups

On Arrival

Settlement Services

Accommodation Providers

English Language Classes

Visitor Information & Support Groups

Looking for Work

Labour Hire Companies

Recruitment Agencies

Employers

Online Job Boards

Other Assistance

Community Service Agencies

Training Providers

Unions

Workwear Shops

Appendix Two: Marketing Collateral

Sample Business Cards, Billboard Signage and Poster:

