

VISA PAK ISSUE 410 — 26 JULY 2019

WORKING HOLIDAY VISA HOLDERS AND FIXED TERM EMPLOYMENT AGREEMENTS

This advice is for staff that interact with external stakeholders. Following prior advice in Visa Pak issue 264 and issue 274, this item provides further advice in regards to employment agreements being offered to Working Holiday Visa (WHV) holders. Please note that employment agreements do not need to be provided with a WHV application.

The Immigration Act 2009 prevents a WHV holder from applying for a 'permanent' position. This creates confusion for employers who want to employ a WHV holder, but are also trying to comply with both the Immigration Act as well as Employment Relations Act 2000, which states that there must be reasonable grounds for offering fixed term employment.

It has been clarified that because the Immigration Act provides genuine and reasonable grounds for employers to not offer permanent contracts to WHV holders (as per s66 of the Employment Relations Act), that employers can offer fixed term contracts in these cases. For example, an employment agreement can specify that the fixed term duration is to comply with both Acts as the employee is a WHV holder, and if the client wishes to change their visa, the term of the contract may be reassessed at a later date.

For other classes of visas where there is no limitation on the term of employment, previous advice remains the same. The visa expiry date in itself does not meet the tests for having a fixed term contract.