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# TOWARDS A DURABLE FUTURE: TACKLING LABOUR CHALLENGES IN THE AUSTRALIAN HORTICULTURE INDUSTRY

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# CHAPTER ONE INTRODUCTION

## Introduction

Food production is of critical importance to Australia's economy and to its food security. The horticulture industry<sup>1</sup> produces 93% of the total volume of food consumed in Australia and forms a central part of the agriculture industry which contributes \$48.7 billion to GDP.<sup>2</sup> It also supports an agricultural export market valued at \$2.1 billion per annum.<sup>3</sup>

The horticulture industry is reliant on workers to pick, pack and grade fresh produce, with the bulk of the seasonal horticulture workforce in Australia drawn from different types of temporary visa holders.<sup>4</sup> However, evidence suggests that the workforce that sustains this industry is poorly regulated and managed. Despite growers attesting to labour shortages, the industry is often accused of non-compliance with labour standards, in particular for migrant workers.

This report interrogates both the extent of labour shortages in the horticulture industry for pickers, packers and graders and the level of non-compliance with labour standards. Its purpose is to comprehensively examine horticulture labour supply to develop a robust evidence base for analysing the effectiveness of existing policy arrangements and organisational practices and to identify areas for potential reform.

We conducted our research over a three-year period from 2016–18 (see Figure 1.1). The research has involved a National Survey of Vegetable Growers involving 332 growers, and 13 regional case studies involving interviews and focus groups with 121 growers, 124 workers and 110 other

stakeholders from industry associations, trade unions, labour hire, local, state and federal government, accommodation providers and community groups. The preliminary findings were presented at a workshop involving 25 stakeholders from industry, unions and government, whose feedback has been taken into account in this final report. While this data collection process, including 13 cases, cannot entirely capture every possible horticulture context, it does provide an unprecedented and detailed picture of the industry within a number of geographical locations.

The methodology described above afforded us the opportunity to gain a relatively holistic understanding of the horticulture industry in Australia. Indeed, the comprehensive analysis of the focus groups and interviews undertaken by the research team for this report results in the most systematic and thorough investigation of the horticulture industry to date in Australia. A full description of the methodology for the project can be found in Appendix A.

### FIGURE 1.1 PROJECT STAGES

#### Phase One (2016)

Stakeholder meetings and  
Secondary Documentary Analysis

#### Phase Two (2016)

National Survey of  
Vegetable Growers  
332 growers

#### Phase Three (2016–2018)

Stakeholder Interviews and  
Focus Groups  
121 growers  
124 workers  
110 other stakeholders

#### Phase Four (2018)

Stakeholder workshop  
8 government officials  
12 grower reps  
5 union reps  
5 academics

<sup>1</sup> The term 'horticulture' covers farms that grow tree and vine crops such as pome fruit, stone fruit, citrus, wine and table grapes, and vegetables: Hayden Valle, Niki Millist and David Galeano, *Labour Force Survey* (Department of Agriculture and Water Services, May 2017) 6 <[http://data.daff.gov.au/data/warehouse/9aaam/2017/ABARESLabourForceSurvey/LabourForceSurvey\\_%2020170518\\_v1.0.0.pdf](http://data.daff.gov.au/data/warehouse/9aaam/2017/ABARESLabourForceSurvey/LabourForceSurvey_%2020170518_v1.0.0.pdf)>.

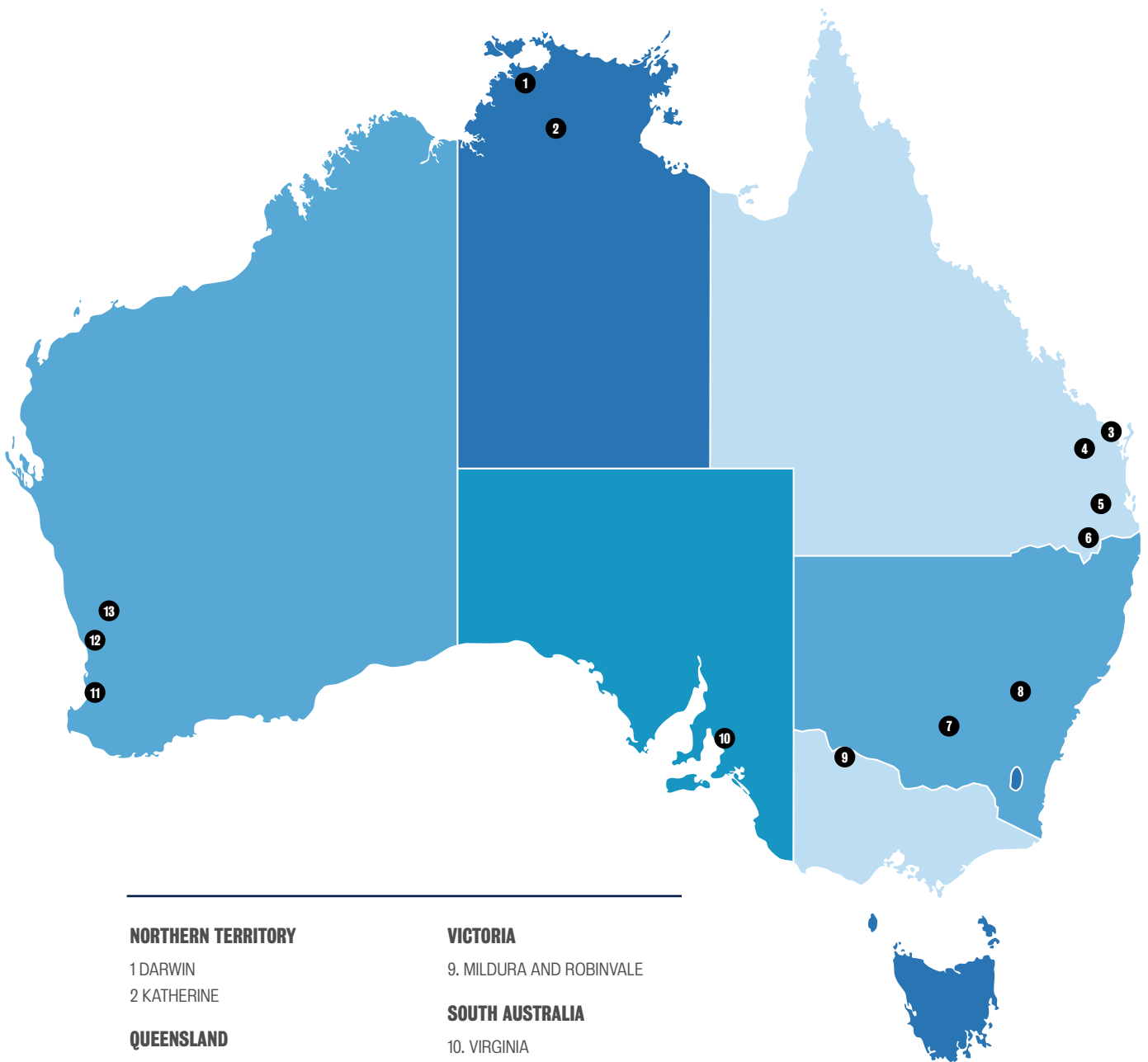
<sup>2</sup> Australian Bureau of Statistics, *4102.0 - Australian Social Trends, April 2013* (10 April 2013) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/4102.0Main%20Features1April%202013>>.

<sup>3</sup> Department of Agriculture and Water Resources, *Horticulture Fact Sheet* <[http://www.agriculture.gov.au/ag-farm-food/hort-policy/horticulture\\_fact\\_sheet#trade-statistics](http://www.agriculture.gov.au/ag-farm-food/hort-policy/horticulture_fact_sheet#trade-statistics)>.

<sup>4</sup> Joanna Howe et al, *Sustainable Solutions: The Future of Labour Supply in the Australian Vegetable Industry* (Report, Horticulture Innovation Australia, 2017). Similarly, a 2016 study conducted by the Australian Bureau of Agricultural and Resource Economics and Sciences found that close to 70% of seasonal horticulture workers were visa holders: Valle, Millist and Galeano, above n 1.

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## CASE STUDY LOCATIONS



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### **NORTHERN TERRITORY**

- 1 DARWIN
- 2 KATHERINE

### **QUEENSLAND**

- 3. BUNDABERG
- 4. MUNDABBERA AND GAYNDAH
- 5. LOCKYER VALLEY
- 6. STANTHORPE

### **NEW SOUTH WALES**

- 7. GRIFFITH
- 8. ORANGE

### **VICTORIA**

- 9. MILDURA AND ROBINVALE

### **SOUTH AUSTRALIA**

- 10. VIRGINIA

### **WESTERN AUSTRALIA**

- 11. BINNINGYUP
- 12. WANNEROO
- 13. GINGIN

## Research questions

When we commenced our research, broad agreement on several basic tenets around horticulture labour supply already existed in the community and in the political sphere. For instance, there was general consensus that:

- growers had a legitimate need to employ migrant farm workers;
- the main rationale for employing these workers was to fill gaps in the Australian workforce;
- temporary migrant farm workers should not displace Australians;
- engaging migrant farm workers should open up more training and investment to develop a skilled, Australian horticulture workforce; and
- the wages and conditions of temporary migrant farm workers should be the same as that of Australian workers.

Starting from those generally accepted positions, we developed a set of interrelated research questions, which are addressed separately in each chapter of the report.

These research questions form the basis for this report. In interrogating these questions, we were mindful of the politically sensitive nature of horticulture labour supply. We have sought to understand the issues and concerns through an independent and scholarly research method, combining a thorough doctrinal and policy analysis with both quantitative and qualitative research. At various stages throughout the three-year project we have consulted and engaged with a Stakeholder Advisory Group, including a diverse array of representatives from government, industry, unions, labour hire and the community.

## The Horticulture Labour Market

There are approximately 130,000 workers in Australia's horticulture industry.<sup>5</sup>

While adequate data are not collected on the volume of workers required in each occupation within this workforce, it would appear that pickers, packers and graders comprise the largest group of workers in the horticulture industry.

The horticulture labour market relies on a number of different sources of labour.

### Local workers

'Local workers' is a broad category that includes the following groups of people:

- Younger workers, including recent school leavers, who live in the towns and regions situated near farms.
- Long-term unemployed people who are residents of the towns and regions situated nearby to farms and who receive welfare support.
- Recent migrants with permanent residency status, including those on humanitarian visas, who live in the towns and regions situated near farms.
- 'Permanent itinerants' and retirees or 'grey nomads' who move from location to location in response to seasonal demand.

Growers commonly assert that "there are no locals" or that "locals don't want to do this work anymore" but this belies the heterogeneity of the local workforce. For instance, recent permanent migrants, including those on humanitarian visas and from developing countries, have become an important component of the horticulture workforce in some regional labour markets.

### Temporary migrant workers

The horticulture industry is increasingly reliant on a temporary migrant workforce. There are a number of different types of temporary visa holders employed in the harvest workforce. These are:

- Working Holiday Makers (WHMs)
- Seasonal Workers from the Pacific in the Seasonal Worker Program (SWP)
- Annual workers from the Pacific in the Pacific Labour Scheme (PLS)
- International students

Of these four types of temporary migrants, WHMs are by far the most common source of harvest labour used in Australia; however, their engagement varies regionally. Last year, 36,617 WHMs were granted a second year extension on their visa, with a likely 90% of these earning this extension through working for 88 days in the horticulture industry. In contrast, in that same year only

## RESEARCH QUESTIONS

### 1. What is the nature and extent of non-compliance with labour standards in the horticulture industry?

Chapter 2: Compliance with Labour Standards

Chapter 3: Supply Chain Pressures

Chapter 4: The Role of Labour Hire

Chapter 5: The Presence of Undocumented Workers

### 2. What is the nature and extent of labour shortages in the horticulture industry?

Chapter 6: Understanding Labour Supply Challenges

### 3. What are the skills and capabilities of the local horticulture workforce and what barriers exist to engaging local workers in the industry?

Chapter 7: Developing a Local Workforce

### 4. How have horticulture regions responded to challenges arising from labour supply issues and non-compliance with labour standards?

Chapter 8: Regional Initiatives

### 5. How effective is regional infrastructure in supporting horticulture labour supply and regulation?

Chapter 9: Regional Infrastructure: Accommodation and Transport

### 6. How effective are existing visa pathways for temporary migrants to work in horticulture in addressing labour supply issues and non-compliance with labour standards?

Chapter 10: The Working Holiday Maker Program; and

Chapter 11: The Seasonal Worker Program

### 7. What are the considerations that need to be taken into account in developing a dedicated agriculture visa?

Chapter 12: An Examination of the Agriculture Visa Concept

### 8. How can sustainable solutions be developed to the labour challenges facing the horticulture industry?

Chapter 13: The New Zealand Approach

Chapter 12: Conclusion

<sup>5</sup> Fair Work Ombudsman, *Horticulture Industry Shared Compliance Program 2010* (Final Report, November 2010).

8,459 workers from the Pacific on the SWP were employed in horticulture. The PLS only came into effect on 1 July 2018 and there is only one PLS employer approved to sponsor Pacific workers in horticulture. The number of international students working in horticulture is unknown.

### Undocumented workers

Undocumented workers are also prevalent in the horticulture industry, although it is impossible to determine the extent and nature of their involvement. Evidence from the interviews and focus groups suggests that the numbers of undocumented workers also vary from region to region, with virtually no presence in some regions, and in others amounting to almost all the harvest workforce.

We use the term ‘undocumented workers’ in this report to reflect the following types of workers:

- Visa overstayers — when a visa is no longer valid because it has expired.
- Visa holders without a right to work — typically, these involve migrants on tourist visas that do not contain a right to work in Australia.
- Visa holders in breach of a visa condition allowing a limited right to work — these are usually international students in breach of the restriction preventing them from working for more than 40 hours a fortnight during semester.

In each of these situations, the worker is considered to be ‘undocumented’ because they are in breach of the law and liable for deportation under the *Migration Act 1968* (Cth).

### Core Findings

The core Findings from the report are explained below. A full list of Findings can be found in Appendix B.

#### Non-compliance with labour standards

The report finds that the industry does not operate on a level playing field because of the presence of large numbers of undocumented workers and the widespread exploitation of temporary migrant workers. The compliance challenge facing the horticulture industry means that, despite the admirable efforts of a large number of compliant growers, poor labour standards and worker exploitation have become established norms in pockets of the horticulture labour market.

The current approach also creates an unacceptable level of vulnerability for many workers employed in the horticulture industry who are left without appropriate and effective regulation, oversight and enforcement of their working conditions.

The issue of non-compliance with labour standards on farms, particularly as a by-product of temporary visas for WHMs and Pacific workers, has become a topic of concern in Australia ever since 2015 when a *Four Corners* program exposed serious exploitation of migrant farm workers.<sup>6</sup> This is especially so with the increase in media reports, government inquiries and academic studies which have drawn attention to working conditions on farms.<sup>7</sup> The Fair Work Ombudsman’s *Harvest Trail Inquiry Report* released in November 2018 identifies wage underpayments, amongst other instances of non-compliance, as a widespread problem.<sup>8</sup>

#### Competition between visa types

There is evidence that current labour supply options — locals workers, WHMs, Pacific workers and undocumented workers — are being inadequately managed and competition between these various sources of labour supply produces a segmented horticulture labour market. In the report, we consider how the crowded horticulture labour market produces a race to the bottom in compliance with labour standards.

In particular, there is a significant disparity between the regulation of the SWP and the WHM program, which has produced a much greater reliance by growers on WHMs than Pacific workers and other sources of labour supply. This disparity can also be attributed to the poor management of the SWP, the higher costs associated with its use and the lack of industry support for this scheme.

The report finds that unfair competition between growers is facilitated through the industry’s reliance on non-compliant labour hire contractors who control the supply of labour to farms. The absence of effective regulation, oversight and monitoring of labour hire contractors in horticulture has led to a systemic practice of contractors supplying labour to farms on non-compliant wages and conditions.

Thus, this report does not find that there is a need for more temporary migrant workers employed in the Australian horticulture industry. Rather, it concludes that there is a need for a *better targeted, more reliable and sustainable* labour migration program. The level of regulation and costs between different visas which allow horticulture work should be commensurate in order to avoid unfair competition between different groups of visa holders in the labour market and the growers who rely on them.

We draw on evidence from our case study of New Zealand’s Recognised Seasonal Employer scheme (RSE) to demonstrate the capacity of a best practice, horticulture

labour migration program to meet industry’s labour needs whilst ensuring a level playing field amongst growers and the protection of vulnerable workers.

A key factor for the success of the RSE has been a genuinely constructive and highly proactive partnership between government, industry and unions. This joint stakeholder approach, developed both prior to, and after the RSE’s inception, has been pivotal to designing, implementing and monitoring a scheme that meets its objectives. The shift to the RSE has produced far less reliance on WHMs in New Zealand’s harvest workforce.

The Australian horticulture industry cannot be a carbon copy of its New Zealand counterpart and thus the RSE’s success cannot be completely replicated here. However, much can be learnt from the experience across the Tasman in developing a better program for deploying temporary migrant labour to Australian farms.

#### Supply chain pressures

The horticulture supply chain is complex. To move fruit and vegetables from the farm to the consumer typically involves a number of commercial transactions in which the bargaining power of the grower to negotiate a fair price may be constrained. The retailers, who are the lead firms at the apex of the supply chain, have increased their commercial presence as a result of market concentration and business consolidation through mergers and acquisitions. This has increased their ability to demand higher quality fruit and vegetables delivered efficiently at lower prices.

This report demonstrates how supply chain pressures can create challenges for the ability of growers to plan their current and future workforce needs and comply with labour standards. Industry-led initiatives such as Fair Farms are welcome developments in improving compliance with labour standards, as they create opportunities for lead firms in the supply chain to take responsibility for labour standards on farms by requiring independent audits of growers who supply to them. International evidence indicates that multi-stakeholder forms of regulation are most effective at improving labour standards and minimising supply chain risks when they genuinely involve engagement with workers, unions and community organisations.

This report also notes that attempts to regulate supply chain pressures may be undermined without competition policy reform and a systematic review of industry dynamics to encourage growers and other firms in the supply chain to compete more on quality, innovation and productivity rather than cost minimisation.

<sup>6</sup> ABC, *Slaving Away: The Dirty Secrets behind Australia’s Fresh Food* (4 May 2015) Four Corners <<http://www.abc.net.au/4corners/stories/2015/05/04/4227055.htm>>.

<sup>7</sup> These are examined in Chapter 2 of the report.

<sup>8</sup> Fair Work Ombudsman, *Harvest Trail Inquiry: A Report on Workplace Arrangements along the Harvest Trail* (Report, 2018).

## Labour supply challenges

In our National Survey of Vegetable Growers, 40% of those surveyed indicated that they had not been able to recruit sufficient pickers, packers and graders at some point in the previous five years, with 63% of this cohort leaving vegetables unpicked. But when we interrogated this at a regional level, we did not find a uniform picture within the industry, as labour shortages were neither absolute nor systematic.

Instead, 'labour supply challenge' was a more accurate depiction of the labour situation facing the horticulture industry in Australia at the time we conducted the survey and regional case studies. The labour supply challenge was more pronounced in some regions than in others and more pronounced within some parts of regions than others. This challenge was particularly notable in regions that were more remote and found it difficult to attract WHMs, or regions that were not classified as eligible postcodes for the WHM visa extension.

The preconditions for a labour shortage might be met in some of these regions, particularly if undocumented workers were no longer available. In contrast, in some regions, there was an oversupply of labour, arising from visa regulations and an ample presence of undocumented workers which distorted horticulture labour supply.

Based on our research, it is our assessment that this oversupply and distortion of the horticulture labour market will be exacerbated by the significant changes to the WHM program mooted in November 2018. These reforms enable a third year visa extension for WHMs who are employed in horticulture for six months during the second year of their visa. They enable a single employer to hire a WHM for the full three years of the visa. The federal government has also undertaken to extend the quota for partner countries within the WHM visa subclass 462 program and provide the opportunity for temporary migrants on this visa to work in an area other than Northern Australia in order to earn a second and third year visa extension. Cumulatively, these modifications of the WHM program represent the most fundamental change to the horticulture labour market since the introduction of the WHM second year visa extension in 2005.

Many growers will likely welcome the opportunity to employ WHMs for a three-year period as this means that there will be less turnover in the workforce and greater opportunity to invest in developing a skilled horticulture workforce. However, there is a very real concern that this reform effectively creates a backdoor agriculture visa without any of the necessary checks and balances required to ensure that the visa does not result in worker exploitation.

A study of agriculture visa arrangements across the globe suggests that the integrity of these visa schemes is difficult to achieve without strong regulatory design and robust mechanisms for oversight and enforcement. The WHM program is not designed as a labour market program and, as such, there are almost no additional requirements on growers who use the visa to access workers, and no additional mechanisms for oversight and monitoring. As the second year visa extension has exacerbated worker exploitation it is hard to see how the third year visa extension will produce a different outcome.

It is likely that this reform will lead to domestic labour hire contractors, in conjunction with offshore recruitment networks, increasingly channelling WHMs into regional areas. Tying a migration outcome to the performance of work via the second and third year visa extensions gives contractors and recruitment agents the opportunity to exploit vulnerable workers eager to remain in Australia. In this report we present evidence about these problems which already exist in the horticulture labour market in relation to the second year visa extension for WHMs, a situation which will likely be worsened with the introduction of the opportunity for a third year visa extension.

The high wage differentials between Australia and many of the partner countries in the WHM program (in particular the subclass 462 visa) will increase the likelihood that some WHMs will accept exploitative work. Furthermore, the fact that the Department of Home Affairs will not track WHMs' whereabouts in the economy (in contrast to other regulated visa programs such as the SWP or PLS) is likely to provide a pipeline to undocumented work through visa overstaying, which currently occurs through the international student and tourist visas.

In sum, the liberalisation of the visa pathway coupled with the absence of regulation means the WHM program is likely to greatly increase labour supply and non-compliance with labour standards.

## Developing a local workforce

This report finds that there is a declining number of local workers, who are long-term Australian residents attracted into the horticulture industry, and a perception by growers that these workers are less reliable and motivated. Government programs that have sought to encourage this group into horticulture work have been largely unsuccessful.

Additionally, the absence of concrete efforts to develop attractive career pathways in horticulture, and of sophisticated management strategies focused on training and improving worker commitment and retention, and generally poor job quality compared to other industries, have led to the declining pool of local workers in horticulture who are long-term Australian residents.

In contrast, local workers who are recently settled migrants from developing countries have proved to be a reliable and desired horticulture workforce in some regions. There is also scope for growers to continue investing and adopting in labour-saving technology as a permanent solution to low-skilled labour supply challenges. Mechanisation has the potential to improve the horticulture industry's international competitiveness and create opportunities for higher-skilled jobs to manage new technology.

## Regional initiatives and infrastructure

Improving visa pathways is not the only priority for future-proofing the horticulture industry's labour supply. This report finds that a multi-stakeholder approach is essential for ensuring a consistent supply of labour in the Australian horticulture industry and widespread compliance with labour standards. In New Zealand the challenge of engaging multiple stakeholders occurs nationally through a National Steering Group involving government, industry and unions and regionally, through 12 Regional Steering Groups with representatives from local areas.

We believe that the Australian horticulture industry is disadvantaged by not having a similar, formal, collaborative infrastructure at the national and regional level. While this report analyses many regional partnership initiatives that address labour supply and non-compliance challenges, a more regionally specific but systematic approach would protect the industry more effectively.

In particular, we found that in regions where there were concerted, multi-stakeholder attempts to stop the operation of non-compliant intermediaries who supply labour to growers, this greatly reduced costs, misinformation and exploitation. We found that in regions where individual growers, supported by a network of local individuals and community organisations, chose to hire labour from reputable sources and to expose growers who were non-compliant, this created a level playing field for all growers. These regional stakeholder networks were not only important for promoting compliance with labour standards, but also for ensuring a consistent supply of labour for the local industry.





## Conclusion

It is clear from our research that this is a time of tremendous opportunity for growth of the Australian horticulture industry. But the industry has also reached an important crossroad in relation to the labour force that will service the industry.

There is a choice between developing a 'low-road' or 'high-road' approach to horticulture labour supply. The former involves a crowded, segmented horticulture labour market in which various sources of labour compete to give growers a low-cost workforce because of non-compliance with labour standards and the proliferation of undocumented workers and contractors arising from weak enforcement, oversight and regulation. This road will be replete with negative media stories and poses risks to the reputation of the industry and its potential for growth into new markets. It leaves the industry highly segmented and open to exploitation by unscrupulous growers and labour hire contractors and allows retail outlets to charge prices for produce based on an unrealistic assessment of the true cost of production, in particular the cost of labour.

In contrast, a 'high road' approach involves a change in direction through genuine dialogue and commitment among stakeholders to work together to develop labour supply solutions. This will involve the development of a national, long-term strategy for horticulture labour supply, which encompasses concerted investment in mechanisation to develop greater productivity and opportunities for the development of a local, skilled horticulture workforce, enforcement of the Horticulture Award and a regulated labour migration program which provides committed, reliable and productive overseas workers to the industry. This road to reform means labour costs will be higher and more uniform across the industry. This comes with multiple benefits to growers including diverting competition away from the cost of labour to more productive points of difference such as product quality and technological innovation, improving the reputation of the industry, which will be crucial when competing in international export markets, and increasing cooperation between growers and other stakeholders in relation to labour supply and production.

# **PART 1: AN UNEVEN PLAYING FIELD**

# CHAPTER TWO

# COMPLIANCE WITH

# LABOUR STANDARDS

## Introduction

**It is critical to the viability of the horticulture industry that there is a level playing field so that growers who comply with their legal obligations in relation to the employment of workers are not disadvantaged.**

This requires eliminating unfair competition from unscrupulous operators. This is important for safeguarding the reputation of the industry both domestically and internationally and creating a market environment that rewards sound business and management practices while focusing on productivity, and product and process innovation, rather than non-compliance.

Non-compliance undermines the principle of fair competition which the market relies upon to operate efficiently. Honest businesses cannot compete with unscrupulous businesses that only profit through a strategy of undercutting.

Furthermore, non-compliance with labour standards exposes workers to exploitation and affects the reputation of the industry. It weakens any argument for a solution to labour supply challenges through visa reform.

## Findings

Our research found that there are number of reasons why the horticulture industry is not a level playing field in relation to compliance with labour standards.

**1. There is non-compliance with labour standards by a subset of growers.** Although it is impossible to quantify the extent of non-compliance, there is a growing body of evidence to suggest that non-compliance is endemic and multi-faceted.

**2. The horticulture labour market is segmented and produces a race to the bottom in labour standards.** This segmentation is derived from the availability of a range of labour sources with different levels of regulation and oversight. These include workers from the Pacific through two programs, the Seasonal Worker Program (SWP) and the Pacific Labour Scheme (PLS), Working Holiday Makers (WHMs), local workers and undocumented workers. Although each of these categories of workers is entitled to the same wages and conditions under Australian law, the different regulatory frameworks for each of these sources of labour produces a segmented horticulture labour market where growers can maximise profits through selecting a source of labour that is more vulnerable to exploitation. The recent reforms extending the PLS and introducing a third year extension for WHMs substantially increase the risk that the horticulture labour market will become even more segmented.

**3. Supply chain pressures on growers undermine fair competition in the horticulture industry.** Supply chain pressures can create planning and compliance challenges for growers in terms of the ability of growers to plan their current and future workforce needs and comply with labour standards. However, supply chain pressures are also a potential source for improving labour standards in horticulture.

# FINDING #1: THERE IS NON-COMPLIANCE WITH LABOUR STANDARDS BY A SUBSET OF GROWERS

A significant and growing body of evidence suggests that non-compliance is widespread in Australian horticulture. Growers and labour hire contractors acting in their individual, short-term interests have been found to underpay wages and otherwise mistreat workers. The media has been a source of much information on non-compliance.<sup>9</sup>

There is also significant evidence of wage underpayments in horticulture, particularly among WHMs in academic research,<sup>10</sup> parliamentary inquiries<sup>11</sup> and in publications from the Fair Work Ombudsman (FWO).<sup>12</sup> A FWO report found that 39% of horticulture employers were non-compliant with labour standards.<sup>13</sup> The FWO's Harvest Trail Inquiry recovered over a million dollars in wages but its report indicated the FWO's belief "that the full extent of wage underpayments is significantly higher than this".<sup>14</sup>

In 2017 an online survey of 4,322 temporary migrants in Australia found that the worst paid jobs were in fruit and vegetable picking, where 15% of respondents said they had earned \$5 an hour or less and 31% had earned \$10 an hour or less.<sup>15</sup>

It is important to note that worker exploitation goes beyond non-compliance with labour standards. Researcher Sayomi Ariyawansa observes that it "involves taking unfair advantage of a person or their situation of vulnerability".<sup>16</sup> In our focus groups and interviews many reports were made of wage underpayments of visa holders employed in the horticulture industry but this was not the only exploitative circumstance. Many attributed the nature and scale of exploitation as stemming from temporary migrant workers' vulnerability as visa holders which allowed some growers and labour hire contractors to take advantage of them.

Evidence from the case studies described practices of both growers and labour hire contractors such as:

- Ignorance of the correct pay rate by growers
- Being unable to afford to pay the correct rate and paying less
- Paying different wages for the same work to different cohorts of workers
- Paying different wages to the same workers over a period of time depending on the market rate for the product
- Paying cash in hand
- No written piece rate agreement
- Extremely low piece rates based on an inflated assumption of the competency of the average worker
- Unpaid work
- Lack of clarity over whether payments are taxed
- Inadequate and/or falsified payslips
- Harassment, bullying and sexual harassment
- No investigation of allegations of harassment, bullying and sexual harassment (in some cases, moving the perpetrator to another farm)
- Unfair sacking
- Substandard, crammed accommodation, in some cases in farm sheds with a mattress on the floor
- Lack of training and supervision
- Lack of record keeping
- Poor and, in some cases, no occupational, health and safety training and awareness
- Lack of access to water and sun protection
- Inflated deductions for transport, accommodation and equipment

- Intimidation, beatings and bullying by contractors
- Confiscation of passports by contractors

A number of factors contribute to non-compliance in Australian horticulture. Workers are vulnerable to mistreatment when working in remote locations, particularly when they do not have their own transport. WHMs are dependent on their employers to provide payslips for farm work performed towards their second year visas.<sup>17</sup> SWP workers rely on continuing sponsorship from their employers to remain in Australia and to return. Undocumented workers have limited access to jobs in Australia and rely on farm work to earn an income. Many of these workers also possess the usual vulnerabilities common to temporary migrants and young workers such as poor English language skills and temporary migration status.

The financial circumstances of growers can create downward pressure on wages. Growers interviewed reported rising costs but stagnant income in recent decades. The nature of the product market contributes to this with 73% of it made up of only two supermarkets which use price competition to keep wholesale prices down,<sup>18</sup> even below cost price in some cases (discussed in detail later in Chapter 3).<sup>19</sup>

There are also quite weak employment law enforcement institutions. The FWO has little ability to enforce employment laws due to the geographically dispersed locations of farms, difficulties locating some labour hire contractors and under-resourcing of the inspectorate.<sup>20</sup> Unions also have a limited, albeit growing, presence in the horticulture sector.

<sup>9</sup> Ben Doherty, 'Hungry, Poor, Exploited: Alarm over Australia's Import of Farm Workers', *The Guardian* (online), 3 August 2017 <<https://www.theguardian.com/global-development/2017/aug/03/hungry-poor-exploited-alarm-over-australias-import-of-farm-workers>>; ABC, above n 6; Nick McKenzie and Richard Baker, 'Fruits of their Labour: Investigation into Exploitation of Migrant Fruit Picking Workers in Australia', *The Sydney Morning Herald* (online), November 2016 <<http://www.smh.com.au/interactive/2016/fruit-picking-investigation/>>.

<sup>10</sup> Elsa Underhill and Malcolm Rimmer, 'Layered Vulnerability: Temporary Migrants in Australian Horticulture' (2015) 58 *Journal of Industrial Relations* 608.

<sup>11</sup> Senate Education and Employment References Committee, *A National Disgrace: The Exploitation of Temporary Work Visa Holders* (Report, Parliament of Australia, 17 March 2016); Joint Standing Committee on Foreign Affairs, Defence and Trade, *Hidden in Plain Sight: An Inquiry into Establishing a Modern Slavery Act in Australia* (Report, Parliament of Australia, December 2017).

<sup>12</sup> Fair Work Ombudsman, *Inquiry into the Wages and Conditions of People Working under the 417 Working Holiday Visa Program* (Report, October 2016).

<sup>13</sup> Fair Work Ombudsman, *Horticulture Industry Shared Compliance Program 2010*, above n 5, 1.

<sup>14</sup> Fair Work Ombudsman, *Harvest Trail Inquiry*, above n 8, 4.

<sup>15</sup> Laurie Berg and Bassina Farbenblum, *Wage Theft in Australia: Findings of the National Temporary Migrant Worker Survey* (Migrant Worker Justice Initiative, 2017) 30.

<sup>16</sup> Sayomi Ariyawansa, 'On the Backs of Migrant Workers - Imported Labour in the Australian Agriculture Sector' (paper presented at the Australian Labour Law Association 9th Biennial National Conference, Gold Coast, 9 November 2018).

<sup>17</sup> Fair Work Ombudsman, *417 Visa Inquiry*, above n 12.

<sup>18</sup> Senate Education and Employment References Committee, above n 11.

<sup>19</sup> Howe et al, *Sustainable Solutions*, above n 4.

<sup>20</sup> Stephen Clibborn and Chris F Wright, 'Employer Theft of Temporary Migrant Workers' Wages in Australia: Why has the State Failed to Act?' (2018) 29 *Economic and Labour Relations Review* 207.

Non-compliance with labour standards negatively impacts not just workers, but also growers and their communities. As well as providing labour for growers, temporary migrant workers spend their money in the community on accommodation, food and entertainment. Non-compliance with labour standards and other mistreatment of temporary migrant workers will build a negative reputation for regions and reduce labour supply to those regions and the level of income in their businesses.

In the focus groups, WHMs told us of some regions they considered ‘exploitation hotspots’ which they would never visit to do farm work. These ‘no go’ zones became quite well known amongst the WHM community on Facebook. Temporary migrant workers can choose which country to travel to and, if they choose to work in horticulture, can choose from many regions within Australia. Therefore, regions are in competition with each other and Australia is in competition with other nations to attract visitors and workers. Maintaining a good reputation in terms of how workers are treated is crucial, particularly given the ease with which information can spread quickly via social media.

## STAKEHOLDER PERSPECTIVES

“Most of them have at least one story to tell. I mean we backpackers — I think what comes up the most is cities like Bundaberg or Mildura or — yeah I don’t know, cities like that, Griffith ... These are places where all the backpackers say, ‘Don’t go there, don’t go there ...’”

### WHM (Stanthorpe)

“Are backpackers necessary for the area? Yes, they certainly are. Is there exploitation going on? Yes, there certainly is. Is that exploitation damaging the reputation of Stanthorpe as an area to come to? I’d say it’s probably damaging a lot of areas. A lot of the kids see it as a necessary evil. They’ll certainly report it. They’ll do their 88 days and suffer or they might do 20 here, 30 there and 30 there to get their 88 and find one good area and a couple of bad areas. The bad area will get reported. Now if that bad area happens to be Stanthorpe that they ended up with the wrong farmer it taints the whole district. That’s the big problem. I don’t think the older farmer has woken up to the fact that social media a) exists and b) goes at the speed of light. They think that they can do what they’ve done for years before and nobody cares and nobody will find out.”

### Accommodation provider (Stanthorpe)

## FINDING #2: THE HORTICULTURE LABOUR MARKET IS SEGMENTED AND PRODUCES A RACE TO THE BOTTOM IN LABOUR STANDARDS

This section examines the different sources of labour available in the horticulture labour market. It demonstrates how reliance on different sources is not solely based on the price of labour as reflected in wages. It also reflects the preferences of growers for a workforce with particular characteristics relating to their labour productivity, flexibility, ease of recruitment, regulatory burdens and other related differential features associated with each source of labour supply.

Segmentation is a process by which different groups of workers in the labour market are compartmentalised, thereby resulting in different labour market outcomes for different sets of workers.

As Paul Ryan, a leading labour economist, has observed, “*segmentation becomes interesting when it results in the failure of the labour market to treat its participants even-handedly, in that it accords significantly different opportunities and rewards to otherwise comparable people. The functioning of such a labour market, then, diverges considerably from the competitive norm*”<sup>21</sup>

This section exposes how the horticulture labour market diverges from the ‘competitive norm’. We found that temporary migrant workers who perform the occupation of pickers, packers and graders do not receive consistently comparable wages and conditions.

**Our analysis shows how disparity in the immigration settings present in various visas combines with poor enforcement of labour standards to produce a segmented horticulture labour market where there is a clear divergence in the wages and conditions received for the same occupation within the horticulture labour market.**

We identify two main types of segmentation involving temporary migrant workers. First, between WHMs and Seasonal Workers from the Pacific and second, between undocumented workers and workers who are employed in compliance with a valid visa.

<sup>21</sup> Paul Ryan, ‘Segmentation, Duality and the Internal Labour Market’ in Frank Wilkinson (ed), *The Dynamics of Labour Market Segmentation* (Academic Press, 1981) 3, 4.

The horticulture industry's segmented labour market has a number of consequences. In this section we discuss the three most significant.

First, this segmentation produces a compartmentalised workforce with different levels of vulnerability in the labour market. It enables growers and contractors to avoid compliance with labour standards with relative ease and impunity.

Second, this segmentation produces groups of workers with different work ethic and skill. This enables growers who use particular segments of the workforce to achieve greater efficiency and labour productivity, thereby reducing the cost of labour per unit of output.

Third, it results in unfair competition amongst employers by enabling some employers to gain a competitive advantage through using segments of the workforce who accept lower wages and conditions because they have fewer rights and less bargaining power. In short, this segmentation produces unfair competition which results in an uneven playing field.

## STAKEHOLDER PERSPECTIVE ON LABOUR MARKET SEGMENTATION

“We need to talk about the cohorts within this space separately, because the backpacker, what they face versus the undocumented versus the permanent resident, the asylum seeker, the visa holder [all have] different ... layers of exploitability. So you've got people on Centrelink who are exploitable in a particular way. An asylum seeker is exploitable in a particular way, and then backpackers — so the less educated you are, or the more precarious your position, the more exploitable you are, obviously. Backpackers are exploitable because they want to get the 88 days' kick on visa, and that could be exploitable in the sexual with the young woman or whatever the case may be, or 'Do this and I'll sign off on it and you don't have to work a day at my farm'. And then you've got the undocumented, who are just completely precarious.”

**Community group representative (Mildura)**

We argue for a reduction in labour market segmentation produced through migration regulation and controls to mitigate these effects in order to reduce worker exploitation, safeguard the industry's reputation and improve the legality and efficiency of its labour supply.

### Substitution effect

The term 'substitution effect' has its origins in economics, which refers to a 'substitution effect' as an understanding that when prices rise, or incomes decrease, households will make less costly decisions for allocating their resources.<sup>22</sup>

Applying this term to the horticulture labour market, a 'substitution effect' would be understood as referring to horticulture employers preferring one group of workers over another based on the cost of labour.

There is a clear substitution effect between undocumented workers and workers entitled to work in the horticulture industry. The opportunity to pay undocumented workers in cash and considerably below award wages is used by unscrupulous labour hire contractors and growers to unfairly reduce costs and gain a competitive advantage over compliant growers. The low risk of detection of non-compliant behaviour, and the small financial penalties that accompany non-compliance, further increases the attractiveness of this option.

There is also a clear substitution effect between WHMs and Seasonal Workers from the Pacific. The lack of regulation and lower costs associated with employing WHMs is a likely reason for the much greater reliance on WHMs in the industry.

The horticulture industry has available to it a number of different sources of labour, each with a different level of regulation and oversight. This has created opportunities for some growers to use unregulated and under-regulated sources of horticulture labour to reduce labour costs. This undermines the ability of the horticulture industry to be a level playing field.

As the relationship between wages and productivity affects business profits, it is unsurprising that different growers use different segments of the labour market to maximise their return. The two dominant sources of horticulture labour reflect this.

Evidence from the case studies suggests that undocumented workers are perceived as low cost and highly productive, and WHMs

are generally regarded as moderately low cost and generally unproductive, although growers reported backpackers from Asian countries as highly productive. In contrast, SWP workers are generally regarded as highly productive by growers who employ them but they are perceived as a more expensive source of labour because of the costs associated with engaging with the SWP.

The segmented horticulture labour market and its capacity to produce a 'race to the bottom' in labour standards has been observed in two recent scholarly examinations of the industry.

In one account, the authors state that, “[there is an] increasing tension between different types of intermediary: contractors who hire documented workers ethically (including WHMs) and operate within the law, contractors who hire documented workers but ignore legal employment obligations, and those who engage and exploit undocumented workers. There seems little doubt that the latter are driving the erosion of employment conditions in a workforce already noted for its vulnerability”.<sup>23</sup>

In another scholarly account, the authors argue that there is a greater reliance on WHMs than SWP workers because “[the higher the regulated wage, the greater the incentive to avoid it by using an unregulated option. The weaker the enforcement regime, the greater the incentive to use the unregulated option”.<sup>24</sup>

A key reason why some sources of labour are more expensive for growers is because they involve a greater degree of regulation and are likely to attract a higher volume of complaints about exploitative work from workers.

The competition between the various sources of labour in the horticulture labour market was also noted in a recent parliamentary inquiry into the SWP. The Chair of the Joint Standing Committee on Migration, Louise Markus MP, observed that “[w]hile the impetus for establishing the working holiday visa is for cultural exchange, the reality is it fills a significant labour gap within the industry and is in direct competition with the Seasonal Worker Programme”.<sup>25</sup>

**Table 2.1** summarises the different levels of regulation for each source of workers and their likelihood to report exploitation to the authorities.

<sup>22</sup> See, eg, Orley Ashenfelter and James Heckman, 'The Estimation of Income and Substitution Effects in a Model of Family Labor Supply' (1974) 42 *Econometrica* 73.

<sup>23</sup> Elsa Underhill et al, 'Migration Intermediaries and Codes of Conduct: Temporary Migrant Workers in Australian Horticulture' (2016) *Journal of Business Ethics* DOI 10.1007/s10551-016-3351-z.

<sup>24</sup> Richard Curtain et al, 'Pacific Seasonal Workers: Learning from the Contrasting Temporary Migration Outcomes in Australian and New Zealand Horticulture' (2018) 5 *Asia & The Pacific Policy Studies* 462, 474.

<sup>25</sup> Joint Standing Committee on Migration, *Seasonal Change: Inquiry into the Seasonal Worker Programme* (Report, Parliament of Australia, 2016) vii.

**TABLE 2.1 CHARACTERISTICS OF DIFFERENT SOURCES OF HORTICULTURE LABOUR**

Source of Labour	Types of Regulation on Employers of this Source of Labour	Likelihood this Source of Labour will Report Non-Compliance
Seasonal Worker Program	<ul style="list-style-type: none"> <li>• Employers have to be approved in advance</li> <li>• Employers are subject to site visits and audits</li> <li>• Employers have to provide an induction for workers, and invite the FWO and unions</li> <li>• Employers can be suspended from the SWP for non-compliance</li> <li>• Employers are responsible for arranging pastoral care and accommodation</li> <li>• Employers are subject to monitoring by the FWO</li> </ul>	<p>Although SWP workers have access to a special hotline administered by the Department of Jobs, it is unlikely workers will complain to either the FWO or this hotline because of their desire to remain in Australia for the duration of the season and to return for subsequent seasons. Some SWP workers in the Griffith case study reported a fear of retribution (including beatings) and of their passports being held by the sponsoring employer.</p>
Local Workers	<ul style="list-style-type: none"> <li>• Employers are subject to monitoring by FWO</li> </ul>	<p>Local workers have security of residence so are more likely to complain to authorities about exploitation as they are not concerned with being deported. However, many local workers in horticulture rely on cash-in-hand payments and are unlikely to report growers when they are complicit in tax evasion. It is less likely local workers will remain in exploitative work because they have access to welfare and do not usually have an acute need for work like many groups of temporary migrant workers in horticulture such as WHMs, international students and undocumented workers. When faced with poor conditions that may lead to exploitation, these workers are more likely to choose ‘exit’ over ‘voice’, particularly given the absence of unions in many workplaces.</p>
International Students	<ul style="list-style-type: none"> <li>• Employers are subject to monitoring by the FWO</li> </ul>	<p>International students are the group of temporary migrant workers with a valid work visa who make the fewest requests for assistance to the FWO each year. This suggests that, as a group, international students are unlikely to report exploitative work to the FWO.</p> <p>Also, international students who are working in breach of their visa condition which only permits 40 hours paid work per fortnight during semester are unlikely to report exploitative work to the FWO because of the concern that they will be deported.</p>
Working Holiday Makers	<ul style="list-style-type: none"> <li>• Employers are subject to monitoring by the FWO</li> <li>• Employers have to register with the Australian Taxation Office if they employ WHMs</li> </ul>	<p>WHMs are unlikely to report exploitative work to the FWO when they are completing their 88 days during their first year, or six months farm work in their second year, because of their need to complete this work in order to gain a visa extension.</p> <p>WHMs are also unlikely to complain about exploitative work because of their transient commitment and involvement in the horticulture industry. Many WHMs know they only have to remain in the industry for a short time to gain a visa extension and thus have less of a vested interest in addressing exploitative work.</p>
Undocumented workers	<ul style="list-style-type: none"> <li>• Employers are subject to monitoring by the FWO</li> </ul>	<p>Undocumented workers are highly unlikely to contact the FWO because they do not have a valid visa and are extremely fearful of detection because they perceive that this could lead to their deportation. Given their incapacity to exercise ‘voice’ and limited options for ‘exit’, these workers are most likely to opt for ‘silence’ and thus tolerate exploitation.</p>

Evidence from the focus groups and interviews also revealed that different sources of workers are treated differently, and in particular, remunerated differently, in the horticulture labour market. These exposed the segmented nature of horticulture labour in Australia and the capacity of this segmentation to erode wages and conditions for workers.



### The role of labour hire in segmenting the horticulture labour market

Although the role of labour hire in the horticulture industry is examined separately in Chapter 4, it is important to note that the segmentation of the horticulture labour market is largely facilitated through the industry's reliance on labour hire contractor's ability to funnel and connect workers to particular jobs/farms.

Our research found that a strong feature of growers' reliance on labour hire contractors was in the ability of this relationship to allow them to select a workforce with certain attributes. Many growers we interviewed had clear views on the relative productivity of workers from different countries and ethnicities, with a general preference for workers from Asian countries rather than Europeans. As one grower stated:

*"They [the labour hire contractor] know I prefer Asians. Yes they know that but again if the Asians aren't there and [another grower] has gobbled them all up then you know I will take the Europeans. I got nothing against Europeans they just don't work as well as the Asians, seriously they don't. And it seems to take them longer to grasp the tasks they're being asked to do"*.<sup>26</sup>

Providing a tailored service to growers' specific preferences was part of what could make a labour hire contractor more attractive to growers. As a director of a labour hire firm stated to the research team:

*"What we do is we ask them what demographic works for them or in their experience has worked for them well in the past. That's not a racial profiling. It's more of a work ethic profile than anything else ... we say to them 'what has worked for you before? I know you only had five employees now you're going to 20, it's a bit hard to answer that question, but what did work for you when you had your five employees?' 'Oh look we found the Taiwanese to be fantastic' or 'We found the Koreans to be excellent' or 'We found the French to be the best'. All that feedback for us is great because it gets the round peg in the round hole or assists us to do that"*.<sup>27</sup>

This indicates that growers' notion of what 'work ethic' might look like is often closely linked to a preference for workers with particular kinds of ethnic heritage, in ways that distinctly resemble ethnic profiling.<sup>28</sup>

Another segmentation enabled by reliance on labour hire contractors was between workers on different visas. Growers could choose which type of visa holder they preferred through their use of a contractor.

Some contractors specialised in certain types of visa holders like WHMs or SWP workers, whereas others we interviewed offered both types of visa holders. A Katherine grower who used a labour hire contractor to access SWP workers reported a much better outcome from relying on this segment of the labour market. He stated:

*"It's more expensive with these guys [SWP workers] but they know their job a lot better. With backpackers they come and go too fast and you're always training people and it's very inefficient. [With the SWP workers] you know you've got that pool who know what they're doing and they become professional at harvesting melons."*<sup>29</sup>

We found that a third type of labour market segmentation, made possible through the presence of labour hire contractors, was between documented and undocumented workers.

Many growers reported that there were opportunities to use non-compliant labour hire contractors engaging this group of workers through regular approaches by phone and farm visits. For example, a number of Wanneroo growers told us that labour hire contractors supplying undocumented workers were "everywhere". One labour hire contractor based in Orange reported that it was hard to compete with contractors who supplied undocumented workers as these were more productive:

*"This is another pressure, we have training, so for the illegal people, it's easy because they are working like every year, almost three to four years and they know what to do. Of course, their performance is much better but we can't do it [because we employ WHMs]"*.<sup>30</sup>

<sup>26</sup> Focus group with growers (Wanneroo).

<sup>27</sup> Director of LH1 (Wanneroo).

<sup>28</sup> Robert MacKenzie and Chris Forde, 'The Rhetoric of the "Good Worker" Versus the Realities of Employers' Use and the Experiences of Migrant Workers' (2009) 23 *Work Employment and Society* 142.

<sup>29</sup> Grower (Katherine).



## STAKEHOLDER PERSPECTIVES: DIFFERENT WAGES FOR DIFFERENT SOURCES OF HORTICULTURAL LABOUR

### Conclusion

This Chapter identifies the highly segmented nature of the horticulture labour market in Australia. This segmentation facilitates non-compliance with labour standards as unscrupulous growers can select a workforce which is less regulated, and less likely to report non-compliance.

The **first segmentation** is between WHMs and SWP workers as the two main sources of temporary migrant labour available to growers. In conjunction with the evidence presented in Chapter 10 on the WHM Program and Chapter 11 on the SWP, we have identified clear disparities in the regulatory framework between the SWP and the WHM program as a significant reason for the limited take up of the SWP in favour of the WHM program. This limited take up of the SWP is also attributable to the prevalence of undocumented workers in the horticulture industry, with this substitution effect largely occurring because of perceptions to do with the low costs and high productivity of this group of workers.

An early evaluation report of the SWP observed that this program was being undercut by “*alternative sources of cheap labour with illegal and undocumented workers*”.<sup>31</sup> A more recent Senate inquiry found that “[i]n effect, the government clearly views the WHM as a de-facto working visa to bring low-skilled labour into the country”.<sup>32</sup> This is especially apparent in the government’s recent announcement to allow WHMs to extend their visa to a third year following six month’s work in horticulture during their second year.<sup>33</sup>

The differences in the regulatory frameworks for the WHM program and the SWP produce a clear distortion in the horticulture labour market, making one migrant worker visa option more attractive than the other. This has created a ‘substitution effect’ (largely, but not solely based on labour costs) between the two visa schemes.

The **second segmentation** is between workers with the right to work in horticulture and undocumented workers, a group which is examined more closely in Chapter 5. Undocumented workers are highly attractive to growers as they are an unregulated source of labour and therefore low cost and low risk, and are usually considered highly productive because of their experience and aptitude for horticulture work.

“I know for a fact some apple packers down there, they’ve told me, have illegals in there and they just fly under the radar, they pay them cheaper than backpackers, and those guys aren’t playing the same level field as other apple packers in the industry. So it’s the illegals that get exploited, not necessarily the backpackers.”

**Grower (Orange)**

“But the price was actually really wrong. Like we got \$27 for a thing of oranges. But his farm, I don’t know why but they had a really bad season. So the fruit was really, really small and lots of bad fruit. So we went to see a guy [from the labour hire company] and he went to see the farmer and he said ‘You have to pay more...’. We had four people I think on one bin and it took us two hours. So you’re like two hours for four people and you get \$27 for everybody. And so the farmer said, ‘Oh no, I won’t pay more, I can get Asians, they do it.’ And he didn’t even pay us. He didn’t pay us.”

**Harvest workers (Stanthorpe)**

“Backpackers are paid cheaper ... They have a certain wage. So I think the farmers would employ backpackers instead of the normal [local] pickers.”

**Industry stakeholder (Griffith)**

“Or varying piece rates. That’s the other one that I came across in Queensland recently ... so it was different visa categories and different ethnicities got different bin rates for the same work. So locals got \$90 a bin, Seasonal Workers got \$70 a bin and it kind of went down from there ... Backpackers, then, mostly Taiwanese and Hong Kong and undocumented got the least”

**Community representative (Griffith)**

“The SWP has built-in requirements that workers be educated about their rights, are able to raise issues when they occur, and there are real consequences for employers when they behave badly or illegally. Because all participants in the scheme must be pre-approved by the federal government, labour hire companies and producers that do the wrong thing can and are suspended from the program, creating a stronger incentive for compliance. The SWP is not perfect but it does have the best built-in protections, and it is currently competing with the rest of the unregulated visa and labour hire world, which stymies the program’s growth.”

**Union official (NUW)**

Our analysis shows the segmented horticulture labour market to be clearly undesirable, in terms of addressing both worker exploitation and horticulture labour supply challenges. A more coherent approach is required so that the different sources of horticulture labour do not undermine each other and produce unintended consequences of detriment to workers and the horticulture industry as a whole. The regulatory burden and costs associated with each source of horticulture labour should be commensurate so that there is less capacity for unscrupulous growers to select a more vulnerable source of labour.

<sup>30</sup> LH3 contractor (Orange).

<sup>31</sup> Cheryl Reed et al, *Final Evaluation of the Pacific Seasonal Worker Pilot Scheme* (Final Report No 53197, Department of Education, Employment and Workplace Relations, September 2011) 10.

<sup>32</sup> Senate Education and Employment References Committee, above n 11, 119.

<sup>33</sup> Department of Home Affairs, *Changes to the Working Holiday Maker Visa Program* (7 November 2018) <<https://www.homeaffairs.gov.au/news-subsite/Pages/2018-Nov/working%20holiday%20maker%20visa%20program.aspx>>.

# CHAPTER THREE

# SUPPLY CHAIN PRESSURES

## Introduction

Supply chains mediate the sale of produce harvested by fruit and vegetable growers. Before reaching consumers, this produce is purchased from growers by supermarkets, food retailers, food processors or wholesalers, or sold through growers' markets.

Produce sold to consumers overseas may require the involvement of export, import and other trading agents. Transportation and distribution companies will typically be involved in moving produce from farms to these other actors in the supply chain. Traders and other companies may be involved between these stages (see **Figure 3.1**).

Each stage of the supply chain requires a commercial transaction in which the bargaining power of the grower to negotiate a fair price may be constrained. The often large and commercially powerful nature of 'lead firms' at the consumer-end of supply chains e.g. supermarkets, wholesalers, transportation and distribution companies, accounts for why growers are often in a weak bargaining position.<sup>34</sup> Many of these lead firms have increased their commercial presence as a result of market concentration and business consolidation through mergers and acquisitions, which have been driven by financial pressures for increased short-term shareholder returns.<sup>35</sup>

These features have come to characterise agro-food industries in many countries. They have shifted power dynamics within supply chains from growers and other supplier firms located at the producer end to lead firms closer to the consumer end.<sup>36</sup> Lead firms often purchase produce from a large number of growers both to serve their consumer base and spread their risk. This can enable lead firms to dictate the price and other standards to individual growers who must comply to complete the transaction and maintain the commercial relationship.

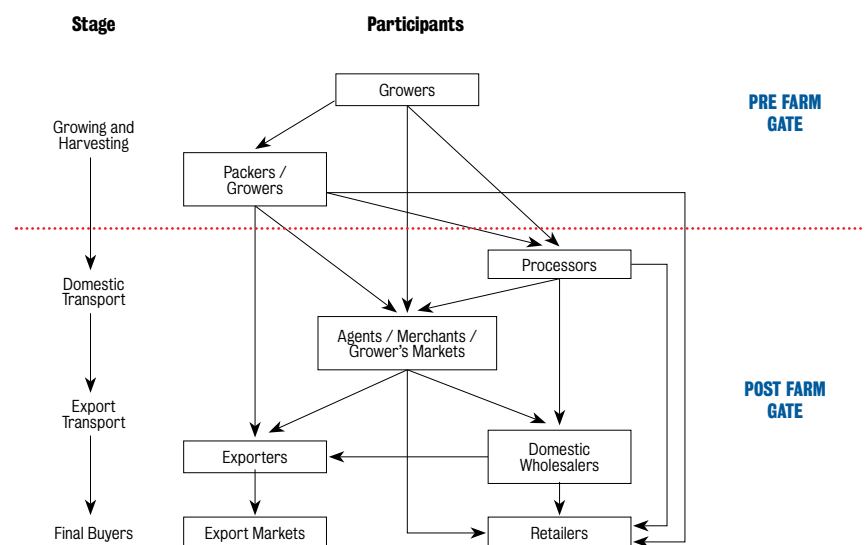
The following findings are presented in this section:

1. Supply chain pressures can create planning and compliance challenges for growers in terms of the ability of growers to plan their current and future workforce needs and comply with labour standards.
2. Supply chain pressures are a potential source for improving labour standards in horticulture.
3. Industry-led initiatives such as Fair Farms are welcome developments in improving compliance with labour standards.

4. International evidence indicates that multi-stakeholder forms of regulation that involve workers, unions or community organisations are more effective than industry-led initiatives at improving labour standards and minimising supply chain risks.

5. Attempts to regulate supply chain pressures may be undermined without competition policy reform and a systematic review of industry dynamics to encourage growers and supplier firms to compete more on quality, innovation and productivity rather than cost-minimisation.

**FIGURE 3.1 PRODUCTION AND DISTRIBUTION CHAIN FOR HORTICULTURE PRODUCE<sup>37</sup>**



<sup>34</sup> Jimmy Donaghey et al, 'From Employment Relations to Consumption Relations: Balancing Labor Governance in Global Supply Chains' (2014) 53 *Human Resource Management* 229.

<sup>35</sup> Peter Dicken, *Global Shift: Mapping the Changing Contours of the World Economy* (Guilford Press, 7th ed, 2015) ch 13.

<sup>36</sup> Bill Vorley, *Food, Inc: Corporate Concentration from Farm to Consumer* (UK Food Group, 2003).

<sup>37</sup> Adapted from Industry Commission, *Horticulture* (Report no 29, 18 February 1993) 96.

## CHALLENGE #1: ADDRESSING PRICE PRESSURES FROM SUPERMARKETS

Many growers we interviewed claimed that the prices they were able to sell their produce for had not kept pace with inflation in recent years. Once adjusted for inflation, this amounts to a decline in real terms in the prices that growers receive for their produce. While this scenario differs between different crops, one stone fruit grower told us “we are getting no more now per kilo than we were in 1988”.<sup>38</sup>

Prices are affected by a large range of factors, most fundamentally the amount of supply of and demand for a particular product in a particular exchange market. But prices are also determined by the bargaining power of actors engaged in commercial exchanges in the market place.

Generally speaking the bargaining power lead firms that buy horticulture produce in the Australian market has increased in recent years while the bargaining power of the supplier firms that sell this produce has diminished.

In particular, many large lead firms, such as supermarkets and large food brands, have been able to use their commercial power to dictate prices or make changes in delivery

orders at short notice. This is evident in the ‘price wars’ between the major Australian supermarkets which has resulted in pressure on growers to reduce the costs of production.

According to one grower, “Woolworths and Coles are the major outlets. They set their price on a week to week basis. If they get it wrong, they’ll drop the price midweek”.<sup>39</sup>

Other growers reported that supermarkets had terminated commercial contracts at short notice thus putting them in a vulnerable position.

Labour is the largest component of cash costs for growers, as presented in Table 3.1. Labour is also one of the few inputs over which growers have control.<sup>40</sup> Therefore, when supply chain pressures intensify, growers looking to gain an unfair competitive advantage may resort to underpaying their workers and fail to comply with the *Horticulture Award*.

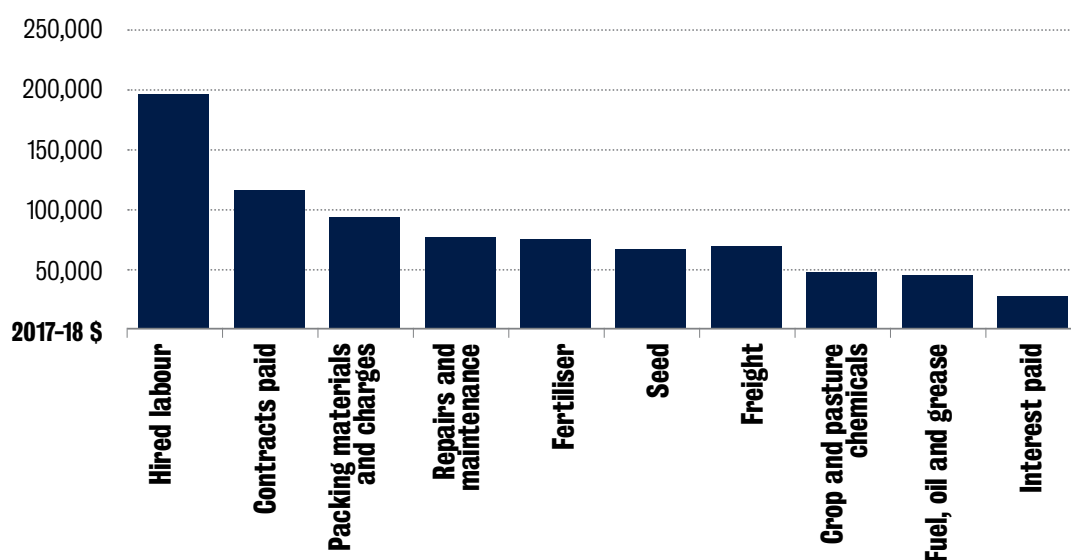
Some growers disputed this perspective, saying they would always meet their legal obligations to their workers regardless of competitive pressures. However, other growers acknowledged that supply chain and other cost pressures did increase the imperative to ensure that their practices for managing labour were efficient.

From a different perspective, a farm worker reported being paid a different wage rate each week depending on the fluctuating market price for blueberries. He stated, “some days we would go and the price of punnets would be 80 cents but then other days it would be over a dollar and then it would be back down to 80 cents. It was so ridiculous, we got a different pay packet depending on the price of punnets.”

In the horticulture context, the major retailers have consistently maintained that responsibility for breaches of workplace laws is the sole responsibility of the Fair Work Ombudsman (FWO). Although major retailers encourage individuals or organisations that have evidence of a breach to take it to the FWO, the retailers do not largely get involved in investigating breaches themselves.<sup>41</sup>

Even following the 2015 ABC *Four Corners* investigation into exploitation of workers in the horticulture industry, in which certain grocery chains were implicated, the major retailers did not introduce more stringent auditing of the workforces of their suppliers.<sup>42</sup> At a subsequent Senate inquiry, a representative from Woolworths stated that it would not conduct an audit as this would place extra costs on suppliers.<sup>43</sup>

**TABLE 3.1 MAJOR COMPONENTS OF CASH COSTS, VEGETABLE-GROWING FARMS, AUSTRALIA, 2016–17 TO 2017–18, AVERAGE PER FARM**



Source: Australian Bureau of Agricultural and Resource Economics and Sciences (2018) *Selected physical and financial characteristics by state — Australian vegetable growing farms: 2016–17 and 2017–18*. Canberra: Department of Agriculture, Figure 16.

<sup>38</sup> Grower (QLD).

<sup>39</sup> Grower (QLD).

<sup>40</sup> David Weil, *The Fissured Workplace* (Harvard University Press, 2014).

<sup>41</sup> Senate Education and Employment References Committee, above n 11, 283.

<sup>42</sup> ABC, above n 6.

<sup>43</sup> Senate Education and Employment References Committee, above n 11.

## STAKEHOLDER PERSPECTIVES ON THE IMPACT OF SUPPLY CHAIN PRESSURES ON GROWERS

“The risk of Woolworths or Coles or Aldi not buying from us is significant but it doesn’t influence our labour decisions. We’ve already made a huge commitment to buy land, equipment and the seed pipeline, so we’re already committed to the game. You can’t be half pregnant; we’re committed to going, we’ve bought things and so therefore we’ve got to hire the labour to do the job. What we need to make sure is we’re delivering in terms of price and quality to make sure we’ve got the business. That means we’ve got to have the right people and controlling labour costs is the key lever to doing that. Every year the price of products is going down, the prices for all farm produce is going down not going up. And offsetting that you’ve got electricity going up, insurance going up, labour costs going up. So you need to get more efficient to be able to make sure you survive long term.”

**Grower (SA)**

“We were supplying [a supermarket] about 60 tonnes a week of [product name omitted]. We put our price up in a tender, because they do tenders every six months, less than CPI and we lost the business overnight so we were left with 60 tonnes. That is the sort of ruthlessness they are.”

**Grower (SA)**

“Some growers supply wholly to supermarkets. Some have a mix of some going to supermarkets, some going to wholesale markets ... To hear stories when you say, ‘Well, okay, you’re sending off to the markets; what will you get?’ [Growers] say, ‘Well, I don’t know until the day’. To hear stories like that, gee, how can you control your business with expenses that you have that are typically fixed, when this income is sort of quite fluid? ... That this low price [growers] might be getting, is that impacting on the employee on the farm getting underpaid? Or is it that you’ve done really well and there’s another reason for that employee getting underpaid? So we’re very interested in supply chain pressures and how we might influence that if we see that there’s a problem up the supply chain.”

**FWO official (QLD)**

“The supermarkets, the pressure that’s put on farmers to provide goods at certain prices, and they really squeeze them ... Our farmers get very little help at all from anybody. A lot of them are not doing very well at all or are only just surviving. Basically Australians don’t pay enough for their fruit and vegetables. That’s the bottom line and if they were really paying what they’re worth, in terms of how much it is actually costing to pick that tomato and spray that paddock and all that stuff, they’d be paying quite a bit more. But the supermarkets just keep squeezing and squeezing and squeezing. And then they threaten them: ‘we’ll go and get them from New Zealand or we’ll go and get them from China’. It’s just disgusting what our farmers put up with.”

**Employment services provider (QLD)**

Despite the revelation of widespread exploitation particularly of temporary migrant workers, the major retailers consider Australia to be ‘low risk’ because of its robust workplace laws and mechanisms for monitoring compliance.<sup>44</sup> In her analysis of retailers’ response to the ABC *Four Corners* investigation, Australian labour law scholar

Rosemary Owens concludes, “[w]hen confronted with the evidence of exploitation, the [retailers] frequently resorted to platitudes defending the values of their organisation and restating their commitment to ethical behaviour by all in the supply line”.<sup>45</sup>

A grower we interviewed stated, “If you get rid of the undocumented [workers], I tell you now, Coles and Woolies will only have half their produce. And as much as they’ve got their ethical sourcing and everything, they turn a blind eye”.<sup>46</sup>

A labour hire contractor we interviewed stated, “They just don’t care — Woolies and Coles, their buyers, their main buyers are standing on their pedestal going, ‘Everyone has to be doing the right thing here, everyone has to be moral about what they do’ and all the rest of it, but they don’t give a shit frankly. They really don’t care so long as they’re getting their produce at that price”.<sup>47</sup>

## CHALLENGE #2: DEVELOPING SUPPLY CHAIN REGULATION FOR IMPROVING COMPLIANCE

Supply chain and labour issues in horticulture were a focus of the final report of the 2017 inquiry by a joint committee of the Australian Parliament into the establishment of a Modern Slavery Act.<sup>48</sup> The report noted that evidence to the committee:

*“highlighted that the long-standing challenges faced by the horticultural industry to secure a reliable and efficient labour force have been compounded by recent changes to the relationship between supermarkets and suppliers... The Committee heard that the low prices set by supermarkets for produce is putting increasing pressures on farmers and growers to reduce labour costs to ensure farms are economically viable”.<sup>49</sup>*

The report acknowledged that there were several factors contributing to the labour challenges facing horticulture. However, it singled out supply chain pressures as important and made several recommendations to address this.

The Modern Slavery Act inquiry supported the creation of a mandatory supply chain reporting requirement. If enacted this would require organisations with annual revenues of \$100 million or more to provide annual reports to the Australian government regarding the composition of their organisational structures and supply chains and the policies adopted to address modern slavery practices to ensure that such practices are not currently taking place, and are unlikely to take place, within their businesses and supply chains. Such policies include due diligence and remediation processes and training for staff about modern slavery.<sup>50</sup>

<sup>44</sup> Ibid 283–7.

<sup>45</sup> Rosemary Owens, ‘The Global Challenge of Temporary Labour Migration: Regulatory Responses and Possibilities’ in Joanna Howe and Rosemary Owens (eds), *Temporary Labour Migration in the Global Era: The Regulatory Challenges* (Hart Publishing, 2016) 393, 396.

<sup>46</sup> Focus group with growers (WA).

<sup>47</sup> Labour hire contractor (WA).

<sup>48</sup> The Committee adopted a ‘a non-legal umbrella definition’ of modern slavery that included “slavery, servitude, forced labour, trafficking in persons, forced marriage, child trafficking, debt bondage and other slavery-like practices”, see: Joint Standing Committee on Foreign Affairs, Defence and Trade, above n 11, 47.

<sup>49</sup> Ibid 282–3.

<sup>50</sup> Ibid 93–139.



Modern slavery or supply chain transparency legislation has already been adopted in several overseas jurisdictions including the United Kingdom and California. Were it to be implemented in Australia it would build upon several other initiatives in which lead firms in the horticulture supply chain, such as supermarkets and food retailers, seek to improve positively grower practices. This is achieved by mandating that lead firms incorporate certain labour standards into their certification requirements for produce that is sold in the domestic market.

We now turn to a number of different initiatives seeking to foster compliance with labour standards in the supply chain.

### STAKEHOLDER PERSPECTIVES ON THE IMPACT OF SUPPLY CHAIN PRESSURES ON WORKERS

“What we’ve seen over the last decade is a move from those supermarkets to direct-supplier relationships, which has led to the emergence of large farms and to intense competition between farms to get business from the major supermarkets. What that does is put price pressure downwards in the supply chain, and what we’ve seen is that the people who wear the cost of that are the workers.”

**(George Robertson, NUW, evidence presented to the Australian Parliament’s Joint Committee inquiry into establishing a Modern Slavery Act in Australia).**

“We do not set the price of our produce in the majority of cases in Australia. We largely operate under a duopoly system, and the big supermarkets don’t have to advertise how much they are paying the grower ... Without some reform to that system of our supply chain, any efforts to stamp out exploitation at the farm level will be futile, because many growers do not have a choice as to how much they can afford to pay their staff members, if they are able to get any staff at all.”

**(Emma Germano, VFF, evidence presented to the Australian Parliament’s Joint Committee inquiry into establishing a Modern Slavery Act in Australia).**

## Global G.A.P.

GlobalGAP is a code of practice for ‘Good Agricultural Practices’ among European retailers requiring horticulture suppliers to maintain certain quality standards including workers’ welfare and workplace health and safety. This has encouraged growers in some countries to improve their labour practices to meet accreditation requirements. For instance, Horticulture New Zealand, a national industry association, has promoted GlobalGAP to its affiliates to improve the reputation of the local industry, which relies heavily on export markets, resulting in over 1,500 New Zealand producers becoming accredited.<sup>51</sup> GlobalGAP is discussed more extensively in Chapter 13: The New Zealand Approach.

## Sedex

Sedex, or the Supplier Ethical Data Exchange, has been a mechanism favoured by many retailers internationally for eradicating modern slavery practices, minimising supply chain risks and improving labour standards. Sedex is a large membership based platform with headquarters in the UK. It is used by lead firms in over 150 countries to share data about the practices of suppliers and other actors in their supply chains.<sup>52</sup> This can help with lead firms’ monitoring efforts and ensure they only source from suppliers who comply with established minimum standards.<sup>53</sup>

The Sedex process for horticulture involves an audit that, among other things, requires employers to guarantee that workers, including those employed by contractors, are being paid and treated in accordance with legal minimum standards and also have the right to work in Australia.<sup>54</sup> While these measures indicate that the process is focused on ensuring legal compliance and minimising the risks of non-compliance, there was a view among some growers and industry representatives interviewed that Sedex was too general an instrument for the purposes of monitoring standards in Australian horticulture. A clear drawback of Sedex is

## STAKEHOLDER PERSPECTIVES ON SEDEX

“[Sedex] use the same process as they do for making t-shirts in Sri Lanka as they do for growing potatoes here. It just doesn’t make a lot of sense having things that are not relevant to Australia. The reason why is because the supermarkets are looking for some type of system to check, to have some type of auditing system to say: ‘yes, our suppliers, our growers, are above board, environmentally, ethically [and] when you buy from us, you know you’re buying from a reputable company’... [But] it’s so non-tailored and they’re asking for things that just don’t make any sense.”

**Industry association official (QLD)**

“Supermarkets have a list of policy standards and self-regulation audits which act as a smokescreen for, rather than as a deterrent, to exploitation. Self-regulation does not work. It makes no difference to the lives of workers and wraps growers up in pointless paperwork while the supermarket bureaucracy sleep well at night knowing a box has been ticked. Any system where the perpetrator audits their own bad behaviours will always be ineffective. We know of several farms that have passed the supermarkets’ Sedex audits but still have undocumented workers, cash contractors and wage theft occurring.”

**Union official (NUW)**

that it only requires audits of those growers who have undertaken a self-assessment questionnaire and come out as medium to high risk. This means that growers can be Sedex accredited without going through an audit.

## Fair Farms

Lead firms and growers have turned towards the Fair Farms initiative to monitor labour standards. Growcom has developed Fair Farms as a certification scheme more tailored to the specific features of Australian horticulture than Sedex. According to an industry representative, “the whole idea of Fair Farms is ... about [growers] checking off that [they] have got the right systems in place for ethical employment”.<sup>55</sup>

The main objectives of Fair Farms are:<sup>56</sup>

- An industry owned and developed standard benchmarked against Australian workplace law
- A coordinated system of quality training to support growers to understand their obligations
- A pathway to certification, if required, including a mechanism to enable cost-effective, third-party audits by competent auditors

- A credible certification that provides certainty and transparency in the supply chain and that enables businesses committed to fair employment to differentiate themselves from less reputable operators
- Data capture to enable industry and customer reporting in relation to compliance

The Fair Farms approach is for the horticulture industry to work with lead firms particularly supermarkets and the FWO to eradicate non-compliant practices by excluding unscrupulous operators from the supply chain. Growers registered with Fair Farms will receive support and guidance to maintain compliance and thereby meet the program’s requirements. A Fair Farms Training and Certification Program piloted in October 2018 will be rolled out in 2019 to prepare growers for future audits by lead firms participating in the initiative. In October 2018, the federal government announced a funding package of \$1.5 million for the Fair Farms scheme.

<sup>51</sup> Richard Curtain, *New Zealand’s Recognised Seasonal Employer Scheme and Australia’s Seasonal Worker Program: Why So Different Outcomes?* (New Research on Pacific Labour Mobility Workshop, Australian National University, Development Policy Centre, 2 June 2016).

<sup>52</sup> Sedex Global, *What is Sedex?* (2018) <<https://www.sedexglobal.com/about-us/what-is-sedex/>>.

<sup>53</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade, above n 11, 111.

<sup>54</sup> Grower (SA).

<sup>55</sup> Industry association official (QLD).

<sup>56</sup> Growcom, *Fair Farms Training & Certification Program: Information Sheet* (2018) <<https://www.growcom.com.au/fairfarmsinitiative/#!form/FairFarms>>.

## STAKEHOLDER PERSPECTIVES ON THE IMPACT OF SUPPLY CHAIN PRESSURES ON WORKERS

“We needed to do something that enabled good growers to be differentiated from those bad [non-compliant growers], because at the moment, they all have access to the supply chain. I’ve seen products in the supermarket, grown by growers who I know have [been] done by Fair Work three or four times ... We have an issue where the retailers really drive who can be paid. That’s how it works. They are the big drivers in our sector. So we’ve been actually working with the retailers in developing a certification scheme, and an education and training program to support growers to meet their obligations, but also provide a mechanism against which they can be audited, which will demonstrate that they are compliant with Fair Work laws, plus a few other additional things that the retailers are seeking. The Fair Work Ombudsman is also putting a lot of pressure on supermarkets to clean up their supply chains. We think that’s a really good thing, because it’s not a level playing field if someone who is underpaying their workers can sell their product into the supermarket. That means that the people who are doing the right things are at a massive competitive disadvantage. The Fair Farms Initiative, or the Fair Farms Program, which is the certification program, will support growers to prepare for an audit that they may want to have because their customers will demand it. Because regardless of whether we go with this path or another path, the supermarkets are going down this path. What we want to be able to do is hold them accountable, to an extent, by this being an industry-led scheme, to say, ‘Well, we know who supplies you. We know who’s got the certification. We know who’s part of the scheme.’ Because one of the frustrations that growers are continually raising with us is that.”

**Industry association official (QLD)**

“The only effective way to end exploitation in the supply chain is to ensure farm workers have freedom to come together in the union, are empowered to speak out, and are protected when they raise issues. Empowered workers are their own day-to-day independent auditors — they are the only way to shine a light on bad and unethical work practices, improve conditions across the supply chain, and ensure that no industry falls into the shadows or has a business model that puts workers at risk.”

**Union official (NUW)**

### CHALLENGE #3: INVOLVING MULTI-STAKEHOLDER INITIATIVES IN SUPPLY CHAIN REGULATION

Extensive international research has shown that multi-stakeholder forms of supply chain regulation that involve workers, unions or NGOs in their design, governance and monitoring, are generally more effective at maintaining labour standards and minimising supply chain risks for lead firms and suppliers than industry-driven regulation.<sup>57</sup>

These initiatives also provide a channel for worker involvement and participation, which can be a valuable feedback mechanism that can allow deficiencies in supply chain regulation to be readily identified and addressed.<sup>58</sup> They can also address concerns identified by researchers regarding the lack of independence and specialised expertise among third-party auditors.<sup>59</sup>

By contrast, industry-driven regulation has been criticised for being more difficult to enforce, ineffective at providing sustained improvements in working conditions and for often being adopted by businesses whose main concern is to portray themselves

as socially responsible rather than to systematically improve standards.<sup>60</sup>

While some studies have disputed this perspective,<sup>61</sup> it does point to potential limitations of Fair Farms, which could be strengthened by involving unions and NGOs more comprehensively in its operation.

The importance of unions and community organisations in assisting workers to rectify wage theft was indicated in a recent study of temporary migrants’ ability to access legal remedies in Australia, which found that workers who relied on unions or community organisations were far more successful in achieving some rectification of underpayments.<sup>62</sup>

There are several examples of how multi-stakeholder initiatives can benefit both growers and workers.

In the United States, tripartite agreements between supermarkets, food manufacturers, growers, industry associations and unions have been used to provide guarantees of individual and collective rights and wage standards to workers, assurances to growers that they will receive prices high enough to remain financially viable and dispute

resolution procedures to enable continuity of production.

Another type of multi-stakeholder initiative in the United States involves agreements that guarantee specific production volumes by growers in return for lead firms providing payments into an industry fund, which provides wage supplementations to workers.

Agreements along these lines have been established between the Coalition of Immokalee Workers and major lead firms such as McDonald’s, Burger King and Taco Bell. Under the Equitable Food Initiative (EFI), certified growers agree to pay higher wages to workers, establish worker participation and development programs and implement ethical recruitment practices as the basis for high quality and more efficient production. Supermarkets and food retailers who participate in the program require their fruit and vegetable suppliers to be certified and in return pay higher prices for certified produce to assist growers’ compliance. The EFI’s design is thus “*wholly built around the principle of shared responsibility and shared benefit within the supply chain*”.<sup>64</sup>

<sup>57</sup> See, eg, Donaghey et al, above n 34; Christina Niforou, ‘International Framework Agreements and Industrial Relations Governance: Global Rhetoric versus Local Realities’ (2012) 50 *British Journal of Industrial Relations* 352; Chris F Wright and Sarah Kaime, ‘Supply Chains, Production Networks and the Employment Relationship’ (2015) 57 *Journal of Industrial Relations* 483.

<sup>58</sup> Kelly Pike and Shane Godfrey, *Two Sides to Better Work – A Comparative Analysis of Worker and Management Perception on of the Impact of Better Work Lesotho* (Better Work Discussion Paper Series No 20, September 2015).

<sup>59</sup> See, eg, Maki Hatanaka and Lawrence Busch, ‘Third-Party Certification in the Global Agrifood System: An Objective or Socially Mediated Governance Mechanism?’ (2008) 48 *Sociologia Ruralis* 73.

<sup>60</sup> Niklas Egels-Zandén and Jeroen Merk, ‘Private Regulation and Trade Union Rights: Why Codes of Conduct Have Limited Impact on Trade Union Rights’ (2014) 123 *Journal of Business Ethics* 461.

<sup>61</sup> John Ruggie, *Just Business: Multinational Corporations and Human Rights* (WW Norton & Co, 2013).

<sup>62</sup> Berg and Farbenblum, above n 15.

<sup>63</sup> James Brudney, ‘Decent Labour Standards in Corporate Supply Chains: The Immokalee Workers Model’ in Joanna Howe and Rosemary Owens (eds), *Temporary Labour Migration in the Global Era: The Regulatory Challenges* (Hart Publishing, 2016) 351; Weil, above n 40.

<sup>64</sup> Jennifer Gordon, ‘Roles for Workers and Unions in Regulating Labour: Recruitment in Mexico’ in Joanna Howe and Rosemary Owens (eds), *Temporary Labour Migration in the Global Era: The Regulatory Challenges* (Hart Publishing, 2016) 329.

## FAIR FARMS INITIATIVE

“We needed to do something that enabled good growers to be differentiated from those bad [non-compliant growers], because at the moment, they all have access to the supply chain. I’ve seen products in the supermarket, grown by growers who I know have done by Fair Work three or four times... We have an issue where the retailers really drive who can be paid. That’s how it works. They are the big drivers in our sector. So we’ve been actually working with the retailers in developing a certification scheme, and education and training program to support growers to meet their obligations, but also provide a mechanism against which they can be audited, which will demonstrate that they are compliant with Fair Work laws, plus a few other additional things that the retailers are seeking. The Fair Work Ombudsman is also putting a lot of pressure on supermarkets to clean up their supply chains. We think that’s a really good thing, because it’s not a level playing field if someone who is underpaying their workers can sell their product into the supermarket. That means that the people who are doing the right things are at a massive competitive disadvantage. The Fair Farms Initiative, or the Fair Farms Program, which is the certification program, will support growers to prepare for an audit that they may want to have because their customers will demand it. Because regardless of whether we go with this path or another path, the supermarkets are going down this path. What we want to be able to do is hold them accountable, to an extent, by this being an industry-led scheme, to say, ‘Well, we know who supplies you. We know who’s got the certification. We know who’s part of the scheme.’ Because one of the frustrations that growers are continually raising with us is that if you’re a good grower, you are expected to jump through so many hoops to get your stuff on the shelves”  
(Industry association official, QLD).

According to David Weil, a leading US academic and former Head of the Department of Labor’s Wage and Hour Division, these multi-stakeholder models of supply chain regulation can:

*“address the distributional tension underlying fissured decisions [associated with commercial pressures from lead firms onto their horticulture suppliers] by making the lead food organization ... adjust the price it pays (and therefore the return it receives) to accommodate better conditions for workers at the base of the supply chain.”<sup>65</sup>*

### CHALLENGE #5: ADDRESSING COMPETITION POLICY AND CORPORATE GOVERNANCE ISSUES

The initiatives created to regulate supply chain pressures signify that there are wider economic forces that constrain and influence growers’ ability to source labour and to comply with their obligations under workplace laws.

As John Buchanan and colleagues note, “no workplace is an island”; the commercial practices of powerful organisations influence employment practices of smaller organisations they do business with.<sup>66</sup> The nature of corporate governance and competition policies influence the prices that growers can obtain for their produce, which can in turn influence labour supply and regulation.

The Horticulture Code of Conduct under the *Competition and Consumer Act 2010* (Cth) aims to provide transparency in growers’ commercial transactions with traders. The Horticulture Code was first established in 2006 as a voluntary instrument and became mandatory on 1 April 2018. In order to trade with each other legally, the Horticulture Code requires growers and traders to have a written contract in the form of a Horticulture Produce Agreement. This contract must clearly establish any delivery requirements, quality and quantity specifications, circumstances under which produce may be rejected, and pricing and payment arrangements including the timing of payment, the formula used to determine pricing, and whether commissions or fees are to be charged.

The Horticulture Code also specifies that growers and traders must act in good faith in their dealings with the other party, contains procedures for the resolution of disputes and allows for the Australian Competition and Consumer Commission to investigate to ensure compliance. The Code only applies to transactions between growers and traders. It does not apply to trade between growers and retailers, exporters or processors, but “if a grower sells horticulture produce through an agent to retailers, exporters, or processors, the agreement between the grower and the agent will be subject to the Code”.<sup>67</sup>

A separate Food and Grocery Code of Conduct sets out the terms and trading conditions between supermarkets and their suppliers. Signing this code is voluntary but its provisions are mandatory for companies that have elected to be bound by it. Of the four companies that have signed the Food and Grocery Code, three are major supermarkets: ALDI, Coles and Woolworths. Its provisions appear very similar to those contained in the Horticulture Code.<sup>68</sup> The measures of both codes are designed to ensure that the parties deal with each other fairly and prevent any exploitative practices from occurring.

Several growers and industry representatives claim that despite the investigation and compliance procedures set out in the Horticulture Code and Food and Grocery Code, they are not adequately enforced. This can allow powerful parties to negotiate lower prices, which can benefit consumers seeking cheap produce. However, this scenario disadvantages compliant growers because the failure to maintain fair and transparent commercial transactions between buyers and sellers can result in an uneven playing field.

One potential consequence is that prices can be set below the costs of production. According to one industry association official:

*“[The Horticulture Code] leaves far too much to negotiation. Because growers tend to be very small, and not have a lot of*

<sup>65</sup> Weil, above n 40, 262.

<sup>66</sup> John Buchanan et al, ‘Beyond Voodoo Economics and Backlash Social Policy: Where Next for Working Life Research and Policy?’ (2006) 32 *Australian Bulletin of Labour* 183.

<sup>67</sup> Australian Competition and Consumer Commission, *Horticulture Code of Conduct* <<https://www.accc.gov.au/business/industry-codes/horticulture-code-of-conduct>>.

<sup>68</sup> Australian Competition and Consumer Commission, *Food and Grocery Code of Conduct* <<https://www.accc.gov.au/business/industry-codes/food-and-grocery-code-of-conduct>>.



market influence, too many of them under this current arrangement are being told to take it or leave it. 'Here's a contract. You're required to have one under the [Code]. You must sign this.' So when you read the details on the contract, you find out there's all these circular clauses that actually mean that the person who's going to be doing the trading has no responsibilities at all. [Contracts can be renegotiated retrospectively] because that's what the agreements allow them to do."<sup>69</sup>

The issue of shareholder demands for short-term financial returns was another factor that can also create pressure for labour supply and regulation issues as it discouraged growers from investing in long-term strategies to address their workforce needs.

One grower claimed that their bank was reluctant to provide a loan for an investment in their operation that was likely to pay dividends over a long-term horizon but not necessarily in the short-term.

Another grower said that changes in ownership towards a single family-owned business that emphasised long-term value over short-term profits prompted major changes in the company's business model. This led to a greater focus on quality enhancement through technology investment and high road employment strategies such as direct employment and skills development.

*"We had different companies with different owners and one of the catalysts that changed [business strategy and employment relations] was the one owner taking over all parts of the business ... Before in the group we had three companies with different owners. Once we had common ownership over the whole group we were able to work more effectively together and design some of these HR strategies."<sup>70</sup>*

Some industry representatives we interviewed claimed a Productivity Commission inquiry was needed to assess the nature of competition in the industry and how this affected labour supply and regulation issues.

Without structural changes to competition policy and corporate governance within the horticulture industry and supply chain, growers will continue to compete primarily on cost minimisation rather than on quality, innovation or productivity. Rectifying this will improve the international competitive standing of Australian growers particularly in export markets. Given that the last inquiry from the Productivity Commission was more than a quarter of a century ago, by the then Industry Commission in 1993,<sup>71</sup> it would appear that another such an inquiry is timely.

## STAKEHOLDER PERSPECTIVES ON THE INEFFECTIVENESS OF COMPETITION POLICY

"That whole [supply] chain ... has got to be transparent, open, level, because as soon as it isn't, it mucks it up over there and labour at the end of it is basically the only one that has the ability to be manipulated. I can't get my fertiliser cheaper. I can't get my diesel cheaper ... In theory, wages should be the same ... There's a real mindset that '[underpayment of wage] is the only way I'm going to survive. If I don't do this, I'm out of business'. That shouldn't be how [some growers] are thinking."

**Grower (NSW)**

"Competition policy is a really huge issue, because the people the growers sell the produce to have a lot of power. They can say how much they will or they won't pay for your produce, and if you sit there and say, 'Well, that's less than the cost of production', you've got two options. You get something for it, or you get nothing for it. So all too often, the grower takes something for it ... You see the ads on television, 'We're keeping prices down, down at Coles', or the chairman of Woolies saying, 'Look, our energy costs are going through the roof ... but it's alright, consumers: we're not passing the cost onto you. You will be no worse off.' The consumer thinks, 'Great!' Woolworths ... are going back down the supply chain, and they're telling everybody to cut their costs. Now, if you're the person who actually grows the stuff, you've got nowhere you can pass your costs onto. You've got to pay your fertiliser, you've got to pay your chemicals, you've got to pay your staff, you've got to pay your mortgage, you've got to pay your fuel, you've got to pay your operating costs, you've got to pay to get your produce to market. There's nowhere that you can say ... You can't go to the petrol bowser and say, 'I'm going to give you 10 cents a litre less on petrol'. You can't say to your chemical dealer, 'I'm only going to pay you for half of that' ... Competition law shouldn't be a closed shop ... Competition is all well and good so long as there is fair competition, [but] what we're seeing in this sector at the moment is some practises which are bordering on uncompetitive, or anti-competitive."

**Industry association official (NSW)**

## Conclusion

This section has found that supply chain pressures can create challenges for the ability of growers to plan their current and future workforce needs and comply with labour standards. However, these pressures are, paradoxically, a potential source for improving labour standards in horticulture.

In reviewing different mechanisms of supply chain regulation for maintaining compliance, it has found that industry-led initiatives such as Fair Farms are a positive step for addressing non-compliance and improving supply chain transparency.

However, international evidence indicates that multi-stakeholder forms of supply chain regulation tend to be more effective at improving labour standards and minimising business risks. This suggests that there may be scope to incorporate unions and NGOs more fully into the design and implementation of Fair Farms.

It has also been argued that attempts to regulate supply chain pressures may be undermined without changes to competition policy and without a Productivity Commission review of the horticulture industry to identify ways that growers and lead firms in the supply chain can be encouraged to shift their competitive focus from cost-minimisation towards quality, innovation and productivity.

<sup>69</sup> Industry association official (NSW).

<sup>70</sup> Grower (SA).

<sup>71</sup> Industry Commission, above n 37.

# CHAPTER FOUR

## THE ROLE OF LABOUR HIRE

### Introduction

In Australia, growers' reliance on labour hire contractors to access workers is a relatively recent phenomenon, emerging in the last two decades and coinciding with the significant growth in temporary migrant workers in the horticulture industry.<sup>72</sup>

On the supply side, the emergence of two visa pathways channelling temporary migrants into seasonal horticulture work, namely the Working Holiday (WH) visa extension introduced in 2005 and the Seasonal Worker Program (SWP) in 2008, have provided opportunities for profit-driven labour hire contractors to connect Australian growers with this temporary workforce.<sup>73</sup>

Several studies have identified extensive reliance among growers on temporary visa holders.<sup>74</sup> This presence of temporary migrants has changed the horticulture labour market considerably by facilitating greater use of contractors, some of whom seek to exploit the vulnerability of temporary migrant labour.

On the demand side, a number of factors have contributed to the growth of labour hire contractors in the horticulture labour market. Internal cost pressures on growers are reshaping the industry with a shift from micro and family farms to large-scale, corporate farming.

Many farms are turning to different crop varieties to ensure a longer crop yield,

labour-saving technology to improve efficiency, and multi-site operations (including in greenhouses) to allow an annual rather than seasonal harvest. Although these increase the predictability and evenness of production and workforce needs, many growers complement direct employment with migrant labour sourced through contractors because of the declining pool of available and willing local workers.

Additionally, external cost pressures, such as export markets with greater price variability due to fluctuations in the exchange rate and complex supply chain arrangements, increase the likelihood that growers will use contractors to simplify their labour recruitment and management processes and to reduce labour costs.

Thus, the Australian horticulture labour market, like in most other countries, is now embedded with an array of profit-driven contractors who provide growers with workers to pick, pack and grade fresh produce.<sup>75</sup>

Several accounts<sup>76</sup> and cases<sup>77</sup> have identified that many labour hire contractors in the horticulture industry do not comply with

Australian labour standards and thus profit from large-scale worker exploitation. In 2015 an ABC *Four Corners* television program exposed non-compliant labour hire use by some of Australia's largest corporate farm entities.<sup>78</sup>

In response to "a regulatory gap with respect to the protection of the labour rights of migrant workers in the horticulture industry",<sup>79</sup> a number of regulatory developments are also emerging. Three state-based labour hire licensing models have been developed and labour hire licensing is now part of the federal Australian Labor Party's policy platform.<sup>80</sup>

In contrast, the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* (Cth) did not include any measures to address the exploitation of vulnerable workers in labour supply chains other than franchising. Federal modern slavery legislation is also unlikely to drive growers away from non-compliant labour hire contractors because of its focus on large organisations, self-reporting and the absence of penalties.<sup>81</sup>

<sup>72</sup> Elsa Underhill, Submission No 32 to Victoria State Government, *Inquiry into the Labour Hire Industry and Insecure Work*, 27 November 2015.

<sup>73</sup> Joanna Howe et al, 'A Tale of Two Visas: Interrogating the Substitution Effect between Pacific Seasonal Workers and Backpackers in Addressing Horticultural Labour Supply Challenges and Worker Exploitation' (2018) 31 *Australian Journal of Labour Law* 209.

<sup>74</sup> Howe et al, *Sustainable Solutions*, above n 4. Similarly, a 2016 study conducted by the Australian Bureau of Agricultural and Resource Economics and Sciences found that close to 70% of seasonal horticulture workers were visa holders: Department of Agriculture and Water Resources, above n 3.

<sup>75</sup> Stephanie Ware Barrientos, "'Labour Chains": Analysing the Role of Labour Contractors in Global Production Networks' (Working Paper No 153, Brooks World Poverty Institute, July 2011).

<sup>76</sup> Anthony Forsyth, *Victorian Inquiry into the Labour Hire Industry and Insecure Work* (Final Report, Industrial Relations Victoria, 31 August 2016) 52; Productivity Commission, *Workplace Relations Framework: Productivity Commission Inquiry Report — Volume 2* (Inquiry Report No 76, Productivity Commission, 2015) 935.

<sup>77</sup> See, eg, *Fair Work Ombudsman v Chaipom* [2017] FCCA 3211 (5 December 2017); *Fair Work Ombudsman v Maroochy Sunshine Pty Ltd* [2017] FCCA 559 (24 March 2017); *Fair Work Ombudsman v Seasonal Farm Services* [2017] FCCA 1020 (5 May 2017).

<sup>78</sup> ABC, above n 6.

<sup>79</sup> Sayomi Ariyawansa, 'A Red-Tape Band-Aid or a Solution? Lessons from the United Kingdom's Gangmasters (Licensing) Act 2004 for Temporary Migrant Workers in the Australian Horticulture Industry' (2017) 30 *Australian Journal of Labour Law* 158, 183.

<sup>80</sup> *Labour Hire Licensing Act 2017* (Qld); *Labour Hire Licensing Act 2017* (SA); *Labour Hire Licensing Act 2018* (Vic); Bill Shorten, 'Same Job, Same Pay: Time to Tackle Unfair Labour Hire' (Media Release, 17 July 2018) <[http://www.billshorten.com.au/same\\_job\\_same\\_pay\\_time\\_to\\_tackle\\_unfair\\_labour\\_hire\\_tuesday\\_17\\_july\\_2018](http://www.billshorten.com.au/same_job_same_pay_time_to_tackle_unfair_labour_hire_tuesday_17_july_2018)>.

<sup>81</sup> Modern Slavery Bill 2018 (Cth); Explanatory Memorandum, Modern Slavery Bill 2018 (Cth).

While horticulture industry associations are beginning to recognise the need for greater regulation of labour hire,<sup>82</sup> difficult questions remain about how to achieve greater compliance with the law without unduly restricting labour hire's ability to assist growers in sourcing labour.

## Findings

### 1. The horticulture industry relies on non-compliant labour hire contractors.

These contractors channel workers into the industry on non-compliant wages and conditions.

2. There is a legitimate role that labour hire contractors can play in the management of labour. Labour hire contractors who comply with labour standards can assist growers to address labour supply challenges, while reducing worker exploitation and alleviating the administrative burden. This finding points to the importance of reducing the role and presence of non-compliant labour hire intermediaries in the industry whilst maintaining opportunities and incentives for compliant labour hire intermediaries to operate without unfair competition.

3. The absence of national regulation governing labour hire contractors in the horticulture industry has contributed to the growth of non-compliant labour hire contractors. The regulation of labour hire contractors through the SWP has reduced scope for non-compliant contractors and increased incentives for labour hire contractors to operate in a compliant manner to retain their ability to recruit SWP workers. A central aim of state-based labour hire licensing scheme is to prevent and reduce worker exploitation and to create a level playing field amongst businesses. Problematically, each scheme seeks to achieve this objective in a different way through the introduction of distinct and separate regulatory approaches. Additionally, one of the state schemes is likely to be repealed because of a change in government. It is preferable that a national labour hire licensing scheme for the horticulture industry be introduced.

4. The introduction of labour hire licensing in a number of international jurisdictions has reduced non-compliance with labour standards by contractors involved in the horticulture industry. These examples illustrate the role of regulation in addressing the problem of non-compliant labour intermediaries seeking to profit from the exploitation of workers across global supply chains.

# FINDING #1 THE HORTICULTURE INDUSTRY RELIES ON NON-COMPLIANT LABOUR HIRE CONTRACTORS

This section presents key findings from the National Survey of Vegetable Growers and from five of the regional case studies in relation to labour hire use in the Australian horticulture industry.

These case studies reveal the horticulture industry's significant reliance on non-compliant labour hire intermediaries. In each of the case studies growers reported being regularly approached by labour hire contractors seeking to supply them with farm labour. Some growers reported their knowledge or suspicion that this labour was of workers without a valid work visa. There were also consistent reports from growers, community representatives and workers that contractors exerted significant control over labour supply within the industry and were involved in retributive behaviour towards growers and workers who threatened their power.

However, we also found that there is a constructive role that labour hire contractors can play in the management of labour through addressing labour supply challenges. In a number of the locations, we came across growers and workers who were engaged with more established and apparently compliant labour hire intermediaries. The presence of these intermediaries appeared to reduce worker exploitation and alleviate administrative burdens on growers in regional labour markets.

Thus, our research points to the importance of reducing the role and presence of non-compliant labour hire intermediaries in the industry whilst maintaining opportunities and incentives for compliant labour hire intermediaries to operate.

### The National Survey of Vegetable Growers

The survey provides an insight into the prevalence of labour hire contractors in horticulture and their relationships with growers and the workforce. The survey findings revealed that 40% of employers had used labour hire firms to access workers and 29% had sourced workers through hostels.

Use of labour hire was far more prevalent (61%) among businesses with more than 20 employees, but very low (10%) among businesses with fewer than five employees. Growers who sourced

workers through labour hire contractors were significantly more likely on average to use temporary migrants (89%) and especially WHMs (82%) than Australians workers from the local region (80%), perhaps exemplifying the tendency of temporary migrants to rely on intermediaries to source horticulture employment.

Among growers surveyed, 15% had a business relationship with a hostel that provided accommodation to their workers. This illustrates the important relationship between growers and accommodation providers for sourcing labour.

Labour hire contractors were especially important for assisting growers to meet their workforce needs. Growers who had difficulties recruiting workers 'always or most of the time' (50%) were significantly more likely on average to use labour hire companies than those who 'sometimes' (35%) or 'never' (40%) had such difficulties. Moreover, growers who 'never' had difficulty recruiting workers were the group most likely to use labour hire exclusively, perhaps illustrating how growers with established networks with intermediaries were able to use these relationships effectively to source labour. By contrast, growers who had recruitment difficulties 'always or most of the time' (15%) were significantly less likely on average to recruit workers through hostels.

The survey also found a significant variation in the way growers engaged with labour hire. Among those who had used labour hire workers, 54% said that the last time they used them they were aware of the wage rate to be paid to the workers. Of these, 67% said the labour hire firm provided written documentation about the rate paid to workers, 56% said that the labour hire company set the wage rate paid to workers and 41% said the wage rate was set after discussions between the labour hire company and the grower. These findings suggest that whilst some growers closely scrutinise labour hire arrangements and oversee the wages and conditions of workers, many do not.

**In summary, the survey revealed that growers had highly dependent relationships with contractors both for the hiring of their labour, particularly temporary migrant workers, and in providing accommodation for their**

<sup>82</sup> John Shannon, 'Growers Need Reform of Labour Hire Rules', *The West Australian* (online), 14 August 2018 <<https://www.pressreader.com/australia/the-west-australian/20180814/281818579665637>>.

## STAKEHOLDER PERSPECTIVES – LABOUR HIRE AND NON-COMPLIANCE

“There’s a shitload of dodgy contractors out there. These people start up companies, close down, start up. They’re a brother of someone or they worked for someone, and they go and start themselves.”

**Grower (Orange)**

“When contractors hire workers they take a cut and sometimes they take more than cut from the workers and it could be 50%, it could be 70% and these workers that come from overseas, they have no idea the current equivalent of how much the Australian dollar’s worth. So they just accept what they are given and then on top of that they have to pay accommodation and food after the contractor has taken a fair bit. So they’re left with very, very little. So they’ve been exploited left, right and centre.”

**Community representative (Griffith)**

“I think when you ask growers ‘what would stop you going to a legitimate labour hire organisation?’ their first answer, quick throwaway answer will be ‘I don’t know of any legitimate ones’, then if you drop a name in, whether it’s us or whether it’s someone else that you know who is legitimate, they go ‘oh yeah, but they charge a fortune.’ Really?”

**Labour hire operator (WA)**

“They said that all their passports were taken off by the contractors and they weren’t allowed to get their own passport. Even some of the girls that ran away from Shepparton, most of

them didn’t even have a passport or ID with them ... they said they were being paid, but not their whole pay. It was always less than half of their pay, every week. The contractor was always telling them that their money is being taken out for the rent, money taken out for transport, money taken out for this, money taken out for superannuation, money taken out for tax, money taken out ... and then that always leaves them with little money of their work. Even though they used to work six, seven days a week from sunrise to sunset.”

**Community representative (Griffith)**

“Now where we have had trouble in the past is the dodgy labour hire contractors that come in and say to growers, ‘I can do you 25 bucks an hour all included’ and they go, ‘Well the other bloke is 32, I’ll have you.’ Now we all know that at \$25 an hour there’s seriously shonky stuff going on.”

**Grower (Katherine)**

“I was hired by a labour hire company [name omitted]. They forced us to pay for our waistcoats which had been used before and they also deducted money for equipment which was dirty and broken.”

**WHM (Sydney WHMs focus group)**

**workers.** The survey responses illustrated the important interdependent relationship between growers and contractors, but at the same time, and somewhat paradoxically, this interrelationship was managed at arms-length. For example, many growers revealed that they were often unaware of the wages and conditions that intermediaries set for their workers. These points are further examined through analysing the qualitative data outlined below.

### Regional Case Studies

The five regional case studies revealed a varied picture of grower reliance on labour hire contractors.

#### Bundaberg

Bundaberg is a coastal town in a relatively desirable tourist area and thus has a consistently strong supply of WHMs throughout the year. In Bundaberg, hostels were particularly prominent in organising horticulture labour in this region.

We identified inflated pricing of hostel accommodation in Bundaberg, suggesting that these accommodation providers made themselves attractive to WHMs willing to tolerate high prices through their connections with local farms. A hostel in the Bundaberg region offered beds in dorms and

farm work to WHMs for between \$180–250 per week, which was not much less than the typical cost of \$250–300 per week for renting a two or three-bedroom house in the region.

Some of these hostels restricted alcohol and noise in the evenings to encourage WHMs to go to bed early in preparation for the next working day. We interviewed the owners of one hostel with a good reputation in the horticulture industry, which had relationships with 25 farms and maintained a long waiting list of WHMs hoping to stay there. This hostel stated that they would only accommodate WHMs on their premises and would refuse local workers or other workers not undertaking the 88 day work requirement for a visa extension.

While hostel owners agreed that most WHMs intended to leave once they reached the 88 days required to be eligible for a second WHM visa, one manager said there were exceptions, “*We’ve had people that have stayed for nine months. So if they’re doing a good job and making really good money, quite often they’ll stay longer*”.<sup>83</sup>

Hostels were often aware of the working conditions of WHMs and would provide information about the work as well as transportation to and from farms for a fee. Some included this service within the accommodation price.

Apart from hostels, some growers drew on the services of contractors to meet their labour needs. These contractors were generally regarded as operating outside the law and actively approached growers to ‘sell’ their services. In a focus group, one grower stated, “*a number of growers have said that they get hit up five times in one week by new contractors coming in and saying: I could supply you 30 people, it’s just this set amount [of money]*”.<sup>84</sup>

Not much was known about the workers engaged by these contractors but there was a general view among those interviewed that there was a degree of ‘co-ethnic’ recruitment: “*there will be Koreans looking after a whole bunch of Koreans*” in the words of one grower.<sup>85</sup> In these scenarios, we were told that the contractors would sometimes advertise positions and recruit workers overseas, process invoices in their home countries to avoid paying payroll tax and withhold travel documents from workers to create an indentured relationship.

An industry representative claimed that some of the hostels in the region were reputable and transparent in their practices, which is partly explained by their greater visibility than the contractors who could leave the region more easily if they were at risk of having their business practices monitored by regulatory agencies.<sup>86</sup>

<sup>83</sup> Hostel manager (Bundaberg).

<sup>84</sup> Horticulture industry association official (Bundaberg).

<sup>85</sup> Grower (Bundaberg).

<sup>86</sup> Horticulture industry association official (Bundaberg).

The hostels were also seen as more reputable by those we interviewed, than the boarding and illegal share houses, of which one hostel owner claimed there were over 100 in the region. These share houses, which are always difficult to locate, undercut the compliant hostel operators and facilitate the employment of WHMs as well as undocumented workers, students, “*dodgy 457 visas and whoever else they bring into the country*”,<sup>87</sup> according to one source.

## Virginia

Virginia is a regional town close to metropolitan Adelaide with most growers requiring labour all year round to work on a variety of vegetable crops such as carrots, potatoes and tomatoes, although there are inflated labour needs at harvest time. Despite being an eligible postcode for the WHM visa extension, growers we interviewed relied heavily on a local population of recently arrived permanent migrants from developing countries.

The absence of an intermediary role by accommodation providers can be attributed to the permanent residency status of the workforce with no need for temporary accommodation.

The case study in Virginia also revealed much less reliance on intermediaries than in the other four case studies. In this location, the aforementioned ABC *Four Corners* television investigation exposing non-compliant labour hire use in Virginia in 2015 has had a unique impact on growers’ decision-making regarding labour hire use.<sup>88</sup>

There was general consensus among large and medium-sized growers in Virginia that using labour hire posed significant risks to their businesses. As one grower reported, “*After that [the Four Corners program] we moved to direct employment and hired a human resources manager*”.<sup>89</sup>

There was a high level of distrust of labour hire among growers in Virginia. The response of some growers was to bring all hiring decisions in-house. One grower reported, “*we got stung really badly by a dodgy labour hire company — that was ripping off the workers and paying them the permanent rate but treating them like a casual; so when we audited payslips we thought they were getting paid right*”.<sup>90</sup>

Another grower told us, “*I think labour hire is too dangerous and often attract the wrong kind of people. We don’t want to work with contractors much because it’s our responsibility to check everybody. Labour hire should be audited or closed up as an industry, otherwise it’s too risky*”.<sup>91</sup>

Some growers we interviewed continued to use labour hire but took more care to engage contractors with good reputations and transparent practices. One large grower had decided to use a labour hire company who was an ‘Approved Employer’ under the SWP. The grower was attracted to the regulated nature of the SWP and its ability to provide the same group of trained and experienced workers for subsequent seasons. This grower appreciated that, under the SWP, the Department of Jobs and Small Business had already vetted the labour hire intermediary, granting it approval to sponsor overseas workers from the Pacific.

Although there was less reliance on labour hire intermediaries in Virginia than in other locations, some other businesses we interviewed felt they had no choice but to rely on labour hire intermediaries to find workers.

One grower stated that “*from a payroll perspective, it gets too top heavy and there’s a big administrative cost. Using [labour hire] is one less thing to worry about — they do recruitment, induction, paperwork, pay*”.<sup>92</sup> To control risks, this grower only engaged one labour hire company and required copies of all payslips given to his workers.

## Wanneroo

The Wanneroo production area is characterised by a high number of small properties, many now leased, primarily to Vietnamese growers of annual crops such as vegetables and strawberries. Although workers are needed all year round, the main crop of strawberries requires a significant pool of labour in September and October.

Wanneroo is not an eligible regional postcode for the purposes of the WHM visa extension. Consequently, despite being close to metropolitan Perth, Wanneroo growers reported substantial challenges in meeting their labour needs and heavily relied on intermediaries to access workers. Many of the labour hire firms in Wanneroo either supplied undocumented workers or were reportedly not legally compliant in how they paid workers.

The Wanneroo focus groups revealed a high degree of co-ethnic employment. We were told that most contractors were Malaysian and supplied Malaysian workers. Vietnamese growers in Wanneroo expressed feeling powerless to ask to see payslips or require compliance as they felt the contractors would then penalise them in the future by sending them fewer or poorer quality workers. As one Vietnamese grower said, “*There’s no control ... If you talk nice to them [the contractor] they give you enough, if you don’t ... treat them nice, you ask for 30, they give you 20 or 15*”.<sup>93</sup> These growers reported feeling that they had no alternative to non-compliant labour hire intermediaries as otherwise they would not be able to source enough workers.

In Wanneroo, many growers indicated that their biggest challenge was dealing with the constant churn of migrant workers. Despite not being an eligible regional postcode for the purpose of the WHM visa extension, many growers referred to the tendency of backpackers to leave their employment after a period of three months, which raised the possibility that some WHMs found work through labour hire firms registered in another location to sign off on horticulture work performed in a non-regional postcode, or whether workers had been misinformed by their employing labour hire contractors.

One Wanneroo grower reported “*usually the labour hire worker has only a three-month visa and three months is just enough to train them to be able to do something and then once the visa is expired, they have to go, that is the problem*”.<sup>94</sup> Another grower claimed, “*We have the same problem — it takes about three months to train the worker ... up to the level that you want but after three months either they just quit or their visa is expired, so three months is the time we accept to lose money with low quality work*”.<sup>95</sup> These comments reflected a wider attitude of growers based in the other case study locations (other than Orange where the cherries harvest is generally only six weeks) as to the efficiency and productivity challenges of a constantly rotating backpacker workforce.

In a nearby region, we interviewed a director from a labour hire intermediary, ‘LH1’<sup>96</sup> which appeared to take its compliance obligations very seriously. LH1 had operated for 18 years in Western Australia and offered a range of services to inoculate growers

<sup>87</sup> Government official (Bundaberg).

<sup>88</sup> ABC, above n 6.

<sup>89</sup> Grower (Virginia).

<sup>90</sup> Grower (Virginia).

<sup>91</sup> Grower (Virginia).

<sup>92</sup> Grower (Virginia).

<sup>93</sup> Grower, Vietnamese growers focus group (Wanneroo).

<sup>94</sup> Grower, Vietnamese growers focus group (Wanneroo).

<sup>95</sup> Grower, Vietnamese growers focus group (Wanneroo).

<sup>96</sup> Pseudonym names are used to refer to the labour hire contractors.

from labour compliance issues, including an employee health questionnaire, an employee-signed safety charter, passport evidence and 'VEVO' entitlement, and an employee ID card for each worker onsite. Its hourly charge out rate of \$29.95 per hour included only a small operating margin for the business but still placed it "at a significantly higher rate than most labour hire players in the WA market".<sup>97</sup>

We conducted two focus groups with LH1's workers and received consistently positive reports of their treatment at work, the wage rate received and their ability to contact LH1 in the event of problems at the grower's farm.<sup>98</sup> Those workers who had been employed elsewhere in the horticulture industry whilst in Australia acknowledged that this was quite different from their experiences of farm work with other employers, often involving long hours, poor health and safety and below-award wages.

LH1 had lost contracts with growers by being undercut by other labour hire operators and was not engaged by any growers in Wanneroo, although LH1 used to supply WHMs to growers in nearby regions such as Gingin and Binningup which were eligible postcodes for the WHM visa extension. An LH1 representative we interviewed stated, "Now we've done it right for about 19 years and the reason we haven't grown exponentially in business is because there's so many dodgy operators still on the scene".<sup>99</sup>

### Katherine

A four-hour drive from Darwin city, Katherine's remoteness meant that it was a less attractive destination for WHMs seeking to complete their 88 days. Growers in Katherine specialised in mangos and melons, both of which are seasonal fruits, with the peak season for each fruit between six weeks to three months long, beginning in October. For these fruits, farms had a very small core workforce during the year (ranging from three to 30) but inflated considerably (70–400) during the peak. Katherine growers did not report either a strong presence by non-compliant labour hire intermediaries nor undocumented workers in the region, although they were aware of these in the greater Darwin horticulture region.

In Katherine many of the growers we spoke to relied on contract labour from a well-established labour hire firm, 'LH2', which had a prominent office on Katherine's main street. LH2 supplied both backpacker labour

and, as an Approved Employer under the SWP, also provided Pacific workers on a longer term, returning basis for subsequent seasons.

In an interview, the founder of LH2 expressed the need to only work with reputable growers. He stated, "I'm talking to growers all the time but I'm being selective about who I talk to because I want to just offer it to clients that I know are going to do the right thing".<sup>100</sup> Most of the corporate farms and medium-large growers in Katherine used the SWP to meet their labour needs. Although some were Approved Employers under the SWP, a significant number of others used LH2 to access workers.

Additionally, we interviewed a small grower on a family farm who needed five additional workers (supplementing the grower's family) during the watermelon harvest. This grower used LH2 to bring in five workers from East Timor through the SWP. Although he said it ended up being at least \$3 an hour dearer per worker, he felt "it's a lot easier [using LH2] ... you've got to pay for a bit of ease in business"<sup>101</sup> and he appreciated that LH2 recruited the workers, organised their transport to his farm and handled the administrative burden of using the SWP.

Focus groups of labour hire workers employed by LH2 reported similarly positive experiences to those conveyed by LH1 workers in the Western Australia focus groups. LH2 workers had experienced being paid award wages, receiving regular payslips, health and safety training and regular, consistent work.

### Orange

A three-hour drive from Sydney, Orange is the closest growing region to Sydney which is an eligible postcode for the WHM visa extension and thus a highly attractive destination for WHMs.

There was only one locally-based labour intermediary in Orange, LH3, who was of Asian origin and was previously a picker but developed a labour hire business because of grower demand. He expressed that it was becoming increasingly difficult to be profitable as a labour hire intermediary and to source enough workers because of the presence of intermediaries supplying undocumented workers. He stated, "the dodgy contractor, they are usually hiring the illegal people, so the illegal people can't just walk away and quit the job [because they are being paid a lower hourly rate]. But if you are doing

it properly like us, we employ all the legal people, and then they feel 'oh I just can't make money', they just walk away".<sup>102</sup>

There appeared to be a high degree of collaboration between Orange's growers around sourcing workers. This meant that growers who needed workers would often call other growers to see if they had a surplus of labour. Growers were also prepared to confront other growers in the area who were not engaging workers in compliance with labour standards. As one grower stated, "we had a grower once that took on dodgy contractor labour and I refused to pack his cherries until he paid the right amount because it not fair to his neighbour, to us the other cherry growers if he can get his fruit picked for 30 cents cheaper. So it becomes an un-level playing field when these dodgy contractors go in with cheap prices and rip off their workers".<sup>103</sup>

Despite the efforts of Orange's growers to ensure compliance with labour standards, the cherry growers we interviewed expressed concerns around labour hire intermediaries who would arrive in Orange for the height of the season when the harvest workforce increased to about 2000 workers. At this time each year, growers said it was almost impossible to verify that workers were receiving the proper wage or that workers were legally allowed to work in Australia because of the significant pressures at harvest time to pick the crop within a very short period.

### Conclusion

The research discussed above exposes a significant reliance by growers on labour hire contractors in all of the case study locations except Virginia where the presence of a permanent, recently settled migrant workforce coupled with the impact of a television exposé created reputational damage that prompted a shift towards direct employment. It may also be that the presence of corporate farms in Virginia, through their investment in technology and more targeted human resources practices, explains the more stable workforce arrangements characterised by less reliance on labour hire intermediaries. But in Bundaberg, Wanneroo, Katherine and Orange, most growers we interviewed chose to use labour hire contractors to source their workers at harvest.

<sup>97</sup> Director of LH1 (Wanneroo).

<sup>98</sup> Focus group with workers (Gingin).

<sup>99</sup> Director of LH1 (Wanneroo).

<sup>100</sup> Director of LH2 (Katherine).

<sup>101</sup> Grower (Katherine).

<sup>102</sup> LH3 contractor (Orange).

<sup>103</sup> Focus group with growers (Orange).

# FINDING #2: THERE IS A LEGITIMATE ROLE THAT COMPLIANT LABOUR HIRE CONTRACTORS CAN PLAY IN THE MANAGEMENT OF LABOUR IN THE HORTICULTURE INDUSTRY

The nature of the horticulture industry lends itself to the presence of labour hire contractors. Growers are generally keen to focus their expertise toward producing fruit and vegetables, and are rarely experienced or interested in managing complex and fluctuating labour needs, making outsourcing of labour recruitment commonplace.

Sourcing a reliable supply of productive labour at short notice is crucial given the uncertainty over the current and future workforce due to seasonal and market fluctuations. At the same time there is increasing pressure on growers to supply quality fresh produce at competitive prices according to tightly pre-programmed schedules for large grocery retailers particularly the major supermarkets. This section discusses the role of labour hire contractors in assisting growers to be more efficient in their employment practices and to manage their labour supply. It also demonstrates how non-compliant labour hire contractors can distort the labour market through controlling labour supply and undermining growers' efficiency by concealing wage underpayments.

## Efficiency

Our research found that many growers relied on labour hire contractors to avoid time-consuming administrative aspects of running a business, rather than an explicit attempt to reduce labour costs.

One familiar driver was the need to outsource the administrative and legal complexities associated with employment. As one grower stated:

*“I don't want the hassle. I don't want the problem. I don't want to go and find them I don't want to pay their superannuation, I don't want to pay their taxes, all that type of thing. The [LH2] does all of that which is perfect as far as I'm concerned. I make one phone call, how many I need and they're there.”<sup>104</sup>*

A number of labour hire contractors we interviewed went to great lengths to improve the efficiency of and reduce costs for growers engaging their services. This often involved training workers before placing them onsite, providing them with transport, organising visas and providing workers with identification cards and uniforms.

In an interview with a manager from LH4, a national labour hire firm that places SWP workers in Orange, it was clear that there was a desire to provide growers with multiple services:

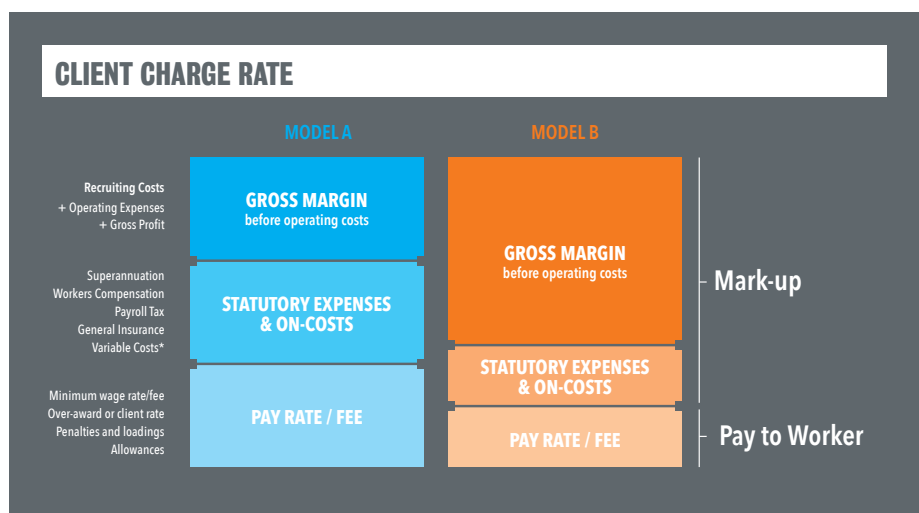
*“So for a farmer, they want to focus on their crop... they don't want to be organising accommodation, they don't want to be checking if the workers are eating right, what they're doing outside of work. Basically they want people to come to work and work and then do their own thing ... but their peace of mind is that they go to bed at night and know that they've got staff turning up the next day so obviously there's a fee but I still think that given the amount of work that gets done [by the labour hire intermediary], it's quite fair.”<sup>105</sup>*

Part of the efficiency in the labour hire model lies in the payment of an all-inclusive lump sum to the intermediary who then distributes wages to workers and pays for other statutory obligations.

56% of respondents in the survey reported that the labour hire company set the wage rate paid to workers, a situation that non-compliant labour hire intermediaries can exploit to their advantage.

Figure 4.1 provides two contrasting labour hire business models. This highlights how it is relatively straightforward for non-compliant labour hire intermediaries to draw upon a bigger operating margin from one lump sum payment from growers. Both business models appeared ostensibly to be the same from the outside with the greater profits of the non-compliant labour hire concealed through the receipt of one lump sum payment. Unless growers request payslips and verify that these payslips are an accurate reflection of work undertaken and payments made to workers, it is difficult for them to confirm how the lump sum payment is divided amongst the relevant parties.

FIGURE 4.1 COMPARISON OF TWO LABOUR HIRE BUSINESS MODELS



<sup>104</sup> Focus group with growers (Katherine).

<sup>105</sup> LH4 operator (Orange).

It can be difficult for growers to ascertain whether labour hire intermediaries take a larger mark-up as indicated in Model B.

Growers in Orange had suspicions that this was occurring at the height of the cherry harvest by some contractors who came to Orange each year from other regions to supply the harvest workforce of 1,500 to 2,000 workers. Some of Orange's growers reported that the brevity and intensity of the cherry harvest and the sheer number of workers involved at harvest time made

it difficult to verify whether labour hire contractors were compliant with labour standards.

As one grower explained, *“so when you're really, really busy and there's a shortage of pickers they [the labour hire contractors] will start bringing anybody in and of course those pickers don't get the amount they're entitled to”*, or as another grower stated, *“I can't prove if they [the labour hire intermediary] have 80 or 70 and whether the other 10 were illegals”*.<sup>106</sup>

Further, when growers had to spend more time and resources verifying whether labour hire contractors were complying with labour standards this could reduce the efficiency argument for engaging labour hire intermediaries in the first place.

A number of growers reported a practice of 'substitution' by labour hire contractors who would provide evidence on the first day that workers had a right to work in Australia but who would provide a different workforce composition on subsequent days.

Thus, whilst some growers were more likely to engage contractors because of the efficiency gains, other growers exploited the efficiency provided by the triangulation of the employment relationship to distance themselves from the non-compliance with labour standards by the contractor.<sup>107</sup>

When asked why growers would engage these contractors, one hostel manager averted to the tendency of these growers to use labour hire to evade their legal responsibilities, *“there are some big farms that only use contractors because they think they're indemnifying themselves against ripping off the workers”*.<sup>108</sup>

## STAKEHOLDER PERSPECTIVES

“And as much as you've done your due diligence to check everything when you're in that peak, you don't have time to check the extra 50 people that are on the books. I don't know if those 50 people are what the contractor's got written down, you know what I mean? So when you're really, really busy, and there's a shortage of pickers, they will start bringing anybody in and of course those pickers don't get the amount they're entitled to.”

**Grower (Orange)**

“We don't know the status of the worker brought to us by the labour hire contractor — so we cannot be 100 per cent sure the worker is legal. What's even more hard is that if I want 40 workers tomorrow, with the first delivery they give me 40 with a list of all the visa numbers and everything is okay for the first time but later on they change which workers they bring. They don't give me the same 40 workers throughout all of the days. They change the workers but they don't change the list”.

**Grower (Wanneroo)**

“You know the contract work is meant to be taking work off you, checking their visas and all that but it's actually back onto us as employers to check their work, which really takes the purpose of having a contractor on out of the whole thing. It's just nearly as much work, except for the wage payments for which you're writing just one cheque, we physically have to sight insurance policies, immigration visas and all of it.”

**Grower (Orange)**

“I can't be in the paddock all day every day. When you engage a contractor they come in, your dealings are with the contractor ... I pay you [them] lump sum and then [they] distribute that [to the workforce]. I'm not here to manage [their] business.”

**Grower (Bundaberg)**

“Although the contractor guarantees you 20 workers, for example, they're not necessarily the same 20 workers...at the end of the day he just gives us labour and so we go with what he gives us. But again we have limited control what we end up getting from a contractor.”

**Grower (Virginia)**

“We get lots of phone calls. We get lots of contractors wanting to come and see us but we just refuse. We know which contractors we can rely on, who are good, who we have used in the past. It's really important. You need to be confident of the person that the person you're using, that they're doing the right thing because with these SEDEX audits the buck stops with you, it doesn't matter that it's the contractor doing the wrong thing, the buck still stops with you. You've got to be very careful. We've used the same fellow for three years now.”

**Grower (SA)**

## Labour Supply Challenges

Another reason why growers rely on labour hire contractors is to access workers in regions or particular harvest periods where it can be difficult to find enough workers.

As one grower we interviewed stated, *“Well that's why we're using labour hire because it's hard to get them yourself. So a guy comes down and says, 'I've got 40 people' and you need them”*.<sup>109</sup>

Many growers reported facing labour supply challenges because of a declining pool of local workers, the seasonal nature of harvest work and the geographical remoteness of many farms. This increased the pressure on growers to use contractors to find workers and some growers we interviewed suggested that the industry would not survive if the supply of undocumented workers organised through intermediaries no longer existed.

These labour supply pressures appeared particularly acute for growers in Wanneroo because it was not an eligible postcode for the WHM visa extension.

Similarly, in Orange, growers reported acute labour supply challenges at the height of the cherry harvest because of the need for 1,500 to 2,000 workers across 20 farming operations in the region. At this time growers

<sup>106</sup> Focus group with growers (Orange).

<sup>107</sup> Stephen Howells, Report of the 2010 Review of the Migration Amendment (Employer Sanctions) Act 2007 (Department of Immigration and Citizenship, 2011) 57–8.

<sup>108</sup> Hostel manager (Bundaberg).

<sup>109</sup> Focus group with growers (Wanneroo).



had no local pool of workers to choose from, given Orange's low unemployment rate, so they had very little choice but to engage workers from labour hire intermediaries who had arrived in Orange for the cherry harvest.

In contrast, in regions like Virginia where there was a supply of recently settled permanent migrants from developing countries, there appeared to be less reliance on intermediaries to source workers, although one of the larger operations had chosen to engage an Approved Employer under the SWP to engage workers from the Pacific as a component of its workforce.

An interesting point of contrast to the other case study locations was Katherine, where labour supply challenges were managed through reliance on the SWP. Although some Katherine growers chose to engage with the SWP by becoming an Approved Employer, others used LH2 or other labour hire contractors approved under the program. This shows how labour hire contractors can assist growers in addressing labour supply challenges. It also shows how the regulation of labour hire contractors through the SWP framework reduces the use of contractors who engage undocumented workers or workers in non-compliance with labour standards.

## STAKEHOLDER PERSPECTIVES ON LABOUR HIRE NON-COMPLIANT PRACTICES

“There's no way a backpacker is going to go anywhere near a farm in Wanneroo because there's absolutely no motivation for them to work there, it doesn't help their visa. So the guys in Wanneroo, and they're the smaller guys, are stuck with labour hire contractors renowned for phoenixing. So what they'll do is say okay I'm going to collect whatever it is, \$22 to \$23 an hour off the farmer where technically it needs to be \$27 for the money to cover all your obligations. But I know that some of these guys [labour hire intermediaries] charge out at may \$21, \$22, \$23 an hour. Now what they do is they pay cash to the workers so the worker ends up with about \$13–\$14 net ... they [the labour hire intermediary] don't pay payroll tax, they wait till the end of the financial year, they just close the company down before submitting any tax returns then start up another brand new company under their brother's name or some rubbish like that and then they just continue on”.

**Grower (Wanneroo)**

“We know what's going on but we don't want to go and dob the guy next door because we know that he's got no choice, we know that without these contractors he just isn't going to be able to run his business ... the industry knows that there is no alternative that we're in a corner — there is just not the number of people that we can employ directly to kick these guys [labour hire intermediaries who supply undocumented workers] out”.

**Grower (Wanneroo)**

# FINDING #3: THE ABSENCE OF NATIONAL REGULATION GOVERNING LABOUR HIRE CONTRACTORS IN THE HORTICULTURE INDUSTRY HAS CONTRIBUTED TO THE GROWTH OF NON-COMPLIANT LABOUR HIRE CONTRACTORS.

The Katherine case study provides an insight into how regulated labour hire contractors, via the SWP's framework for approving employers, produced fewer labour market distortions arising from non-compliance with labour standards. It also shows the helpful contribution that compliant labour hire contractors can make in improving the efficiency of labour supply in the horticulture industry. This is in contrast to Orange and, in particular, Bundaberg and Wanneroo, where non-compliant labour hire contractors were strongly embedded in supplying workers to growers and were able to do so because of the absence of regulation of labour hire.

The SWP has additional entrance hurdles for contractors and labour hire firms seeking to become Approved Employers under the program. These include a requirement to demonstrate five years of continuous operation and a record of compliance with workplace and immigration laws. Contractors and labour hire firms who apply to become Approved Employers are also required to complete a 'Financial Viability and Credentials' form. Interviews with labour hire contractors who are approved under the SWP indicate that they take their compliance obligations very seriously as they know they could be removed from the program and thus lose their ability to recruit

Pacific workers. These contractors indicated that they also monitored growers to ensure that their work practices and provision of accommodation were satisfactory.

There is a growing consensus that there needs to be some form of regulation of labour hire licensing in the Australian horticulture industry. Three recent state government inquiries into labour hire each found that there was an ease of access, or absence of barriers to entry, for persons and corporations seeking to provide labour hire services.<sup>110</sup> Many non-compliant labour hire providers were found to lack visibility by not operating under a registered business or corporate entity. They would use technology (such as mobile phones and the Internet) to avoid the detection of unlawful practices, and operate outside the reach of the regulators.<sup>111</sup> The Forsyth Inquiry in Victoria specifically identified the horticulture industry as requiring a labour hire licensing scheme.

As demonstrated by the Katherine case study, the rationale for labour hire licensing regimes, if properly enforced and monitored, is that it will minimise the use of such practices and create a more level playing field for compliant labour hire companies and businesses using licensed labour hire contractors to source labour.<sup>112</sup>

Since these inquiries, Queensland, Victoria and South Australia have introduced labour hire licensing, although the newly elected State government in South Australia has indicated that it will repeal its legislation.<sup>113</sup> In Victoria the introduction of labour hire licensing led to some concerns being raised by the horticulture industry that labour hire firms would pass the additional costs onto growers who would not be able to pass them on to the supermarkets because of the nature of the supply chain.<sup>114</sup>

## STAKEHOLDER PERSPECTIVES – SWP APPROVED CONTRACTORS

"We do obviously a check of the place where they'll be working, make sure everything's prepared up there. We arrange their transport and accommodation if the employer has accommodation, then we just make sure we do a check on it to see that it's all up to scratch".

**Labour hire contractor (Griffith)**

"We do a lot of checks before with the growers anyway so we've got our own internal policy and procedures that we run through. We do credit checks, where you know we've gone on the farm, we've done site inspections, we felt comfortable ourselves.

**Labour hire contractor (Orange)**

"We go and meet growers, we have a look at their operation, we evaluate whether we feel comfortable sending people there. So I'm talking to growers all the time but I'm being selective about who I talk to because I just want to offer [the SWP] to clients and potential clients that I know are going to do the right thing. ... We know and I can see what they [the SWP workers] are getting paid because I have to sign off on it every week, so I know and can make sure they're getting paid the right rate."

**Labour hire contractor (Katherine)**

<sup>110</sup> Economic and Finance Committee, Parliament of South Australia, *Inquiry into the Labour Hire Industry* (Final Report, 18 October 2016) 6; Parliamentary Committees, *Inquiry into the Practices of the Labour Hire Industry in Queensland* (Report No 25, 55th Parliament Finance and Administration Committee, June 2016) 15 <<http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2016/5516T1028.pdf>>; Forsyth, above n 76.

<sup>111</sup> Forsyth, above n 76.

<sup>112</sup> Senate Education and Employment References Committee, above n 11, 328.

<sup>113</sup> Consumer and Business Services, *Labour Hire Licence* (7 November 2018) <<https://www.sa.gov.au/topics/business-and-trade/licensing/labour-hire/labour-hire-licence>>; Labour Hire Licensing Repeal Bill 2018 (SA).

<sup>114</sup> Warwick Long, 'Labour Hire Licensing Bill High on Victorian ALP Agenda despite Farmer Opposition', ABC News (online), 28 March 2018 <<http://www.abc.net.au/news/rural/2018-03-28/labour-hire-licensing-bill-high-on-victorian-alp-agenda/9587112>>; 'Labour Hire: Victoria's Plan Won't Prevent Vulnerable Workers Being Exploited', Weekly Times (online), 20 February 2018 <<https://www.weeklytimesnow.com.au/news/opinion/labour-hire-victorias-plan-wont-prevent-vulnerable-workers-being-exploited/news-story/2c174d9e40cf6f519744c8c6a532bd01>>; Victorian Farmers Federation, *Labour's Labour Licence Scheme* (2018) <[http://www.vff.org.au/vff/Policy/Policy\\_Priorities/Labour\\_Crisis/vff/Policy\\_\\_\\_Submissions/Policy\\_Priorities/Labour\\_Crisis.aspx?hkey=39fa7285-3418-4031-b212-f03ecd0f4181](http://www.vff.org.au/vff/Policy/Policy_Priorities/Labour_Crisis/vff/Policy___Submissions/Policy_Priorities/Labour_Crisis.aspx?hkey=39fa7285-3418-4031-b212-f03ecd0f4181)>.

In our regional case studies, many growers reported difficulties in assessing whether a labour hire contractor was compliant with labour standards and suggested that a form of labour hire licensing should be introduced.

However, concerns were also raised that a stated-based approach would cause difficulties for labour hire providers operating nationally, as they would need to be licensed under three different regimes. There was also the concern that non-compliant labour hire providers would simply move to other states and territories that have no labour hire licensing regimes in place.

In its submission to the Forsyth Inquiry into labour hire, the United Kingdom's Gangmasters Licensing Authority (GLA) stated:

*"If a form of licensing/regulation was introduced in Victoria, which did not operate elsewhere, it might encounter similar issues to where a labour hire company changes its approach, and only supplies labour outside of a regulated environment. Thus companies that provide labour across Australia could conceivably decide to only provide labour outside of Victoria. Any new regulation should therefore consider any unintended consequences outside its jurisdiction, and whether therefore a national approach can be adopted to avoid such risks."<sup>115</sup>*

Similar concerns were also raised by stakeholders during the SA Economic and Finance Committee's Inquiry into the Labour Hire Industry:

*"There is a risk that if you simply do it [introduce labour hire licensing] in South Australia you push up the cost of labour in South Australia and the businesses all move elsewhere, so it needs a consistent and national approach. ... [I]t really needs to be a much broader cross-jurisdictional or cross-border approach"<sup>116</sup>*

*"[P]art of the difficulty in introducing a licensing regime, particularly where there are cross-border issues, is that if it's not a national approach, sometimes it can be a bit messy for the players in that space in trying to get that balance right between protecting workers but also making business viable and able to operate. ... [Whether it is a] federal or a joint state approach, some level of cross jurisdictional approach ... [is needed] rather than one licence type here and one licence type in Victoria. I just know from history that it makes it really hard for those who operate across borders if there is a different regime in each state."<sup>117</sup>*

## STAKEHOLDER PERSPECTIVES – LABOUR HIRE LICENSINGS

"In the Northern Territory horticulture industry the farmers have been hit by unscrupulous activity to the point that the 2017 Harvest Labour Report shows that 79% if our farmers do not use labour hire agencies, they actually employ directly because of experiences of undersupply but also taking the money and not providing the employees at the times promised, so that leaves the farmer with the fruit in the trees and no people to pick or pack. We definitely think that an accreditation and licensing of labour hire agencies would be a good thing for our industry."

**Industry association official (NT)**

"We need labour hire licensing. We need to work more on regulation and consolidation of agents who are allowed to bring people onto farms — if you had decent companies doing labour hire, then it would work better."

**Union official (NUW)**

"We need licensing models but the licensing model has to work — and this is where the growers aren't going to like to hear this, the licensing model will only work if the grower gets slapped. Not only the dodgy operator because he's already operating under the radar, he doesn't care about being found out ... he'll phoenix — he'll be gone and he'll pop up here or there."

**Labour hire contractor (WA)**

"I've been banging on for years is that we need a registered list of who are reputable contractors. We talk amongst each other to know who the reputable contractors are and who the dodgy ones are but we really need a list."

**Grower (Orange)**

"I think what licensing would do is, it might actually weed out, make it too hard for the backyarders to be legitimate, so it would clean up the industry and lower the risk that's hanging over our whole industry."

**Grower (Virginia)**

There are challenges for the industry and workers in relation to the varied way in which these licensing schemes have been introduced, particularly for growers, labour hire firms and workers who operate across a number of jurisdictions. Thus, there is a strong case for developing a national approach to labour hire licensing for the horticulture industry. The Katherine case study is a useful example illustrating how the regulation of labour hire through the SWP has led to greater compliance with labour standards and the absence of unscrupulous labour hire contractors from the region.

<sup>115</sup> Gangmasters Licensing Authority, Submission No 15 to Victorian Inquiry into the Labour Hire Industry and Insecure Work, 24 November 2015, 8.

<sup>116</sup> Evidence to Economic and Finance Committee, Parliament of South Australia, Adelaide, 2 May 2016, 136 (Greg McCarthy, CEO of ReturnToWorkSA).

<sup>117</sup> Evidence to the Economic and Finance Committee, Parliament of South Australia, Adelaide, 18 September 2015, 16 (Dini Soulio, Acting Director of SafeWork SA).

# FINDING #4 THE INTRODUCTION OF LABOUR HIRE LICENSING IN A NUMBER OF INTERNATIONAL JURISDICTIONS HAS REDUCED NON-COMPLIANCE WITH LABOUR STANDARDS BY CONTRACTORS.

Many countries overseas face similar challenges in relation to the recruitment of labour. Two international examples where greater regulation of labour hire firms has been successful are instructive for understanding how problems in the Australian horticulture industry might be addressed.

In response to growing concern over substantial recruitment fees that were forcing temporary migrant workers into exploitative work, the Canadian province of Manitoba passed legislation that required employers accessing overseas labour to register with the authorities and for foreign recruiters to be licensed under the scheme.

Employer registration is the lynchpin of Manitoba's regulatory framework because it forces employers to become directly involved in the recruitment process, placing full legal responsibility for illegally charged placement fees by a foreign recruiter on the employer.

This regulation has resulted in an increase in direct employer recruitment, a reduction in the reliance on intermediaries, as well as being a useful "mechanism for screening out unscrupulous employers".<sup>118</sup>

The process involves the recruiter being obliged to become a member of the Law Society of Manitoba or the Immigration Consultant of Canada Regulatory Council and to provide comprehensive financial information on the individual's business and position. This example reveals the potential for a highly regulated framework that effectively undermines the potential for intermediaries to be involved as recruiters to exploit temporary migrant workers.<sup>119</sup>

The United Kingdom's GLA provides an alternative model for labour hire regulation.

The GLA is a statutory authority that regulates the supply of workers in agriculture, food processing, forestry and shellfish industries by requiring that labour hire agencies be licensed. It emerged after the drowning of Chinese undocumented migrant workers picking cockles in Morecambe Bay.

Under the *Gangmasters (Licensing) Act 2004* (UK), it is illegal to operate as, or enter into an agreement with, an unlicensed gangmaster. In issuing licences the GLA takes account of whether the applicant is a fit person and whether they meet detailed licensing standards, including being registered for tax, arranging wage payments on time and above the legal minimum, not mistreating workers and not withholding identity documents.

Additionally, the GLA scrutinises licence applications relying upon checks with other government departments and can decide whether an application should be awarded or a license refused.<sup>120</sup> There may be some weaknesses to the GLA model, including the regulator's inadequate civil penalties and inability to eliminate phoenixing or assist workers who lose their jobs.

<sup>118</sup> Judy Fudge and Daniel Parrott, 'Placing Filipino Caregivers in Canadian Homes: Regulating Transitional Employment Agencies in British Columbia' in Judy Fudge and Kendra Strauss, *Temporary Work, Agencies and Unfree Labour: Insecurity in the New World of Work* (Routledge, 2014) 70, 87.

<sup>119</sup> Ibid 85–9.

<sup>120</sup> For an overview of the GLA regime, see Mick Wilkinson, Gary Craig and Aline Gaus, *Forced Labour in the UK and the Gangmasters Licensing Authority* (Report, Wilberforce Institute, University of Hull, 2010); Nick Clark, 'Enforcement in the Workplace' in Bernard Ryan (ed), *Labour Migration in Hard Times: Reforming Labour Market Regulation* (Institute of Employment Rights, 2013) 89; Gangmasters Licensing Authority, *Licensing Standards* (May 2012) 5 [5.5] <<http://www.gla.gov.uk/media/1596/licensing-standards-may-2012.pdf>>; A C L Davies, 'Migrant Workers in Agriculture', in Cathryn Costello and Mark Freedland (eds), *Migrants at Work: Immigration and Vulnerability in Labour Law* (Oxford University Press, 2014) 79, 93.

# CHAPTER FIVE

# THE PRESENCE OF

# UNDOCUMENTED WORKERS

## Introduction

The term ‘undocumented workers’ is a catch-all phrase which masks a range of different types of workers. It can refer to workers who are permanent residents or citizens of Australia but who work in an undocumented manner by accepting undeclared, cash-in-hand payments which allow them to collect welfare.

It most commonly refers, however, to temporary migrants in a range of circumstances:

- Migrants whose visas have expired
- Migrants with a valid visa but who do not have a right to work in Australia
- Migrants with a valid visa with work rights, but who work in breach of a condition of their visa.

When we use the term undocumented workers in this report, the reference is limited to migrant workers.

The presence of undocumented workers is a key reason why the horticulture industry is an uneven playing field. Our research identifies four recurring themes from the case studies: first, the prevalence of undocumented workers in the industry; second, the role of offshore recruitment networks and non-compliant labour hire contractors in supplying undocumented workers to growers; third, the strategies employed by undocumented workers to avoid detection and the inadequacy of current approaches to enforcement; and fourth, the concern from an increasing number of growers and industry representatives as to the impact of undocumented workers in creating unfair competition amongst growers.

## Findings

**1. The horticulture industry has a structural reliance on undocumented migrant workers as a key source of labour.** Although the number of undocumented workers in the industry is not known, the research revealed that their use is widespread in large parts of the industry.

**2. Detection of undocumented workers has been largely ineffective and has done little to address the industry’s structural reliance on undocumented workers.** Indeed, when undocumented workers are detected by authorities, they are generally deported while non-compliant growers and labour contractors engaging these workers are left to repeat potentially their illegal activities (see Table 5.2).

**3. Undocumented workers are the most vulnerable workers in the horticulture industry.** As undocumented workers either have no visa or are working in breach of their visa conditions, they are highly vulnerable to exploitation. Their undocumented status means that employers can threaten to report them to immigration authorities if they complain about their wages or conditions. Although not all undocumented workers are exploited, there is evidence of a large degree of serious exploitation involving

undocumented workers, especially those who are recruited through offshore networks. As a result of their irregular status, they have significantly reduced capacity to seek assistance in the event of exploitation

**4. Growers regard undocumented workers as highly productive.** These findings are evident in grower feedback in this report.

**5. The introduction of amnesty arrangements for undocumented workers in other jurisdictions provides some examples of a different regulatory approach to addressing the challenge presented by undocumented workers.**

# FINDING #1: THE HORTICULTURE INDUSTRY HAS A STRUCTURAL RELIANCE ON UNDOCUMENTED WORKERS

Undocumented workers are not a homogenous group. It is difficult to gather data on the profile of undocumented workers because of their interest, and that of the growers who employ them, in not being detected.

Our interviews and focus groups suggested that the main group of undocumented workers are visa overstayers. This group includes international students, working holiday makers (WHMs), Seasonal Worker Program (SWP) workers and tourist visa holders, all of whom stay in Australia beyond the term of their visa. Our research found that there are a substantial number of visa overstayers who remain in Australia for the purpose of work.

We found evidence of workers on student visas that do not have study as their main intention but are using this visa to work in Australia on an unrestricted basis. This is despite the student visa condition permitting only 40 hours work per fortnight during semester. One example from our research was an engineering student from Malaysia who came to Australia on a student visa but had the intention of working full time in horticulture for the three years of his degree in order to save enough money to start his own engineering firm in Kuala Lumpur.

Another group of undocumented workers hold tourist visas which do not include a right to work. Workers in this group are non-compliant as soon as they engage in work, and experience a second level of non-compliance once they have overstayed their tourist visa. A grower reported an example of a Thai couple who came to Australia on a tourist visa leaving their 18-month-old child behind in Thailand with extended family members. This couple returned home after a couple of years, having saved up a significant amount of money by working on the grower's farm.

We also found evidence of Pacific workers who had absconded from their sponsored employment under the SWP. Community representatives in Griffith also told the research team of non-compliant contractors who entice Seasonal Workers from the Pacific to abscond from their employment under

the SWP and who continue to provide them with access to farm work once they lose the right to work in Australia under the terms of their visa.

Although little is formally reported about the composition of the undocumented workforce in Australia, government statistics reveal the countries with the largest proportions of undocumented workers, as presented in Table 5.1. Reports from growers and workers in interviews and focus groups suggested the main source countries of undocumented workers in horticulture were Malaysia,

Indonesia, Thailand, Cambodia and Vietnam. The vast majority of visa overstayers are within working age with 77% of visa overstayers between 21 and 60.<sup>121</sup> The most common industries for undocumented work are agriculture, forestry and fishing, construction, and accommodation and food services.<sup>122</sup>

Media reports also provide some information on the profile of undocumented workers in horticulture as identified in Table 5.2.

**TABLE 5.1 UNLAWFUL NON-CITIZENS BY NATIONALITY AT 30 JUNE 2016<sup>123</sup>**

Countries	Number of overstayers	Proportion (%) of total
Malaysia	9,440	14.6
China	6,500	10.1
USA	5,170	8.0
United Kingdom	3,680	5.7
Indonesia	2,780	4.3
India	2,730	4.2
South Korea	2,550	3.9
Philippines	2,370	3.7
Vietnam	2,370	3.7
Thailand	2,290	3.5
Germany	1,510	2.3
Tonga	1,390	2.2
France	1,390	2.2
Japan	1,360	2.1
Fiji	1,160	1.8
All other countries	17,920	27.7
<b>ESTIMATED TOTAL</b>	<b>64,600</b>	<b>100.0</b>

<sup>121</sup> Department of Immigration and Border Protection, *Australia's Migration Trends 2014–15* (Report, Commonwealth of Australia, 2016) 68.

<sup>122</sup> Department of Immigration and Citizenship, *Fact Sheet 87 – Initiatives to Combat Illegal Work in Australia* (Factsheet, Commonwealth of Australia, 2013).

<sup>123</sup> Department of Immigration and Border Protection, *BE17/172 – Visa Overstayers for the Financial Year – Programme 1.2: Border Management* (Budget Estimates Hearing, Question Taken on Notice, 22 May 2017) 2. Numbers are rounded which may result in rounding errors.



**TABLE 5.2 MEDIA REPORTS ON UNDOCUMENTED WORKERS IN HORTICULTURE**

Media report	No. of UWs uncovered in enforcement activity	Types of UWs	Geographical area	Consequences reported in the media
Mitch Mott, 'Illegal Agricultural Workers Detained after Raids on Naracoorte Property', <i>The Advertiser</i> (online), 6 August 2018	3	All 3 overstayed their visas.	Naracoorte, in SA's south-east.	All taken into custody and are being held in detention pending their removal from Australia.
'Two Nepali nationals amongst six detained in WA', <i>SBS Nepali</i> (online), 19 July 2018	8	Undocumented workers	Kununurra, far north of Western Australia	3 of them held in detention ahead of their removal from Australia.
Cameron Bates, 'Ingham Ju Fu Chinese Restaurant temporarily closed after illegal worker raid', <i>The Townsville Bulletin</i> (online), 30 May 2018	4	Undocumented workers	Ingham	In detention and awaiting removal from Australia.
Joanna Menagh, 'Trial Aborted Four Years after Market Garden Raids led to Allegations of Illegal Foreign Workers', <i>ABC News</i> (online), 7 May 2018	Not disclosed.	Undocumented workers	Carabooda, north of Perth.	Not discussed.
Natalie Kotsios, 'Border Force Farm Raid: Foreign Workers in Cobram Detained', <i>The Weekly Times</i> (online), 25 April 2018	11	Undocumented workers.	Cobram	All workers were detained including three people who had organised the illegal workers.
Kath Sullivan, 'Illegal Worker Amnesty: Farmers Admit Problem and Want Deal to Fix Issue', <i>The Weekly Times</i> (online), 10 October 2017	Not applicable.	Not applicable.	Victoria	Not discussed.
Graeme Powell, 'Dozens of Illegal Workers Detained by Border Force Officers at Perth Strawberry Farm' <i>ABC News</i> (online), 14 September 2017	36	28 had breached their visas, 8 undocumented workers.	Bullsbrook and Wanneroo, on the outskirts of Perth.	Workers were detained.
Grant Taylor, 'Alleged Illegal Foreign Workers Arrested on Bullsbrook Strawberry Farm after Border Force Raid', <i>The West Australian</i> (online), 14 September 2017	36	28 had valid tourist visas but breached the conditions. 8 had overstayed their visa.	Bullsbrook, Perth.	Workers were detained.
Grant Taylor, 'Rude Awakening for Sleepy Farm Workers', <i>The West</i> (online), 2 March 2017	More than 50.	Undocumented workers.	Pemberton, in WA's south-west.	Taken to Perth to leave Australia immediately or to Yongah Hill detention centre to fight deportation.
'Queensland Strawberry Farm Raid Net 27 Illegal Workers', <i>Brisbane Times</i> (online), 8 February 2017	27	13 had overstayed their visas, 12 had breached their visa conditions.	Near Stanthorpe, south-west of Brisbane	21 sent to Brisbane to be deported or apply for bridging visas, 2 granted bridging visas, 4 to face more interviews.
Bridget Fitzgerald, 'Farming Groups Condemn Illegal Labour Hire Practices after Raid Uncovers Foreign Nationals Working for Australia's Largest Asparagus Producer', <i>ABC News</i> (online), 5 December 2016	61	Undocumented workers.	Koo Wee Rup Farm, east of Melbourne.	Workers were detained.

**TABLE 5.2 MEDIA REPORTS ON UNDOCUMENTED WORKERS IN HORTICULTURE**

Media report	No. of UWs uncovered in enforcement activity	Types of UWs	Geographical area	Consequences reported in the media
'Illegal Migrant Workers Used by Farms Supplying to Coles and Woolworths Using illegal Foreign Workers', <i>7:30 Report</i> , 15 November 2016	Not applicable.	Not applicable.	Northern Victoria.	Deportation.
Ruby Cornish, 'Border Force Crackdown: Illegal Blueberry Farm Workers Detained on NSW Mid North Coast', <i>ABC News</i> (online), 24 August 2016	34	14 were in the country illegally, 20 were breaching their visa conditions.	North of Coffs Harbour, NSW Mid North Coast.	The adult detainees were to be sent back to Malaysia, and the children also detained.
Emma Field, 'Illegal Farm Workers Detained Near Mildura after Immigration Department Operation', <i>The Weekly Times</i> (online), 13 August 2015	11	All had overstayed their visa.	Near Mildura.	Workers had been moved to Melbourne pending arrangements for deportation.
Emma Field, 'Illegal Malaysian Farm labourer Told about "Kangaroo Call" When Starting Work', <i>The Weekly Times</i> (online), 5 August 2015	Not applicable.	Not applicable.	Victoria.	Not discussed.
David Hurley, 'Alleged Illegal Farm Workers to be Deported after Police Raids in Shepparton', <i>Herald Sun</i> (online), 1 July 2015	38	32 unlawful non-citizens and 6 breaching their visa conditions.	Shepparton, north Victoria.	Workers were detained.
Kallee Buchanan and Marty McCarthy, "'Operation Cloudburst" Detains 22 Suspected Illegal Workers at Gatton, Queensland', <i>ABC Rural</i> (online), 29 May 2015	38	32 unlawful non-citizens, 6 breaching their visa conditions.	Gatton, 90kms inland from Brisbane.	Deportation

**STAKEHOLDER PERSPECTIVES ON LABOUR HIRE CONTRACTORS AND UNDOCUMENTED WORKERS**

“The dodgy contractor model acts both as a network for jobs and visas in the fresh food industry. We have seen multiple examples of workers being asked to pay between \$500 and \$10000 to contractors to submit a \$35 visa application and if they refuse they are denied access to work on a farm. As contractors linked with unlicensed agents are the key to accessing jobs in growing regions they have power to place workers in precarious and vulnerable positions. Workers once in debt over their visas are then asked to pay the debt off by handing the money over to the contractors every week. Workers become effectively bonded to their contractors and agents until they have paid the debt off.”

**Union official (NUW)**

“A fine means nothing to these people. This particular lady, she advertises on Gumtree that she has accommodation and can get you work. She’ll get people in a house and this is her system – they go to a nice house and that’s where they sign them up with their contract that’s not a contract, doesn’t even say who it’s been but it makes it look like it’s all official. Then they say, right, we’ll take you to your house now but you’ve got to pay – it’s about \$600 cash. They pay in cash for the bond and first two week’s rent, then they take them to a house and that’s where they’re trapped. They’re in a place, thinking ‘holy hell, what have I done?’ She subcontracts them to the dodgy labour hire companies who pay her cash and the workers only get \$5 an hour on a piece rate because everyone’s taken their cut along the way. Then these people leave in a few weeks and say, ‘I’m out, I’m leaving’. So they leave, she keeps the \$600 and the cycle continues. She’s been to court a couple of times and she’s not in jail.”

**Grower (Lockyer Valley)**

**The role of labour hire contractors in supplying undocumented workers**

The case studies revealed that most growers accessed undocumented workers through a contractor rather than through direct employment. Interviews with some growers and other stakeholders suggested that the employment of undocumented workers through contractors was a deliberate decision to avoid direct knowledge and possibly accessorial liability in wage underpayments to undocumented workers.

An Australian Workers’ Union (AWU) official stated, “most growers know their workers are undocumented workers, that’s why there’s so many labour hire contractors, so they can say ‘we didn’t know’, even though they really do know. Some growers have a business model of using undocumented workers via contractors”.<sup>124</sup>

**Presence of Undocumented Workers**

The horticulture industry’s reliance on undocumented workers is not a new phenomenon. As far back as 1999 the Department of Immigration found substantial numbers and recommended increased penalties on employers, although horticulture industry associations opposed this on the basis that “it was not always possible to attract sufficient legal workers during the harvest”.<sup>125</sup>

<sup>124</sup> AWU official.

<sup>125</sup> Department of Immigration and Multicultural Affairs, *Review of Illegal Workers in Australia: Improving Immigration Compliance in the Workplace* (Report, Parliament of Australia, 1999) 27.



## STAKEHOLDER PERSPECTIVES: THE PRESENCE AND IMPACT OF UNDOCUMENTED WORKERS ON THE INDUSTRY

It is very difficult to gauge the extent of the use of undocumented workers in the horticulture industry. Employers of undocumented workers do not provide payslips, pay tax or leave any documentary trail that would indicate their workers are undocumented.

Although the Department of Home Affairs has information on visa overstay, there is no way of confirming how many visa overstayers are working in low-skilled horticulture work. There is also no way of ascertaining how many visa holders are working as farm workers in the horticulture industry in breach of their visa conditions. As a result, the evidence of the incidence and extent of undocumented work in the industry is largely anecdotal.

Researchers Malcolm Rimmer and Elsa Underhill posit that the numbers of undocumented workers in horticulture “is likely to be a large proportion (perhaps a third) of the 50,000 to 90,000 undocumented workers estimated to be in Australia”.<sup>126</sup>

In some locations, growers estimated that undocumented workers’ proportion of the workforce was extremely high. A Darwin grower estimated that up to one fifth of the horticulture workforce in the greater Darwin region was undocumented.

An industry association official reported that 80–90% of the Mildura and Robinvale workforces were undocumented.<sup>127</sup>

A Wanneroo grower suggested that 70–80% of the workforce in that region was undocumented,<sup>128</sup> with another grower estimating that across Western Australia, 50% of the workforce was undocumented.<sup>129</sup>

Only in one of the regional case study locations did the interviews and focus groups explicitly suggest very little presence of undocumented workers. In Katherine, growers and other stakeholders suggested there was not a large presence of undocumented workers or non-compliant labour hire contractors.

Our research found that in some regions, undocumented workers organised through non-compliant labour hire contractors provided the main or a significant supply of workers. This appeared most common in Wanneroo, Darwin, Griffith and Robinvale, although growers reported that undocumented workers were also prevalent in other areas, for example, in Orange at the height of the cherry-picking season when the workforce would increase from 200 workers to approximately 2,000 for a six-week period.

“When we do onions, the amount of [undocumented workers], you can’t believe it ... because, oh, there’s thousands, thousands, thousands ... And Immigration turns up to a farm ... and into the field we go. Phew! Yeah! Some other people just scream to one of your family members to pick up the car and then you go. Someone just shouts, “Immigration!” And that’s it, forget about your harvesting, and everything, and forget about your lunchbox and fsht! Whoa! ... I’ve been running for almost 5 years. I’ve had to run fast.”

**Former undocumented worker (Griffith)**

“There are at least 140,000 unauthorised workers in the Australian horticulture industry — let me emphasise, this is an underestimation, it’s a conservative figure.”

**Union official (AWU)**

“The combination of undocumented workers and Malaysians and Indonesians on dead end bridging visas is vital to the horticulture industry. In more seasonal parts of the industry this group forms a clear majority of the workforce.”

**Union official (NUW)**

“Now the supermarkets have used the illegals — they’re nicely at a distance, and they’ve used it to keep prices down ... so there’s a section of growers that have used that, and used it and used it, and all it’s been is a race to the bottom. Nobody saw it [the undocumented workers]. They still wouldn’t see it but that’s all it’s done, and now, those ones that are still hanging in there are using all of that type of labour to gain an unfair market advantage. They should be nailed to the wall because it’s stopping the ones doing it properly from continuing.”

**Labour supply operator (Vic)**

“There are market gardens in this area that — well you do wonder where the labour comes from. You know it’s difficult to say whether they’re legit or not, but I know they’re not going through [our labour hire], I know they’re not going through a number of other labour hire companies because I know the [compliant] labour hire companies. So where do they come from?”

**Grower (Gingin)**

“The Malaysians ... are the ones who are exploited because generally there’s no allocation for them in the working holiday visa. So when you know there’s Malaysians on a farm, very few of them could be legal.”

**Industry stakeholder (WA)**

“Well, to be honest, I would say 70% of the Pacific Islanders who come here are on tourist visa and they do harvest work and some of them work, their visa is still current, but some of them work when their visa is still expired and they are the vulnerable ones ... I’ve come across a family member who [was] here for 20 years and he genuinely wanted to go back home. So he bought a ticket and went to the airport and then immigration pulled him aside and immigration said he won’t be allowed in for the next 10 years and then he said that’s all right. He was ready to go back home.”

**Industry stakeholder (NSW)**

“Maybe 70–80% [undocumented workers as a proportion of the workforce] for intensive farming here, that’s not just harvest but continuous harvesting the crops you know, capsicums, tomatoes, those kinds of crops.”

**Grower (Wanneroo)**

“Yep, there are certainly a lot out there, the more we’re working in the industry the more we see that and obviously it’s very disappointing for us, but it’s also really annoying for the growers because as they’ve mentioned that you know you’re paying a fee for this program [the SWP] and if you’re paying more to have your workers and the person down the road is doing it illegally and paying them half the price or whatever it might be, it really just doesn’t bring a nice vibe to the industry or anything like that as well.”

**Labour hire contractor (NSW)**

“There’s much more illegal people in Mildura, Shepparton and Bundaberg, these kind of places because more Malaysians stay there because there’s more jobs there. That’s why they come. But in Orange the job is not really stable actually. In winter there’s not many jobs, so maybe that’s the reason.”

**Labour hire contractor (Orange)**

<sup>126</sup> Malcolm Rimmer and Elsa Underhill, “Temporary Migrant Workers in Australian Horticulture: Boosting Supply but at What Price?” in Massimo Pilati et al (eds), *How Global Migration Changes the Workforce Diversity Equation* (Cambridge Scholars Publishing, 2015) 143,145 (citations omitted).

<sup>127</sup> Industry association official (Vic).

<sup>128</sup> Grower (Wanneroo).

<sup>129</sup> Grower (WA).

In the case studies, the reports of undocumented workers were higher in regions that found it difficult to source WHMs (for example, Darwin, Wanneroo and Robinvale) or without a legitimate source of local or SWP labour, unlike in Katherine and Virginia. This suggests that one driver of turning to undocumented workers is the absence of a readily available source of labour for seasonal, casual work.

The reliance in some regions of the horticulture industry on undocumented workers is accompanied by fear of this labour

source becoming unavailable in the future. As one Robinvale grower stated, “there’s a percentage of workers around here that don’t have work visas. I get that. That’s a real worry for us because if you take them away, I don’t know what Plan B is”.<sup>130</sup> Another grower asked, “How else are we going to get our workforce? Are the people from the city going to go work on farms and pick products?”<sup>131</sup>

Another grower from Wanneroo reported, “If we take them [undocumented workers] out, I don’t know what the level beyond crisis is, but that’s where we’re at. The reason I’ve cut

back [on production] is because I cannot get enough legitimate workers and I cannot afford to take the risk of dealing with the people that are questionable”.<sup>132</sup>

Although there are regional differences, the horticulture industry has a substantial reliance on undocumented workers, with a number of growers and other stakeholders reporting that growers in some regions have ‘no choice’ but to engage undocumented workers because of inadequate labour supply from legal sources of labour.

## FINDING #2: DETECTION OF UNDOCUMENTED WORKERS HAS BEEN LARGELY INEFFECTIVE AND DONE LITTLE TO ADDRESS THE INDUSTRY’S STRUCTURAL RELIANCE ON UNDOCUMENTED WORKERS

There are mixed accounts as to the difficulty of employment and immigration authorities detecting undocumented workers. On the one hand, compounding the problem of detecting undocumented workers is the behaviour of undocumented workers themselves. Undocumented workers have an incentive to remain invisible to authorities because they risk deportation if detected.

Evidence from the focus groups and interviews suggests that undocumented workers tend to be located in more isolated areas and keep to themselves. As one local representative reported, “A lot of people in town may not even see them. They sleep. They work. They sleep. They go back to Bundy and get supplies, they come back. Yeah, they’re very quiet”.<sup>133</sup> A representative of the FWO reported, “we hear about all these illegal workers, but [when we visit farms] we just don’t see them”.<sup>134</sup>

It seems that undocumented workers are adept at avoiding detection and have sophisticated, well-developed strategies in the

event of a Border Force raid. An officer from the Stanthorpe police force observed that during a raid, “it’s like mice abandoning the ship”,<sup>135</sup> with a former undocumented worker describing the need to respond quickly upon the arrival of enforcement authorities, “Someone just shouts, ‘Immigration!’ And that’s it, forget about your harvesting, and everything, and your lunchbox and fssht! Whoa! ... I’ve been running for almost 5 years”.<sup>136</sup>

This is consistent with media reports indicating that undocumented workers shout code words to alert other undocumented workers in the same row that a raid is occurring,<sup>137</sup> and also with the opening anecdote of a 2006 Senate Committee inquiry report into harvest labour, “...when [inquiry] members [were] touring an isolated farm just north of Euston on the Murray River, suddenly came across a team of grape pickers hard at work. Taking fright at our unexpected appearance, they fled down the vine rows toward the other end of the field. The committee had been mistaken for immigration officers conducting a raid on illegal workers”.<sup>138</sup>

Undocumented workers are also difficult to detect because of their tendency to be housed in private dwellings (usually share houses), often owned or leased by their contractor.

As one labour hire contractor reported to the research team, “They [undocumented workers] just hide. Like let’s say, you rent a house and something like that and you can hide easy”.<sup>139</sup> A former undocumented worker described how contractors are vigilant in ensuring undocumented workers do not make local connections and remain concealed, describing how “the contractor will just sleep in the car outside [the houses of undocumented workers] and watch them. So no-one walks outside”.<sup>140</sup>

On the other hand, we received conflicting evidence that growers are aware of those in the industry who employ undocumented workers. One Victorian labour supply operator told the research team the use of undocumented workers in some regions is so extensive that it is readily apparent where these workers are being used. As one

<sup>130</sup> Grower (Robinvale).

<sup>131</sup> Grower (Lockyer Valley).

<sup>132</sup> Grower (Wanneroo).

<sup>133</sup> Accommodation provider (Wide Bay Burnett).

<sup>134</sup> FWO inspector (QLD).

<sup>135</sup> Police force representative (Stanthorpe).

<sup>136</sup> Former undocumented worker (Griffith).

<sup>137</sup> Emma Field, ‘Illegal Malaysian Farm Labourer Told About “Kangaroo Call” When Starting Work’, *The Weekly Times* (online), 5 August 2015 <<https://www.weeklytimesnow.com.au/news/national/illegal-malaysian-farm-labourer-told-about-kangaroo-call-when-starting-work/news-story/eb02f7037082803af6ced386775540d6>>.

<sup>138</sup> Senate Standing Committee on Employment, Workplace Relations and Education, *Perspectives on the Future of the Harvest Labour Force* (Report, Commonwealth of Australia, October 2006) vii.

<sup>139</sup> Labour hire contractor (Orange).

<sup>140</sup> Former undocumented worker (Griffith).

## STAKEHOLDER PERSPECTIVES: STRATEGIES OF UNDOCUMENTED WORKERS TO AVOID DETECTION

“There’s definitely, I can say without a doubt that a lot of the contractors around here [supply undocumented workers] and a lot of the farmers, vast majority would be cash in hand. I’ve been on raids here before a few years back and it’s like mice abandoning the ship.”

**Police representative (Stanthorpe)**

‘Just before the census there’s always a big bus come along and collect, so all the illegal people are gone. Robinvale is one of those places where people hide ... the census is a waste of time for that [undocumented worker] community. Because they are people who have overstayed visas or whatever that live quietly away from anything. I may even have some in my congregation. I don’t know

and I will never ask but there are people there who fly under the radar and, of course they never go on a census. So there’s probably double what the census says there is.”

**Church representative (Mildura)**

“I don’t know if they [undocumented workers] get involved much in the town. They bring a lot of their own produce in, their own food in, so I don’t think they spend a lot of time in town. They just kind of sit under the radar a little bit. ... A lot of people in town may not even see them. They sleep. They work. They sleep. They go back to Bundy and get supplies, they come back. Yeah, they’re very quiet.”

**Accommodation provider (Wide Bay Burnett)**

“We hear about all these illegal workers, but [when we visit farms] we just don’t see them.”

**FWO inspector (QLD)**

“There is a lot of people that don’t want to be found. I’m up very early in the morning and there’s still a lot of buses but they’re mainly of Asians. Now they don’t talk. Some of them don’t speak English, so what’s going on there, who knows? I think there’s Asian contractors who are keeping a lid on their workers.”

**Local government representative (Mildura)**

## STAKEHOLDER PERSPECTIVES: THE EFFECTIVENESS OF DIFFERENT APPROACHES TO ENFORCEMENT

“I do not think that the intention of the Taskforce is to remove undocumented workers from the system. I think they have clear instructions from the government to look like they’re doing something but they’re not actually doing anything meaningful. They go to one farm but they don’t go to the farm next door. One car will rock up to a farm in Werribee and they’ll get a verbal warning. If the Taskforce genuinely wanted to clean up undocumented workers they could do it. I could do it for them. They could go to Werribee tomorrow, block off the main roads out of there, there’s only two so it’s not that hard, and go from farm to farm. If they were doing it meaningfully they would have been able to clean the industry up. Everyone knows where they [undocumented workers] are. Or in Cobram, there’s a Commodore graveyard where the illegal workers leave their Commodores for future seasons. Everyone

knows where they are and where they live but everyone turns a blind eye to it.”

**Industry Association official (Vic)**

“We used to have the Department of Immigration out here — they called them status resolution groups because before that the department used to chase illegal workers and round them up and all that but that wasn’t working and so they thought there must be a better approach than this. Slowly then, they decided one time to try this and it was very successful and that calmed the community down because if you try and resolve the visa issues with the communities then they’re not going to be hiding and scared and taken advantage of, and that’s been very successful. But when they restructured the department that finished and so the last couple of years have been really bad.”

**Multicultural Council representative (Griffith)**

“I think these issues of a large number of undocumented workers who have been grossly underpaid are being swept under the carpet ... When I was there, all of a sudden there was a big demand for pickers because two days the company [name omitted] had been given notice of a visa compliance check, and of course, the contractor rang everyone and said, ‘If you don’t have a visa, don’t come to work tomorrow’. So that meant that 200 workers shrunk down to 80. There were ten teams of 20 that shrunk down to 4 teams. So that’s the kind of numbers who literally disappeared overnight. The contractor controls them. I don’t know where they go.”

**Community representative (Griffith)**

interviewee stated, “*In some areas in peak periods, and it still happens to this very day, I could walk into a paddock or into a street, and I could put on a blindfold and have a shotgun and swirl myself around, aim the shotgun in any direction, fire it, and there’s a good likelihood that I’ll hit an illegal worker*”<sup>141</sup>

The Australian Border Force, which is the enforcement agency housed in the Department of Home Affairs, is charged with the responsibility of detecting undocumented workers. In 2015 the government established a specialist multi-agency taskforce, known as Taskforce Cadena, to target and disrupt the organisers of visa fraud, illegal work and the exploitation of foreign workers.

There is only one mention of Taskforce Cadena’s work in the 2017–18 annual report from the Department of Home Affairs which states that the Taskforce has completed

17 operations and executed 24 warrants to investigate visa fraud, illegal work and the exploitation of foreign workers.<sup>142</sup> As this summary statement refers to multiple industries and there is no further publicly available information on the Taskforce’s activities on the Department’s website or in the report, it is unlikely that this reported level of enforcement activity is able to address the scale of undocumented work in the horticulture labour market.

Growers from the Lockyer Valley suggested that enforcement efforts in their area designed to address non-compliant contractors who house and sell undocumented labour were too weak to be effective. One grower suggested that there should be criminal penalties, asking: “*she [the non-compliant contractor] goes to court, pays the fine, keeps operating. Why isn’t she in jail?*”<sup>143</sup>

Other stakeholders reported that a previous enforcement effort prior to the establishment of Taskforce Cadena had been more effective in encouraging undocumented workers to come forward. In a number of regions, the research team was informed of a former status dispute resolution approach which sought to identify undocumented workers in a particular location and to assist them onto bridging visas and then valid visas. This was reported as being a more successful method of encouraging undocumented workers to come forward and seek legal and visa assistance. Status resolution is still a service undertaken by the Department,<sup>144</sup> however, reports from the case studies suggest that outreach activities such as these which encourage undocumented workers to self-report are now far less frequent.

<sup>141</sup> Labour supply operator (Vic).

<sup>142</sup> Department of Home Affairs, *Annual Report 2017-18* (Report, Australian Government, 2018) 29.

<sup>143</sup> Grower (Lockyer Valley).

<sup>144</sup> Department of Home Affairs, *Status Resolution Service* (25 November 2018) <<https://immi.homeaffairs.gov.au/what-we-do/status-resolution-service>>.

# FINDING #3: UNDOCUMENTED WORKERS ARE THE MOST VULNERABLE IN THE HORTICULTURE INDUSTRY

There is evidence that in some instances, workers are forced into undocumented work through a complex network of offshore and onshore labour hire contractors and migration agents who have a business model of recruiting overseas workers on visas without work rights such as tourist visas. A landmark report of unauthorised work in Australia by Stephen Howells emphasised the role of offshore agents who supply tourist visas that do not permit work:

*“There are many people who come to Australia on a tourist visa ... but who work to support their stay ... This method of gaining access to the labour market in Australia by non-citizens has proved reasonably successful and so it becomes attractive for organisers to arrange for tourist visas and passage to Australia and then to arrange work and some form of accommodation ... A person then meets them on arrival and takes them to a workplace. They may not actually meet the employer, rather they perform work and they are ‘paid’ by the intermediary. They may move from one workplace to another.”<sup>145</sup>*

The case studies suggest that Howells’ depiction of offshore networks producing an undocumented workforce is an apt description of how some undocumented workers arrive in the Australian horticulture industry. It appears that organised crime does have a role in misleading workers in their home countries and enticing them into significant debt to fund an all-inclusive package involving a visa, flights, pre-arranged accommodation and employment.

## STAKEHOLDER PERSPECTIVES: OFFSHORE NETWORKS AND UNDOCUMENTED WORKERS

“We know from our members’ experiences that contractors advertise and lure workers to Australia on the promise that they will get them a visa and a job working on a farm. When workers arrive in Australia they often find themselves in precarious and frightening positions including being forced to pay to secure their passports, extorted thousands of dollars for visa applications, lied to about their visa status, forced to work unpaid to pay off debts and threatened if they speak out that they will be reported to Border Force.”

**Union official (NUW)**

“Some people come to us and talk about other people that they’ve worked for that haven’t paid them or haven’t paid the right amount of money, or they’ve been working at a contract rate that was just ridiculously low and obviously wasn’t set so that any normal person could make money ... I’ve reported backpackers who are working illegally that I’ve discovered. The Koreans have a dodgy thing going where they go home and change their name and then get a third visa under another name.”

**Grower (Stanthorpe)**

“Getting the student visa is just a scam for a lot of them [undocumented workers]. So a lot of colleges are basically there just to take their money. They don’t even want them to front up. A lot of the colleges barely have any face-to-face.”

**Grower (Stanthorpe)**

“There’s a lot of Malaysians being contracted from their country ... It’s like contractors putting job advertisements out online for you in Malaysia or Korea to apply and then come to Australia and that is where it all starts to go wrong, as soon as you land [in Australia].”

**Community centre representatives (Griffith)**

“I know some Malaysians, they just use the Visitor Visa to come to Australia and they stay longer than 3 months and just work in Australia, and that’s what happens ... they are very hard workers and then they become illegal people.”

**Labour hire contractor (Orange)**

“They [some undocumented workers] also know the system. They know they can stay here beyond their visa, a lot of them come on Working Holiday or student visas, they’re not intending on becoming a student. They come here with the intention of working illegally however they can, and they know very well that when they’re ready to go home, they can go to the local cop shop, hand themselves in and they get sent home for free. That happens very regularly.”

**Grower (Virginia)**

“...organised crime in Taiwan had targeted Australia specifically as a place to operate this whole organised crime venture using people who have been trafficked or victims of modern slavery and the reason they picked Australia was because they knew that Australia had a policy of deporting people rather than prosecuting them, so they thought that if everything went belly up they would probably be able to get away with it because they wouldn’t get prosecuted. So unfortunately we’re currently creating a situation where it creates a business case for people to start these exploitative practices here.”

**Law clinic representative (WA)**

“We know from our members’ experiences that contractors advertise and lure workers to Australia on the promise that they will get them a visa and a job working on a farm. When workers arrive in Australia they often find themselves in precarious and frightening positions including being forced to pay to secure their passports, extorted thousands of dollars for visa applications, lied to about their visa status, forced to work unpaid to pay off debts and threatened if they speak out that they will be reported to Border Force.”

**Union official (NUW)**

<sup>145</sup> Howells, above n 107, 55–6.

Many undocumented workers recruited through offshore networks are unaware until they arrive in Australia that their visa does not include work rights and that the potential earnings are being inflated by the recruiter.

A Virginia grower described this situation as “slave labour”, explaining that *“It all starts when they’re home in their own countries. They’ve made promises to repay money, then they’re trapped”*.<sup>146</sup>

In the focus groups and interviews, we were also told of labour hire contractors who actively enticed Seasonal Workers from the SWP into undocumented work. In Griffith several community stakeholders reported the existence of contractors who sought to encourage SWP workers to leave their Approved Employer and work for them, taking advantage of the workers’ trust in them because of a shared ethnicity. In Griffith there appeared to be unfair competition between growers using the SWP to access Pacific labour, and other growers accessing low-cost Pacific labour through contractors providing undocumented workers.

## STAKEHOLDER PERSPECTIVES: UNDOCUMENTED WORKERS IN GRIFFITH

“Then you get this thing where [the local contractors in Griffith] half-pollute their minds with them and say ‘come work for us’. Even though they can’t, these guys don’t understand it. Then you find a lot of them abscond, which we did. We had half of them abscond. We had about four weeks left of the harvest with half absconded. In the end they all apologised within about nine days and wanted to come back because they realised they couldn’t work anyway. They’re now classed as illegal and then they all had to get sent back. This is quite a common thing.”

**Former undocumented worker (Griffith)**

“They run off because they are so afraid. They don’t know if the police catch them — so they don’t know whether it’s a good thing or it’s a bad thing. Because they make sacrifices to come here to earn a living so they can provide for their families. Unfortunately, somebody exploited and took advantage of their vulnerability.”

**Church representative (Griffith)**

“I know of cases of workers running away and the contractors tracking them down and giving them a hiding, beating them up, taking their passports.”

**Church representative (Griffith)**

“That’s one of the reasons why it’s hard for us to market ourselves against some of the contractors because they’ll take a Malaysian group of people that all they want to do is work and they’re not too fussed about what they’re getting paid ... That Malaysians ... a lot of them are on tourist visas but we don’t see those people [in our labour hire business] because they know they can’t come in.”

**Labour hire contractor (Griffith)**



<sup>146</sup> Grower (Virginia).

# FINDING #4 GROWERS REGARD UNDOCUMENTED WORKERS AS HIGHLY PRODUCTIVE

The case studies reveal that undocumented workers were a highly sought after workforce by many growers because of their commitment, experience and skill level. Although out of step with the general reports that undocumented workers were paid less, one grower reported that undocumented workers earned the highest piece rates in horticulture because they were very productive and that some were earning over \$40 an hour. One grower stated that undocumented workers were 70% more productive than backpackers, and another said of his former employment of a group of undocumented workers, “they were the best workers I ever had”.<sup>147</sup>

Similarly a labour hire contractor stated that “they’re an incredible workforce, and their English language and their understanding is incredible and their ethic is incredible, in fact

*they [undocumented workers] should be on a work visa, it would be fantastic”.*<sup>148</sup> Labour hire contractors supplying either backpacker or Pacific labour via the SWP, reported to the research team that it was difficult to compete with the superior productivity of undocumented workers.

A number of growers also reported that undocumented workers were used by smaller farms to gain a competitive advantage over corporate farms who had greater pressures and reputational risks from engaging non-compliant labour. One grower who estimated that over half of Western Australia’s horticulture workforce was undocumented, stated that labour hire contractors engage directly with smaller farms to entice them to take on undocumented workers.

## STAKEHOLDER PERSPECTIVES

“Now you’ve got the bigger farms, they do the right thing because we have to because the thing is I know that Fair Work is going to raid me once every one to two years. I know that Immigration is going to come and raid me at least every one or two years and I have a contract with [a supermarket retailer] so I can’t afford for charges to be laid against me for doing the wrong thing. So the bigger guys, you know, we’re as clean as can be. But out of the smaller growers and they’re not doing it intentionally because the labour hire contractors know which farms are going to check more thoroughly and which are farms are not. This is the case for a lot of the farms where they don’t speak a lot of English and they really don’t have a clear understanding of legislation and they’re mum and dad operations and they’re really to small for the authorities to go after. The labour hire contractor knows this and I reckon if you went through their operations, you’d be turning up 9 out of 10 workers who will be questionable [undocumented workers].”

**Grower (WA)**

## STAKEHOLDER PERSPECTIVES

“Undocumented workers are a workforce who have a different cultural attitude towards work. Once the workday starts, undocumented workers will be the first people standing, ready to go, and ensuring that everyone’s working at a good pace and they’ll teach everyone to be faster. Backpackers are still finishing their cigarette, having a laugh — it’s simply attitudinal and this makes a huge difference to productivity. They [undocumented workers] don’t see it as lowly work that’s beneath them. They take far more pride in how they present their produce.”

**Industry association official (Vic)**

“If you are employing proper people, like legal people, they are fresh and then farmer is usually not happy with their performance. This is another pressure, we have to do training. So for the illegal people, it’s easy because they are like working every year for almost three, four years and they know what to do. Of course their performance is better.”

**Labour hire contractor (Orange)**

<sup>147</sup> Grower (Binningyup).

<sup>148</sup> Labour hire contractor (Gingin).

# FINDING #5 THE INTRODUCTION OF AMNESTY ARRANGEMENTS FOR UNDOCUMENTED WORKERS IN OTHER JURISDICTIONS PROVIDE SOME EXAMPLES OF A DIFFERENT REGULATORY APPROACH TO ADDRESSING THE CHALLENGE PRESENTED BY UNDOCUMENTED WORKERS

In light of the limited enforcement capacity of the FWO and Taskforce Cadena, one alternative strategy for removing unlawful workers from the industry is to offer the opportunity for unlawful workers to regularise their visa status.

Worker amnesty schemes have been used globally to address the presence of undocumented immigrant workers. The circumstances in each country differ markedly in relation to the ease with which workers can enter states to work unlawfully, and the social and economic circumstances of the migrant workers. For this reason, direct comparisons are not possible. However, a brief analysis of the range of amnesties that have been used in different countries provides a sense of what might be possible in Australia.

In the United States, there have been amnesties throughout the 20th century.<sup>149</sup> When the Immigration Act 1924 came into effect in 1929, Congress introduced an amnesty to allow people who had crossed the border without immigration clearance to regularise their status.

The Bracero guest worker program of the 1940s was accompanied by a process for granting visas to 55,000 undocumented Mexican workers.<sup>150</sup>

In 1986, the Reagan administration offered two forms of amnesty to undocumented migrants. First, 1.7 million migrants who proved they had lived in the United States for four years were granted temporary

residency. Second, up to one million farm workers who could prove they had “harvested fruits, vegetables or other perishable crops in the United States for at least 90 days in a one-year period” were granted temporary residency with work rights.<sup>151</sup>

The 1997 *Nicaraguan Adjustment and Central American Relief Act* (NACARA) provided amnesty to one million undocumented immigrants from Central America, and in 1998, the *Haitian Refugee Immigration Fairness Act* (HRIFA) provided secure residence for around 125,000 unauthorized immigrants from Haiti.<sup>152</sup>

Spain granted five amnesties between 1990 and 2005.<sup>153</sup> The 2005 amnesty involved residency and work permits granted to 700,000 undocumented workers, which officially increased the immigrant population by 30 per cent.<sup>154</sup> A further amnesty was offered to hundreds of thousands of workers in 2013.<sup>155</sup>

Saudia Arabia has implemented several amnesties for undocumented migrant workers. Approximately one million migrant workers, mainly from Bangladesh, India, the Philippines, Nepal, Pakistan and Yemen left the country during a seven-month amnesty in 2013. At the conclusion of the amnesty, many more workers were detained.<sup>156</sup> In 2017, undocumented workers were offered the opportunity to leave the country with no penalty between March and November 2017. As part of the amnesty, these workers were not required to provide an exit fingerprint,

which means they would be eligible to apply to return to the Kingdom for work in the future.<sup>157</sup> A new amnesty was implemented in June 2018.

In 2017, the Sri Lankan and Lebanese governments arranged for an amnesty of 7,000 Sri Lankan workers in Lebanon. Workers who were over 60 years of age and had been in Lebanon for over 15 years were able to leave without any penalty, while other workers had to pay 50% of applicable fines for overstaying their visas.<sup>158</sup>

In 2011, the Malaysian government offered the opportunity to a large number of undocumented migrant workers to regularise their status. The scheme allowed workers to apply for a work permit for 800 ringgit (US\$250).

<sup>149</sup> See generally, Alex Nowrasteh, *Legalization or Amnesty for Unlawful Immigrants – An American Tradition* (28 July 2014) Cato Institute <<https://www.cato.org/blog/legalization-or-amnesty-unlawful-immigrants-american-tradition>>.

<sup>150</sup> Ibid.

<sup>151</sup> ‘US Amnesty Ends for Farm Workers’, *The New York Times* (online), 1 December 1988 <<https://www.nytimes.com/1988/12/01/us-us-amnesty-ends-for-farm-workers.html>>.  
<sup>152</sup> Nowrasteh, above n 149.

<sup>153</sup> Organisation for Economic Cooperation and Development, *International Migration Outlook* (OECD Publishing, various years).

<sup>154</sup> Giles Tremlett, ‘Spain Grants Amnesty to 700,000 Migrants’, *The Guardian* (online), 9 May 2005 <<https://www.theguardian.com/world/2005/may/09/spain.gilestremlett>>.

<sup>155</sup> ‘Amnesty Period for Illegal Immigrants Opens in Spain’, *Majorca Daily Bulletin* (online), 12 February 2013 <<https://www.majorcadailybulletin.com/news/local/2013/02/12/10904/amnesty-period-for-illegal-immigrants-opens-spain.html>>.

<sup>156</sup> ‘Saudi Arabia Rounds Up Migrant Workers as Amnesty Ends’, *BBC News* (online), 4 November 2013 <<https://www.bbc.com/news/world-asia-24810033>>.

<sup>157</sup> ‘Saudi Arabia: Migrant Worker Amnesty Success’, *The Middle East* (online), 1 April 2017 <<http://go.galegroup.com/ps/i.do?p=AONE&u=adelaide&id=GALE|A502159265&v=2.1&it=r&sid=AONE&asid=ec55b04e>>.

<sup>158</sup> Mission News, *Amnesty Granted for Sri Lankan Migrant Workers in Lebanon* (26 July 2017) Ministry of Foreign Affairs – Sri Lanka <<https://www.mfa.gov.lk/amnesty-granted-for-sri-lankan-migrant-workers-in-lebanon/>>.

## Conclusion

There is a genuine, long-standing and widespread problem of non-compliance in the horticulture industry through its structural reliance on undocumented workers. This underscores the need for a fresh approach to addressing this issue as previous attempts to detect and respond to the engagement of undocumented workers in horticulture have not substantially reduced the presence of this group in the horticulture labour market or the numbers of growers who rely on them.

The removal of undocumented workers or policy settings, which result in a change to their engagement in the industry, is a risk to the sustainability of horticulture labour supply. **Thus, it is vital that industry and unions work collaboratively with government to develop a tripartite approach to addressing challenges associated with the horticulture industry's structural reliance on undocumented workers.** An important first step is to develop a closer understanding and empirical picture of the contribution of undocumented workers in the horticulture industry.





# **PART 2: LABOUR SUPPLY CHALLENGES**

# CHAPTER SIX

# UNDERSTANDING LABOUR SUPPLY CHALLENGES

## Introduction

The Australian horticulture industry is facing a labour supply challenge. This challenge is often reported as one of *labour shortages*.<sup>159</sup> However, for a labour shortage to exist certain preconditions need to be met.

Perhaps, most importantly, it generally needs to be systematic, in that it affects all businesses in a particular industry or location, rather than individual employers who may experience *recruitment difficulties* because their wages and conditions are uncompetitive for attracting a sufficient number of capable workers.<sup>160</sup>

Our research did not find evidence of a systematic labour shortage in the horticulture industry at the national level. This is consistent with two other surveys of employers which did not reveal an aggregate labour shortage in the horticulture labour market in Australia.<sup>161</sup> **However, our research did find that there is a labour supply challenge facing the horticulture industry, which is more pronounced in some regions than in others and more pronounced within some parts of regions than others.** We outline the features of this labour supply challenge in this Chapter, drawing upon evidence from the National Survey of Vegetable Growers and the 13 regional case studies. Both the survey and case studies were conducted prior to the reforms announced in November 2018 extending the working holiday maker (WHM) visa extension for a third year and expanding the period of work for all Seasonal Worker Program (SWP) countries to nine months. Thus, the labour market impact of these two changes is not reflected in the evidence presented in this Chapter.

## Findings

1. Labour supply challenges across the industry are uneven, which means no single policy solution will fix every grower's or every region's challenges. Although the WHM visa extension has succeeded in encouraging WHMs into some regions (for example, Orange, Gingin, Binningyup and Bundaberg) it does not sufficiently encourage WHMs to travel to regions that are the most remote from capital cities or other large urban centres (for example, Darwin, Katherine and Griffith). In the case studies, growers identified regions where they had additional farms outside of the 13 regional case study locations which were also regarded as too remote to attract WHMs, including the Mallee region in South Australia and Geraldton in Western Australia.
2. Growers with annual labour needs struggle to develop a permanent workforce, although many rely on a core of local workers for permanent jobs. The National Survey of Vegetable Growers found that 40% of growers had labour needs which were year-long, or at least 11 months each year, and were not seasonal. The survey found that larger businesses were more likely to need workers for seven to 12 months. Recent changes to existing visa programs created more opportunities for growers seeking to meet their annual labour needs through a temporary migrant workforce.

First, the uncapping of the Pacific Labour Scheme (PLS) means that growers can sponsor workers from Pacific countries for a three-year period. The PLS commenced on 1 July 2018 and so far there are nine PLS approved employers, with only one of these eligible to recruit workers for the horticulture industry. Second, the removal of the limit on WHMs being employed by a single employer in one location has been removed. WHMs can now be employed by a single employer for a three-year period in horticulture. Third, the SWP has been changed to enable growers to sponsor workers from the Pacific for a nine-month period.

3. In some regions, the WHM visa extension has been working effectively to channel WHMs into the horticulture industry. In regions such as Orange, Gingin, Binningyup and Bundaberg, growers were largely positive about relying heavily on WHMs to meet their low-skilled labour needs. Although there was a general view (other than in Orange) that WHMs were not always committed, experienced or productive, most growers expressed a view that they could weed out the "88-dayers" through careful recruitment and select WHMs who were likely to have a strong work ethic. Often strong perceptions of ethnicity and race conditioned growers' views of whether a particular WHM was likely to be productive.

<sup>159</sup> Matt Brann, 'Labour Shortage Looms for Northern Horticulture', *ABC News* (online), 21 May 2014 <<http://www.abc.net.au/news/2014-05-21/labour-shortage-northern-horticulture/5466460>>.

<sup>160</sup> Joshua Healy, Kostas Mavromaras and Peter J Sloane, *Skill Shortages: Prevalence, Causes, Remedies and Consequences for Australian Businesses* (NCVER Monograph Series 09/2012, National Centre for Vocational Education Research, 2012); P N (Raja) Junankar, *Was There a Skills Shortage in Australia?* (Discussion Paper No 4651, Institute for the Study of Labor, December 2009); Susan Richardson, 'What is a Skill Shortage?' (2009) 35 *Australian Bulletin of Labour* 326.

<sup>161</sup> Danielle Hay and Stephen Howes, *Australia's Pacific Seasonal Worker Pilot Scheme: Why Has Take-Up Been so Low?* (Discussion Paper No 17, Development Policy Centre, April 2012); Jesse Doyle and Stephen Howes, *Australia's Seasonal Worker Program: Demand-Side Constraints and Suggested Reforms* (Discussion Paper, World Bank Group, 2015).

4. In some regions, the WHM visa extension has been ineffective and growers expressed a high degree of insecurity about their ability to source low-skilled labour. This was evident in regions that found it difficult to attract WHMs, either because they were not an eligible postcode for the visa extension (e.g. Wanneroo) or because they were too remote (e.g. Darwin). In Mundubbera, which had suffered reputational damage because of media stories of the exploitation of WHMs, this insecurity around labour supply led to the development of a formal network amongst regional actors and increased reliance on an alternative labour force, including those employed under the SWP.

5. In some regions, undocumented workers, organised through non-compliant labour hire contractors, provided the main or a significant supply of workers. This appeared most common in Wanneroo, Darwin, Mildura and Robinvale, although undocumented workers were also prevalent in other areas too, for example, in Orange at the height of the cherry-picking season and in Griffith. The case studies revealed that most growers accessed undocumented workers through a contractor or an intermediary rather than through direct employment. In some locations, growers estimated that the proportion of undocumented workers in the workforce was extremely high. If there were a crackdown on undocumented workers through stronger government enforcement, or an amnesty given to undocumented workers which meant some of these workers left the industry, this would potentially exacerbate labour supply challenges in some regions.

6. In some regions, the labour supply challenge facing the industry in general was mitigated through corporate farming, reliance on the SWP or WHM program or through attracting and retaining a permanent, local workforce. Regions that displayed the least degree of labour insecurity were those that either had a strong local workforce because of the influx of recently settled migrants from developing countries (e.g. Virginia), an established reliance on the SWP (e.g. Katherine and Mundubbera), a consistent stream of WHMs (e.g. Orange, Gingin, Binningyup and Bundaberg), or a combination of these factors (e.g. Lockyer Valley).

7. Regions that experienced more secure labour supply were associated with more innovative labour practices. For instance, in the Lockyer Valley, some growers use flexible working hour schedules to facilitate the employment of locals including primary carers of young children and university students. Others have established links with the local communities of SWP source countries and

communities of humanitarian migrants to establish a more reliable long-term labour supply. In contrast, the ready supply of WHMs in some regions (e.g. Bundaberg) is associated with a lack of interest in the SWP and a lower level of innovation in addressing labour supply challenges.

8. Without the incentive of the WHM visa extension or the presence of non-compliant labour hire contractors, providing undocumented workers, labour supply challenges would be far more acute in most of the case study regions. This is because the industry has not largely embraced the SWP and is unlikely to rely on the recently introduced PLS given that the WHM program now permits three years' of work for the one employer. This indicates that the abundant supply of labour in most regions is dependent on the particular incentives under the WHM program and the inadequate enforcement of labour standards. This is a substantial risk for the horticulture industry as these policy arrangements could change at any time, and is more likely to change if further revelations about exploitation of this segment of the workforce emerge.

### Evidence from the National Survey of Vegetable Growers

The survey provides valuable information regarding the labour requirements of growers and the conditions provided to workers, which can be used to analyse the nature and extent of labour supply challenges across the horticulture industry more generally. Only vegetable growers were surveyed, which means that the findings of this Chapter should be interpreted with some caution. Some (though not all) vegetable crops are perennial and others have less acute seasonal peaks and troughs than other horticulture crops. As such, the labour needs of vegetable growers may differ from other horticulture growers, thereby limiting the extent to which the findings presented here can be generalised to other parts of the industry.

Of the 332 vegetable growers surveyed who hired pickers, packers or graders, 70% employed a total of fewer than 20 people in peak season (and could therefore be classified

as small businesses), 28% employed 20–199 employees in peak season (medium businesses) and 2% employed 200 or more people in peak season (large businesses).

While 34% of respondents used pickers, packers or graders for less than six months of the year, **66% of growers surveyed employed workers for seven months or more, including 41% who claimed to employ workers to perform these roles all year round.** There was a relationship between employment size and seasonal requirements, with growers who needed labour more than six months of the year also tending to be larger businesses.

Evidence from the survey indicates that recruitment difficulties are widespread in the vegetable industry. When asked whether there had been any occasion in the last five years where they were unable to get the pickers, packers and graders they needed, 40% of growers surveyed said 'yes' compared to 60% saying 'no'. Moreover, 63% claimed to face challenges finding pickers, packers or graders, with 22% saying this was the case 'always or most of the time' and 41% claiming that they 'sometimes' faced recruitment challenges (see **Table 6.2**). Those employing five to 19 workers were the most likely to experience this, with 72% facing recruitment challenges (25% of whom experience this always or most of the time), compared to 54% of growers employing 20+ workers (18% always or most of the time).

### Which Types of Growers Were Most Likely to Experience Recruitment Difficulties?

Academic studies suggest that employers who maintain 'decent' work conditions are less likely to experience recruitment difficulties. These conditions are generally associated with high road human resource management practices including paying competitive pay rates (i.e. above the relevant award), providing workers with accommodation assistance, investing in structured workforce training, and using mechanisms to allow workers to 'have a say' over management decisions.<sup>162</sup>

However, our findings from the survey confound these well-established assumptions. For instance, of those growers who have difficulty getting workers always or most of

**TABLE 6.1 MONTHS USING PICKERS, PACKERS AND GRADERS**

	No. people employ in peak season		
	Less than 5	5-19	20+
(sample size n=)	(59)	(111)	(82)
Months use pickers, packers, graders	%	%	%
1-6 months	61	30	16
7-12 months	39	70	84

<sup>162</sup> Angela Knox and Chris Warhurst (eds), *Job Quality in Australia* (Federation Press, 2015).

**TABLE 6.2 DIFFICULTY RECRUITING PICKERS, PACKERS AND GRADERS**

	TOTAL	NUMBER EMPLOYED IN PEAK SEASON			MONTHS USE WORKERS	
		Less than 5	5-19	20+	1-6	7-12
(sample size n=)	(252)	(59)	(111)	(82)	(84)	(168)
	%	%	%	%	%	%
Always or most of the time	22	22	25	18	20	24
Sometimes	41	36	47	37	42	41
Total: always or most of the time or sometimes have difficulty	63	58	72	54	61	64
Never	37	42	28	46	39	36

Note. Respondents were asked ‘in general, how often do you find it difficult to get pickers, packers or graders?’.

the time, 80% claimed to pay award hourly rates whilst 13% admitted to paying below the award. Of those growers who never had recruitment difficulties, 67% claimed to pay the award or higher compared to 19% who paid below the award.

There are various possible explanations for our unexpected finding that growers who offer higher wages and better working conditions find it more difficult to attract and retain workers than non-compliant growers. One possible explanation is that there may be, in effect, a ‘dual’ labour market in horticulture: one involving compliant growers who have experienced difficulties recruiting workers despite offering award wages or higher; and a second labour market of non-compliant growers who have relatively minimal difficulties finding workers willing to work for below award rates, for instance those working in breach of their visa conditions who lack the security to demand legal minimum standards.

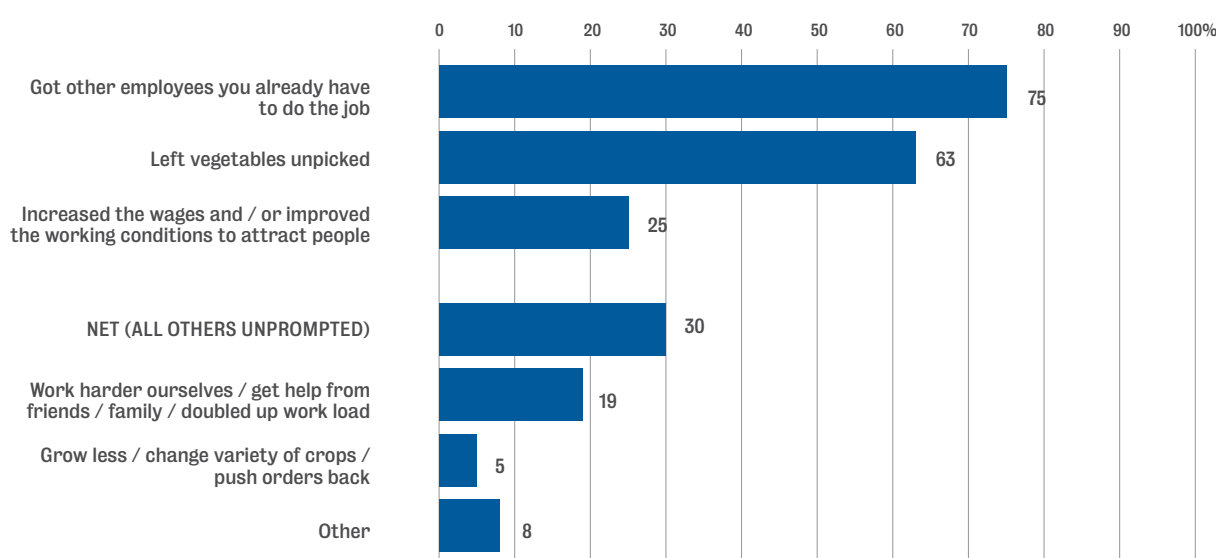
In this uneven playing field, growers in the first (compliant) labour market are, in effect, being penalised for doing the right thing by their workers, while (non-compliant) growers in the second are being rewarded for utilising an underpaid workforce.

**What Have Growers Done When They Could Not Get Enough Workers?**

A total of 40% of respondents said there had been occasions in the past five years when they were unable to get as many pickers, packers and graders as they needed (Figure 6.1). For these growers, what were the consequences of not getting enough workers? The most common response (75%) was to get existing employees to do the job, which in some cases involved asking them to work harder. **A further 63% of these respondents who could not get enough workers (i.e. 25% of all respondents) reported that they left vegetables unpicked.**

It is also noteworthy that only 25% of respondents who claimed that they had not been able to get enough workers said they had increased the wages and/or improved working conditions to attract people. This is unexpected in the context of growers claiming to experience acute labour supply challenges, given that such challenges are generally expected to prompt employers to raise wages in response.<sup>163</sup> This finding could reflect several factors including weak capacity of workers to bargain for higher wages, due to low levels of union representation in horticulture and high levels of casual employment, which are both factors that generally inhibit workers from asking for higher pay rates. It could also reflect the cost pressures on many growers, which constrain them from raising wages in response to labour supply challenges caused by intense market competition, low profit margins and supply chain pressures.

**FIGURE 6.1 WHAT GROWERS HAVE DONE WHEN THEY COULD NOT GET ENOUGH WORKERS**



Note. These figures relate only to the 40% of survey respondents who stated that they had occasions in the past five years when they were unable to get enough pickers, packers and graders, not to all growers surveyed. Respondents were asked ‘in the last five years, when you haven’t been able to get enough farm workers, which of these have you done? Have you...?’

<sup>163</sup> Richardson, above n 160.

## Evidence from the Regional Case Studies

The evidence from the survey clearly indicates that some vegetable growers face extensive labour supply challenges. It could be the case that acute shortages exist in certain regions at certain times, and conversely, that growers in regions with access to an abundant supply of labour do not face labour supply challenges.

The qualitative research conducted in the 13 regional case studies clarifies the localised and varied nature of labour supply issues in the horticulture industry.

**TABLE 6.3 KEY CHARACTERISTICS OF CASE STUDY LOCATIONS**

LOCATION	CROPS	HARVEST LENGTH	MAIN WORKFORCE	KEY ATTRIBUTES AND DISTINGUISHING FEATURES
<b>Binningyup WA</b>	Vegetables	Six to 12 months	WHMs and undocumented workers	Strong supply of WHMs, close postcode to Perth, eligible for WHM visa extension.
<b>Bundaberg QLD</b>	Potatoes, strawberries and capsicums	Six to 12 months	WHMs and undocumented workers	Tourist location eligible for WHM visa extension.
<b>Darwin WA</b>	Mangos, melons, vegetables	Three to six months for mangos and melons	WHMs and undocumented workers	Low local unemployment, not as many WHMs as other urban centers because of Darwin's remoteness, eligible for WHM visa extension.
<b>Gingin WA</b>	Vegetables	12 months	WHMs and undocumented workers	Strong supply of WHMs, closest eligible postcode to Perth for WHM visa extension.
<b>Griffith NSW</b>	Citrus, table grapes, onions, cherries, cotton	12 months (with varied demand)	WHMs, SWP workers, permanent migrants and undocumented workers	Eligible postcode for WHM visa extension. Six hours' drive from Sydney. Large Pacific Island community. Strong presence of both formal and informal labour hire contractors. Strong local economy and demand for permanent work.
<b>Katherine NT</b>	Mangoes and melons	Three to six months	SWP workers, and to a lesser extent WHMs	Remote location that is difficult for WHMs to reach so most growers use SWP, eligible postcode for WHM visa extension.
<b>Mildura and Robinvale VIC</b>	Table grapes, citrus, almonds, stone fruits, olives, carrots, mandarins, asparagus, avocados	12 months	In Mildura WHMs, SWP workers, undocumented workers. In Robinvale limited WHMs and SWP workers but significant evidence of undocumented workers	Both Mildura and Robinvale are eligible postcodes for WHM visa extension. Mildura has a population of 30,000 with youth unemployment 4–7%; Some evidence of non-compliant labour hire contractors. In Robinvale, there is an officially recorded population of 3,000 but in peak season there is a reported influx of undocumented workers, reported to be 10,000. Significant evidence of non-compliant labour hire contractors.
<b>Mundubbera and Gayndah QLD</b>	Citrus, table grapes and more recently blueberries.	Five months	SWP workers; large recent decline in WHMs	Eligible postcode for WHM visa extension. Some evidence of non-compliant labour hire contractors. Youth unemployment around 26% in the region.
<b>Orange NSW</b>	Cherries and apples	Six weeks for cherries	WHMs and undocumented workers	Closest eligible postcode to Sydney for WHM visa extension.
<b>Stanthorpe QLD</b>	Apples, wine grapes, stonefruit, strawberries, tomatoes, capsicum, broccoli, leaf vegetables	Five months	WHMs and some local permanent migrants	Eligible postcode for WHM visa extension. Official population of about 5,500. Harvest recruitment office in town. Three hours' drive from Brisbane.
<b>Lockyer Valley QLD</b>	Broccoli, onions, cauliflowers, leaf vegetables, corn, cabbages, beans, root vegetables	Up to 12 months	WHMs, SWP workers, local workers, permanent migrants and undocumented workers	Eligible postcode for WHM visa extension. Some innovative recruitment practices relating to SWP visa holders, local workforce and permanent migrants.
<b>Wanneroo WA</b>	Strawberries and vegetables	12 months	WHMs and undocumented workers	Not an eligible postcode for the WHM visa extension. Mainly small, Vietnamese-owned farms on three to four hectares blocks.
<b>Virginia SA</b>	Tomatoes, carrots and potatoes	Nine to 12 months	Recently settled migrants and SWP workers	Large workforce of recently arrived permanent migrants from developing countries.

## Binningyup, WA

Binningyup is a coastal town, just over an hour's drive from Perth with the main commodities being vegetables such as carrots, potatoes, broccoli and onions. As one of the closest eligible postcodes for the WHM visa extension, Binningyup is a popular destination for WHMs.

Binningyup growers did not report any labour supply challenges for pickers, packers and graders because of the ready supply of WHMs, although they did report finding it difficult to source semi-skilled and skilled workers. Many commented on receiving regular, even daily approaches from WHMs seeking to work on their farm.

Although Binningyup growers did report that WHMs were often less productive and reliable, particularly if their purpose was purely to complete the 88-day requirement, they were mostly positive about their ability to manage this challenge through recruiting WHMs who had a good work ethic and commitment.

Many Binningyup growers sought to employ WHMs over a six-month, or even a 12-month period where possible. The main problem expressed by Binningyup growers was not a labour supply challenge or shortage, but rather the high cost of labour in Australia. Binningyup growers did not express a strong awareness of undocumented workers or non-compliant labour hire operators in the case study location.

## Bundaberg, QLD

Bundaberg is a coastal town in a relatively desirable tourist area and thus has a consistently strong supply of WHMs throughout the year. Bundaberg's horticulture crops include sweet potatoes, tomatoes, strawberries, avocados and macadamia nuts. In Bundaberg, hostels and labour hire contractors were particularly prominent in organising horticulture labour in this region.

Despite the high rate of unemployment, WHMs, rather than locals, represented the most important source of labour for the local horticulture industry. Among the growers interviewed, WHMs comprised the largest share of workers but most also employed local workers to varying degrees depending on the crop. One grower, whose workforce comprised 90% of WHMs reported: *"I completely depend on the backpackers ... without backpackers, it [the produce] would just be eaten by the birds and the bats"*. The visa extension offered to WHMs who had spent 88 days in the horticulture industry — or the *"three month sentence in rural Australia"* in the words of one grower — was a major reason why almost all backpackers detoured to this region.

While there was a clear preference for WHMs, growers also tended to employ locals particularly to perform packing work that is ongoing rather than seasonal. Local workers generally formed a small share of the overall workforce on farms but a relatively large proportion of the 'core' workforce, many of whom were employed throughout the year. We interviewed one grower who employed 21 workers outside the picking season, all of whom were locals. Another said that the majority of their core workforce were employed permanently, in some cases for a long time. One employee had worked on the same farm for 24 years.

However, despite the high youth unemployment, there were significant challenges getting locals to work in the industry. Although a number of factors were mentioned, many respondents cited the welfare system as the primary obstacle. According to one grower: *"There's plenty of work for those unemployed, but it's easier to get the dole"*.

Combined, these options — especially WHMs and to a lesser extent local workers — provided Bundaberg growers with an abundant supply of labour. According to one grower, current labour needs were being met *"extremely well"*. Another reported: *"in this region there's plenty of labour"*.

## STAKEHOLDER PERSPECTIVES: BINNINGYUP

"A third [of WHMs] that are on holidays and we kind of steer away from them if we can. We call them, '88-dayers,' backpackers just coming here to get their 88 days. They've quite often done a fair bit of that time elsewhere and they turn up and they want 10 days or 12 days, or they don't tell you until they start working then 10 days later, they go, 'Oh no. I've got my 88 days now.' We try and avoid them when we can, but we do get them."

**Grower (Binningyup)**

"What we're trying to do is creating more skilled positions for the local residents. But, the casuals are doing picking jobs. They're doing a lot of packing. We have some driving forklifts because we've got a big shortage of skilled workers here as well, so we're kind of putting them in wherever we can."

**Grower (Binningyup)**

"We really need unskilled workers and they're always typically been 417 visa holders where they're basically looking for their 88 days. For us, that works really well. Probably one of the few positive things that the federal government has done was to introduce that extension 10 or 15 years [ago]. Up until that point of time we used to really struggle for supply of workers and as soon as they did that, we've been inundated in this neck of the woods and we're really lucky, everyone wants to come here so we've never had an issue since that time."

**Grower (Binningyup)**

## STAKEHOLDER PERSPECTIVES: BUNDABERG

"[If] you take away that second year visa or that backpacker tax comes in ... it can make it very difficult because if we don't have backpackers then it starts making it hard ... We [would then] have to rely on locals for our labour supply. That's very difficult because like I said, we've got a lot of good locals but generally the long term unemployed, they've been told to go out and work and it doesn't work."

**Grower (Bundaberg)**

"A number of growers have said that they get hit up five times in one week by new contractors coming in and saying: I could supply you 30 people, it's just this set amount [of money]."

**Industry association official (Bundaberg)**

## Darwin, NT

Although an eligible postcode for the WHM visa extension, Darwin's growing region is over an hour's drive from Darwin city and public transport to this region is almost non-existent. Its remoteness meant that Darwin growers reported that it was extremely difficult to attract a strong supply of WHMs. The main commodities in the greater Darwin horticulture region were mangos, melons and vegetables.

Darwin's unemployment rate is very low at 3.53% and many growers reported finding it difficult to attract local workers to unskilled work in horticulture. Darwin growers expressed a significant degree of insecurity in meeting their labour needs.

Non-compliant labour hire contractors and undocumented workers were reported as being active in the greater Darwin horticulture growing region. Some growers estimated that about 20% of the local horticulture workforce were undocumented workers.

A number of small and medium-size growers of Vietnamese origin reported previous failed attempts to become Approved Employers under the SWP. These growers expressed significant difficulty in accessing a sufficient workforce each harvest. A number of growers said they would not grow their business or had left fresh fruit and vegetables unharvested in previous seasons because of insufficient labour supply. One grower said he had cut back on his planting because of insufficient labour.

## Gingin, WA

Just over one hour's drive from Perth and the closest eligible postcode to Perth for the WHM visa extension, Gingin growers did not report any labour supply challenges in sourcing pickers, packers and graders. The main commodities in Gingin were vegetables, requiring a fairly steady annual harvest.

Although Gingin growers were aware of undocumented workers and non-compliant labour hire contractors being active in the region, the growers we interviewed largely relied on direct employment or a reputable, well-established labour hire company to source workers.

Most growers relied on local workers for their core, year-long workforce but supplemented this through a heavy reliance on WHMs and permanent, recently settled migrants from the humanitarian visa program. Some Gingin growers had gone to considerable lengths to make the work more attractive to locals, including providing flexible hours (particularly for mothers with caring responsibilities and school-run commitments) and increased pay. One grower sponsored a scholarship at a local high school to encourage young locals to consider a future career in agriculture.

## STAKEHOLDER PERSPECTIVES: DARWIN

"It's not easy to do business from the Territory and the biggest problem is getting labour. We have not been able to get very much local labour."

**Grower (Darwin)**

"Our real problem is that we can't keep that many people going all year long up here in the Territory, and we keep losing them to other industries unless we can find some way to job-share a bit more and then get them back."

**Grower (Darwin)**

"We haven't used any of the Seasonal Worker Program workers. In the nineties there used to be a lot of grey nomads used to come and help us and did mango season and helped and that wasn't too bad but they've just stopped coming."

**Grower (Darwin)**

"Well about three years ago, we would have lost, I'd say about a third of our crop. Couldn't get enough people to pick, and everybody in the region was the same. It was a compressed season, so most of the fruit came on – so the window instead of being three months, ended up being a month and a half or a month. We're now growing about a hundred acres less this year because of it; we're only doing 200 instead of 300 because we can't get enough workers."

**Grower (Darwin)**

## STAKEHOLDER PERSPECTIVES: GINGIN

"It's pretty much unskilled labour that we're after. The problem is we start fairly early, at 4am and we finish early, by 1pm, so it doesn't quite fit into the Aussie lifestyle so it's hard to get locals to work... We just find if we start too late the product wilts or perishes, we lose weight and we get paid by the kilo so that's why we start early. The guys we find that do better in that environment are the guys from overseas nationalities. We've got a couple of Vietnamese, a couple of Burmese, a couple of Sri Lankans and the rest are local guys that do more our logistics and our office work. But guys on the farm that do the on-farm labour it's pretty much 90 per cent all overseas backpackers."

**Grower (Gingin)**

"The problem with finding workers is finding those who are legitimate. Now we ask for all the paperwork but it's often not all there - it's very hard to find all 100 per cent ridgy-didge workers."

**Grower (Gingin)**

"We ask them [the WHMs] to stay for six months because it's training them over and over - and when they first come they've got to have the first two weeks training, if they don't prove to have that common sense then we ask them to go. We've only ever had a couple that we've asked to go. A lot of them stay for longer, the majority of them do, they stay for 12."

**Grower (Gingin)**

"This area is one of the first postcodes for the visas out of the metro area ... You get an influx straight away up this end."

**Grower (Gingin)**

## Griffith, NSW

Griffith is a city in the Murrumbidgee Irrigation Area in the north-west of the Riverina region. It has a population of about 20,000<sup>164</sup> and is located 574 km (about six hours) drive west of Sydney. The region grew as a farming community after World War II with modest farming land grants within a small radius around the town of Griffith. Outside of that radius, larger farms were available. Over time, many smaller farms expanded with the purchase of neighbouring farms.

The Griffith economy was reported as strong and there was a resulting shortage of skilled labour. A number of interviewees said words to the effect, “if you can’t find a job in Griffith, you don’t want a job”. For example, there was a new solar farm paying \$30–40 per hour for low/semi-skilled labour. Skilled and semi-skilled work was available in work relating to water use infrastructure. A number of large employers in the region demanded a large number of workers for permanent low-skill jobs. These included Baiada that operated a large chicken processing plant and a few large wineries such as De Bortoli, Casella, McWilliams.

Griffith has historically been known as a citrus growing area and its main crops in which harvesting labour was required included citrus, onions and cherries. However, many farms had diversified or moved completely away from citrus, due to recent periods of low citrus prices (although they were booming at the time of research) and the availability of mechanisation for other crops. There were abundant nut crops grown along with cotton, neither of which required much low-skill labour. Griffith also had a very large production of wine grapes for bulk wine, exported from the region in large bladders or tanks. Given the bulk nature of this production, picking of these grapes was mechanised. There remained demand for packing labour but this was minimised on the mechanised farms. The range of crops and the nature of citrus meant that the labour demand was relatively consistent across most of the year.

As the local economy was strong and because of the large employers demanding permanent low and semi-skilled labour, it seemed that there was little practically-available supply of low and semi-skilled labour amongst the local permanent population. However, this did not seem to have increased pay or conditions in low-skill jobs due in part to growers’ limited capacity to pay more and due to the continued supply of WHMs and vulnerable, undocumented workers including from the local Pacific Islander population.

There were two main threats to labour supply. First, geographical distance from Griffith city and its main suppliers of labour. That is, transport distance impacted reliability of labour when hostels limited the distance they would transport their guests to work and workers with vehicles were less reliable the further they were asked to drive for work.

Second, the negative reputation of the region, along with some others in Australia such as Mildura and Bundaberg, threatened to reduce overall supply of labour to the region. For example, one WHM we interviewed stated, “Most of them [other WHMs] have at least one story to tell. I mean we backpackers — I think what comes up the most is cities like Bundaberg and Mildura, or cities like Griffith ... These are all the places where backpackers say, ‘don’t go there, don’t go there.’”<sup>165</sup>

## Katherine, NT

A four-hour drive from Darwin city, Katherine’s remoteness meant that it was a less attractive destination for WHMs seeking to complete their 88 days. Growers in Katherine specialised in mangos and melons, both of which were seasonal fruit, with the peak season for each fruit between six weeks to three months long, beginning in October. For these fruits, farms had a very small core workforce during the year (ranging from three to 30) but inflated considerably (70–400) during the peak. Katherine growers reported neither a strong presence by non-compliant labour hire intermediaries nor undocumented workers in the region,

although they were aware of these in the greater Darwin horticulture region.

Most of the corporate farms and medium-large growers in Katherine used the SWP to meet their labour needs. Although some were Approved Employers under the SWP, a significant number of others used an SWP-approved labour hire company to access Seasonal Workers from the Pacific. Although growers reported some challenges using the SWP, most were extremely positive about the increased reliability, productivity and efficiency of employing SWP workers.

Additionally, a small grower on a family farm we interviewed required five additional workers (supplementing the grower’s family) during the watermelon harvest. This grower engaged the labour hire company to source five workers from East Timor through the SWP. Although he said it ended up being at least \$3 an hour dearer per worker, he felt “it’s a lot easier [using labour hire company] ... you’ve got to pay for a bit of ease in business”<sup>166</sup> and he appreciated that the labour hire company recruited the workers, organised their transport to his farm and handled the administrative burden of using the SWP. Most Katherine growers reported a strong preference for SWP workers over WHMs.

Most growers relied on local workers where possible for the core, year-long workforce. As in the other case study locations, Katherine growers reported a high degree of frustration and disappointment with their past experiences of using government programs to access long-term, welfare dependent unemployed locals.

## STAKEHOLDER PERSPECTIVES: KATHERINE

“It’s much better now [with the SWP]. It’s more expensive with these guys but they know their job a lot better. With backpackers they come and go too fast and you’re always training people and it’s very inefficient and your product is not as good. You know you got that pool who know what they’re doing and you know, they become professional at harvesting melons and that’s what I need ... it’s very difficult to start with [the SWP] because these guys know nothing, you’ve got to train them.”

**Grower (Katherine)**

“We used some backpackers last year but I don’t know that’s sustainable ... we keep on saying it every year, “never again!” The Vanuatans are more productive, are more engaged, are better workers, they’re all round better workers.”

**Grower (Katherine)**

“Without that [the SWP] we’re doomed. It’s that simple. We have this huge number of humans here in the Territory on permanent welfare, have been on permanent welfare since the day I come here and the only difference I see with them now is that they, when their booze is cut off [welfare support means that] they now wear better clothes but the children are having babies earlier than they used to. They’ve been of no contribution to society but a massive drain on society and there’s no way we can employ them on our farms — it’s just not possible.”

**Grower (Katherine)**

<sup>164</sup> Australian Bureau of Statistics, 3218.0 - *Regional Population Growth, Australia, 2016-17* (24 April 2018) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3218.02016-17?OpenDocument>>.

<sup>165</sup> WHM (Stanthorpe).

<sup>166</sup> Grower (Katherine).





## Lockyer Valley, QLD

The Lockyer Valley region in south-eastern Queensland is located between Toowoomba and Brisbane and encompasses several major townships including Gatton. The regional economy was centred around agriculture and horticulture particularly vegetable crops including beetroot, broccoli, cauliflowers, onions, pumpkins, green leaf vegetables, cabbages, beans, corn, potatoes and other root vegetables. Several of the largest local growers harvested a diverse range of crops enabling them to operate year round and others operated all months except during the winter.

Temporary migrant workers provided the main supply of labour for low-skilled seasonal jobs in the region. Since the region was located close to Brisbane yet most growers were outside of the postcode restriction region for the WHM visa extension, they found it easy to recruit sufficient backpackers to address their seasonal labour needs. However, there was diversity in recruitment practices among local growers. While some growers relied primarily on WHMs for picking and packing work, others came to utilise the SWP more widely and in some cases had become large sponsors under the scheme.

All of the growers interviewed used locals for both lower-skilled and higher-skilled positions where possible. However, there was frustration at the lack of reliability particularly among local unemployed. Drug dependency and barriers created by the

welfare system were seen as major problems in this respect, including the incentives that employment services providers had to place people in employment even when they were not suited for horticulture work. Some large growers also reported problems attracting and particularly retaining workers for higher-skilled positions, which led them to invest more in training and skill development.

There were several examples of growers meeting their workforce needs in creative ways in order to alleviate their labour supply challenges. For instance, one grower employed young mothers and had flexible arrangements in place to allow them to work at hours that fitted around family commitments. Another grower had developed a Farm Ready Hub as an information source and certification scheme that provided workers with all necessary knowledge about their rights and responsibilities before they started working on farms. Another grower who has used the SWP program for many years established an exchange program between the local school and a sister school in the Solomon Islands where many of the workers came from to strengthen links between the two communities.

There was collaboration between growers and their communities related to workforce attraction, retention and development strategies. Some of these related to the recruitment of permanent migrants, especially those on humanitarian visas. The region's Queensland Agriculture Workforce Network (QAWN) office established a

scheme that matched growers with former refugees with agriculture backgrounds for this purpose. However, there were reports that the government systems in place for providing welfare support to former refugees served as barriers to this happening more widely. For instance, some regulations discouraged former refugees from working and others did not give them the appropriate skills and capabilities to transition into horticulture work. QAWN also played an active role in linking different growers with each other and with education providers and community organisations. However, maintaining continuity of funding for these activities was an ongoing challenge.

Some growers perceived the practices of labour hire contractors in the region, especially in their recruitment of undocumented workers, as a major concern. Only one of the growers we interviewed used labour hire companies, while the others actively avoided them. Changes to visa arrangements were seen as one way of doing this, because of a view that current restrictions forced people who wanted to work in the industry underground. Another solution favoured by local growers was to criminalise underpayment, especially for repeat offenders. It was perceived that this would send a signal to non-compliant operators who took advantage of an unenforced field where the penalties for non-compliance were minimal to non-existent and which effectively penalised growers who did the right thing.

## STAKEHOLDER PERSPECTIVES – MILDURA

“Kids need to realise the opportunities. It’s not a hay seed farm anymore, there’s a lot of technology and a lot of science in farming. You need people on the ground to bring the customer to the farm, paddock to plate marketing now, and they need to know about the product, because they’re marketing paddock to plate, not just marketing that crop. Where was crop, or where was it built that’s what everyone wants to know these days — know what they’re eating and where it is from.”

**Grower (Mildura)**

“We can say it all day long, we need workers, and the government can say, well get off your arse and go and get them. We can advertise, it doesn’t work. Farmers have a business to run, and part of our business project is to attract workers, maintain workers, engage with workers. So, two days of the year, we shut down, cut wood or plant some trees. These sort of things we’re trying to attract and hold on the staff.”

**Grower (Mildura)**

## STAKEHOLDER PERSPECTIVES – ROBINVALE

“If the growers start to do the right thing, and they start to fall behind the ones that are doing the wrong thing ... they’ve got to start shutting down or selling out and then the ones that are doing the wrong thing will start all over again. So, you’ve got this endless cycle. It will continuously do a spiral, back and forth, back and forth ... growers have to hire cheap labour in order to get the fruit off, otherwise they’ll rot on the trees and then you get your bugs and your rot and what not. So, the vicious cycle starts again.”

**Grower (Mildura)**

“I use a labour contractor for my table grapes, because I couldn’t find individuals that would form a team. I don’t know of a table grape grower that would employ all their own employees. I don’t know that you could. And that’s me coming from a position where I can. It’s just too hard. You just can’t get people to do it. I mean I’m on Facebook, I’m a member of a couple of backpacker sites, and you’ve only got to read what they put on there to see that there’s just no hope of getting them to come and do fruit in general, actually, whether it be Queensland, South Australia, New South Wales. The work is hard and the underpayment. I have no doubt within the industry I think there’s a fair bit of work being done both at the local Victorian government, and federally, to stamp it out. I think that will be a good thing. The sooner we can start making sure people are looked after, they’ll return.”

**Grower (Robinvale)**

### Mildura and Robinvale, VIC

With an official population of 30,000 people, Mildura is the largest urban center in the Sunraysia region, sitting alongside the Murray River on the border of Victoria and New South Wales. The town is a hub for the surrounding horticulture regions that produce a wide range of produce including grapes, citrus, almonds, dried fruit and carrots. Many growers increasingly export their produce, particularly the larger corporate farms that are located in the region. For example, Dried Fruits Australia shipped 40,000 tons of citrus in 2016 where there was no market five years previously.<sup>167</sup>

While there are definite low periods, the diverse range of crops in the area and consistent demand for harvest and pruning labour means it is possible for workers to secure work for most of the year. Growth in the region is set to double in the next decade, with a projected demand for pickers, packers, irrigation technicians, machine operators and orchard hygienists.

In terms of labour supply challenges, there has been a notable reduction in the prevalence of backpacker labour over the past five or 10 years. This could be partly due to reputational damage resulting from recent media coverage of underpayments and substandard accommodation in the surrounding areas.

However, in terms of local workers there have been some innovative labour initiatives in the industry. Horticulture within the Mallee region broadly accounts for 10% of the workforce, however it only accounts for 5% of the region’s training activities. With youth unemployment relatively low at 4–7%, there have been concerted efforts to grow local opportunities in the region, spearheaded by the Victorian Skills Commission.

Local collaborations have seen growers collectively sourcing workers; piloting a Certificate IV in agribusiness across several farms; and the piloting of 40 horticulture cadetships for school leavers or young people to undertake a Certificate III in production

horticulture in August 2018.<sup>168</sup> These initiatives are seen by many growers in the area to be essential to cater for the future needs of horticulture.

Robinvale is ninety kilometres south of Mildura and is situated on the Murray River in the north-west of Victoria. The area is well regarded for the production of grapes, olives, carrots and almonds. While the official recorded population of the town was around 3,000, many in the area reported that the real population within the town area (particularly during peak periods) was around 10,000 residents. This disparity was reported as putting an enormous strain on local infrastructure (particularly housing) which constrained horticulture production.

In addition to supplying domestic markets, there were high levels of export of locally harvested horticulture products. For example, within the past five years, the table grape industry has fed into new markets in China, Hong Kong, Japan and Korea. These new markets have given farmers more confidence to expand farming of almonds, table grapes, pistachios, carrots and salad vegetables.

Many growers in the area reported that they tried to use local workers as much as possible. This was particularly the case where growers had some level of mechanisation. One large carrot producer in the area who utilised local workers felt that mechanisation favoured local workers but also reduced the numbers required.<sup>169</sup> While there was significant evidence of non-compliant labour hire contractors, this grower made sure he communicated directly with his workers to ensure that they were being paid correctly.

Although an eligible postcode for backpackers, use of WHMs in Robinvale was undermined by a lack of adequate hostel accommodation in the town. One local health worker suggested that the farm workforce was predominately undocumented, and/or temporary workers from Malaysia, Vietnam, Philippines, Pacific Islanders on SWP visas, or backpackers in peak season. Some have suggested that there were approximately 3–4,000 Malaysians in Robinvale alone and there were obvious indicators of diversity with three Asian (...) Australian supermarket in the township.<sup>170</sup>

### Mundubbera and Gayndah, QLD

Located 390 km north of Brisbane, Mundubbera and Gayndah are small (combined populations around 4,000) and attractive country towns within reach of Bundaberg. The main crops grown in the area include citrus, grapes, mangoes and

<sup>167</sup> Victorian Skills Commissioner, *Regional Skills Demand Profile: The Mallee* (Victorian Government, 2017) 31.

<sup>168</sup> Ibid 34; *Sunraysia Daily*, 28 June 2018.

<sup>169</sup> Grower (Robinvale).

<sup>170</sup> Researcher observation (Robinvale); Evidence to Joint Standing Committee on Foreign Affairs, Defence and Trade, House of Representatives, Mildura, 30 October 2017, 14–15.

vegetables and the peak season is between May and August. While the region around Bundaberg faced high youth unemployment, the impact of this was not as apparent in these smaller surrounding towns. Particularly, citrus growers in the area relied heavily on SWP with one citrus farm participating in the SWP Pilot Scheme over an 18-month period between 2010 and 2012.

The efforts of the towns to ensure labour standards were met in the horticulture industry seemed to be mostly successful, if not tenuous. There was evidence of non-compliant behaviours by both local growers and labour hire operators, however these breaches were well known and were seemingly uncommon. However, the research suggested that the success in maintaining labour standards was due to the efforts of several key individuals, and for this reason needed further attention in the long term.

There was a very diverse population and a relatively high degree of collaboration in the region to manage this diversity. Mundubbera had a very active local government, with the North Burnett Deputy Mayor spearheading a Social Cohesion Committee, funded initially by the Department of Immigration, to address the reputational damage the region had suffered from the exploitation of farm workers and to harmonise community diversity as a result of their engagement with the SWP. Committee members included Rotary, local growers, local caravan park operators, local business people (including labour hire contractors), church and health centre representatives.

The prevalence and success of the SWP took the pressure off growers sourcing labour and the program appeared to be working very well, particularly in the citrus industry.

Local growers and accommodation providers attested to a significant drop in WHMs visiting the area to work in recent years as a result of reports of exploitation of WHMs. As one grower noted, *“I think there was an Aussie dollar change ... that got me thinking that this might be a permanent situation, what if they decide they’re not going to come anymore?”*

There was a concern that this would result in labour supply challenges during the peak harvest periods. Growers in the area voiced frustration that the WHM visa did not suit their overall needs, but it was important during the peak periods.

Growers in Mundubbera were taking measures to redress the reputational damage of the past in the hope to prevent volatility of labour supply.

## Orange, NSW

A three-hour drive from Sydney, Orange is the closest growing region to Sydney which was an eligible postcode for the WHM visa extension and was thus a highly attractive destination for WHMs. There is a limited

## STAKEHOLDER PERSPECTIVES: MUNDUBBERA

“The Pacific Islanders working direct for the farmer are more satisfied than the ones working for the contractor. The ones working for the contractor won’t speak up. These guys are very forthcoming, talking about their jobs and don’t feel threatened about losing their jobs as much as the contractor guys feel.”

**Grower (Mundubbera)**

“The WHMs are here for a holiday. It’s a holidaying visa. They’re not here to work for six months, and that’s a problem with the backpacker visa, is it’s not really what the intention of it was. There are some people who use it as a working visa and there are other people who use it as a holiday visa. So, it’s not really purpose-built for what we want.”

**Grower (Mundubbera)**

local workforce in Orange, which has a low unemployment rate of 4.5%. There were 20 farms in Orange that specialised in cherries which cumulatively required a workforce during the peak harvest period of 1,500 to 2,000 workers. The other 20 farms grew apples which cumulatively required a harvest workforce of 300 to 350 workers. The picking season for cherries was short and intense, usually lasting six weeks beginning in late November.

There appeared to be a high degree of collaboration between Orange growers around sourcing workers. This meant that growers who needed workers would often call other growers to see if they had a surplus of labour. Growers were also prepared to confront other growers in the area who were not engaging workers in compliance with labour standards.

Despite the efforts of Orange’s growers to ensure compliance with labour standards, the cherry growers we interviewed expressed concerns around labour hire intermediaries who would arrive in Orange for the height of the season when the harvest workforce increased to about 2,000 workers. At this time each year, growers said it was almost impossible to verify that workers were receiving the proper wage or that workers were legally allowed to work in Australia because of the significant pressures at harvest time to pick the crop within a very short period.

Orange growers were heavily reliant on WHMs and, unlike growers in the other case study locations, did not express any of the reservations around WHMs having poor productivity and reliability. They were highly supportive of the WHM visa extension as

## STAKEHOLDER PERSPECTIVES: ORANGE

“The 88 days works to our advantage because it takes them out of the cities. Most of the backpackers would love to stay in the cities – especially Asians they would love to stay in the city. They don’t want to come out doing rural work. So if they get rid of that [the 88 days] I think we’re going to lose a lot of pickers.”

**Grower (Orange)**

“They should be opening up other countries [to the 417 visa] so that we get the inflow. It doesn’t matter what the Union will tell you, they’re not taking no locals’ jobs. That’s the main point. The government holds back because they think they’re taking Australian jobs – no they’re not, we don’t turn any Australians away from our gate or anybody else. It’s just without them [WHMs] the industry is really running a tightrope.”

**Grower (Orange)**

enabling them to meet their labour needs. Orange’s growers did not report a labour supply challenge because of the ready supply of WHMs and said that where cherries had not been harvested, this was not because of insufficient labour supply but rather depressed markets which made it unviable to harvest the product.

## Stanthorpe, QLD

Stanthorpe is a town of about 5,500 population in south-eastern Queensland in a region known as the Granite Belt, within the Southern Downs Regional Council area. It is located 218 km south-west of the nearest major city, Brisbane. The region grows a diverse range of produce including apples, wine grapes, stone fruit, strawberries, tomatoes, capsicum, broccoli and leaf vegetables. Farms in the region ranged in size but a number of growers interviewed reported that it was increasingly difficult to maintain a small farm and that there were not many left in the region. Small farms had been bought by neighbouring farms over the years to maintain viability. The region had farms that supplied direct to Woolworths, export and to the general market.

The farms around Stanthorpe demanded seasonal labour to perform jobs such as picking and packing produce. The main demand for labour came during the peak harvest time from November to March and a smaller number of workers was required at other times. The region was an approved location for the WHM visa extension and the growers relied heavily on temporary migrant workers.

Overall, the region seemed to have done quite well with labour supply for low-skill,

seasonal jobs, relying mainly on WHMs. With the presence of the harvest recruitment office, accommodation providers and other sources of Seasonal Workers, labour supply appeared to be well managed. Additionally, the geographical location of Stanthorpe meant that it was a manageable drive of under three hours from Brisbane so, while the area was not popular tourist destination like Bundaberg, for example, it was considered close enough to the nearest urban centre to be a popular choice for WHMs seeking to do their 88 days work.

However, at the time of the research there was fear amongst some growers and community stakeholders about future labour supply. This fear arose from concerns that two things in particular would damage the region's reputation and scare away future WHMs: first, the impending introduction of the 'backpacker tax', which at the time of the interviews, was proposed at a rate of 32.5%; and second, underpayment and other mistreatment of WHMs by some employers.

### Wanneroo, WA

The Wanneroo production area is characterised by a high number of small properties, many leased, primarily to Vietnamese growers of annual crops such as vegetables and strawberries. Although workers were needed all year round, the main crop of strawberries required a significant pool of labour in September and October. Wanneroo was not an eligible regional postcode for the purposes of the WHM visa extension. Consequently, despite being close to metropolitan Perth, Wanneroo growers reported substantial challenges in meeting their labour needs and heavily relied on intermediaries to access

workers. Many of the labour hire firms in Wanneroo either supplied undocumented workers or were reportedly not legally compliant in how they paid workers.

The Wanneroo focus groups revealed a **high degree of co-ethnic employment**. We were told that most contractors were Malaysian and supplied Malaysian workers. Vietnamese growers in Wanneroo expressed feeling powerless to ask to see payslips or require compliance as they felt the contractors would then penalise them in the future by sending them fewer or poorer quality workers. Growers reported feeling that they had no alternative to non-compliant labour hire intermediaries as otherwise they would not be able to source enough workers. Wanneroo growers estimated that undocumented workers comprised a **high proportion of the local horticulture workforce**, with some growers estimating between 50–70% of all workers.

In Wanneroo, many growers indicated that their biggest challenge was dealing with the constant churn of migrant workers. Despite not being an eligible regional postcode for the purpose of the WHM visa extension, many growers referred to the tendency of backpackers to leave their employment after a period of three months. This could be because some growers at the Wanneroo focus group were from neighbouring regions eligible for the WHM visa extension. One Wanneroo grower reported *“usually the labour hire worker has only a three-month visa and three months is just enough to train them to be able to do something and then once the visa is expired, they have to go, that is the problem”*.<sup>171</sup>

Another grower claimed, *“We have the same problem — it takes about three months to train*

*the worker ... up to the level that you want but after three months either they just quit or their visa is expired, so three months is the time we accept to lose money with low quality work”*.<sup>172</sup>

These comments reflected a wider attitude of growers from the other case study locations (other than Orange where the cherries harvest is generally only six weeks) as to the efficiency and productivity challenges of a constantly rotating backpacker workforce.

### Virginia, SA

Virginia is a regional town close to metropolitan Adelaide with most growers requiring labour on an annual basis to work on a variety of vegetable crops such as carrots, potatoes and tomatoes, although there are inflated labour needs at harvest time.

Despite being an eligible postcode for the WHM visa extension, most growers we interviewed relied heavily on a local population of recently arrived permanent migrants from developing countries. The absence of an intermediary role by accommodation providers can be attributed to the permanent residency status of the workforce with no need for temporary accommodation.

The case study in Virginia also revealed much less reliance on intermediaries than in the other case studies. In this location, an ABC Four Corners television investigation exposing non-compliant labour hire use in Virginia in 2015 had a unique impact on growers' decision-making regarding labour hire use, turning instead to direct employment or well-established labour hire firms.<sup>173</sup>

The northern suburbs of Adelaide where most of Virginia's horticulture labour force live have an unemployment rate of 8.7%, the highest rate of any region in the state. Youth unemployment in the region is also the highest in the State at 17.8%.<sup>174</sup> The region is associated with low incomes, low levels of education and jobs in relatively unskilled occupations.

Growers in the Virginia region indicated that their workforce was constituted mainly of recently arrived permanent migrants to Australia from developing countries, in particular, from India, Nepal, Sri Lanka, Pakistan, the Middle East, Syria and Afghanistan. These communities were a mixture of refugees, and migrants who arrived on skilled migration visas but were not able to find employment in the area of their skills.

Growers reported that these recent migrant communities constituted a relatively stable workforce in the industry. There were very few WHMs and Pacific Seasonal Workers,

### STAKEHOLDER PERSPECTIVES: WANNEROO

*“There's no control ... If you talk nice to them [the contractor] they give you enough, if you don't ... treat them nice, you ask for 30, they give you 20 or 15.”*

**Grower (Wanneroo)**

*“Well that's why we're using labour hire —they're just everywhere and they come straight to the farm door — because it's so hard to get them yourself. So a guy comes down and says, 'I've got 40 people' — and you need them.”*

**Grower (Wanneroo)**

*“They [WHMs] can't do the job properly, they don't want, you know — and the other thing is they're here on a working holiday, we're here to run a business and they're here to have fun and work and make some money. So that doesn't give you the best person that's necessarily motivated to, you know, if it's 35 degrees to come to work and we've had issues in that in the past where, you know, a quarter of the staff don't come to work because it's too hot.”*

**Grower (Wanneroo)**

<sup>171</sup> Grower, Vietnamese growers focus group (Wanneroo).

<sup>172</sup> Grower, Vietnamese growers focus group (Wanneroo).

<sup>173</sup> ABC, above n 6.

<sup>174</sup> WorkReady, *South Australian Labour Force Indicators* (29 November 2016) <<http://www.skills.sa.gov.au/workforce-information/labour-market>>.

## STAKEHOLDER PERSPECTIVES: VIRGINIA

“[One] of the things we see at the moment ... the labour breakdown of north Adelaide plains is that we don’t see Anglo Saxons wanting to work because they are generally lazy. They don’t like the labour intensive dirty work that is mundane and repetitive.”

**Industry association official (Virginia)**

“I know it sounds like discrimination but it is quite true. The migrant workers really want the work whereas the locals they have probably developed a bit of a non-working culture and why would they want to change that?”

**Training provider (Virginia)**

“Is the wage rate enough? Yes, it is higher than the dole and the dole is high enough to live on right. We are paying a lot more than that and for people who do the hours, people working for us are earning \$60–\$70 grand a year. That is plenty. Now we have to remember that these jobs are no skills, no training. Super, super basic jobs. They wouldn’t get a job elsewhere these people.”

**Grower (Virginia)**

although one of the larger firms reported hiring 25 SWP workers from Vanuatu via a labour hire firm.

Growers and other stakeholders indicated that there were few locals from European backgrounds doing low-skilled work in the industry. Greeks and Italians largely populated the industry from the 1950s, but there were few from the third generation of these communities working in low-skilled work in the industry today. There were also few workers originally from the United Kingdom and Ireland.

Although there was a high level of unemployment among long-term residents of the region, they did not transition into low-skilled work in the industry. A training provider indicated that there had been a range of training programs aimed at the long-term unemployed but that the success rate of these programs was low. Growers testified to trying to employ long-term unemployed through training programs, but claimed that these workers were either not prepared to do the hard work required in horticulture, or found the work too demanding. One grower stated that *“arrangements might be made for 60–70 workers. 40 turn up. 20 get through screening. 18 accept a job. Nine are still there after six months”*.

An ongoing challenge for growers was to keep the permanent workforce occupied during slow periods and to find workers at short notice for short periods of work during peak periods. The larger local businesses had their own human resources teams to manage their workers, whereas medium-sized and smaller businesses did not appear to have these resources or capabilities.

## Conclusion

There is no single picture of labour supply challenges across the Australian horticulture industry. The National Survey of Vegetable Growers identified that many growers had a longer need for labour than is typically considered seasonal (60% of growers required workers for more than six months a year) and a significant minority had been unable to find the pickers, packers or graders they needed in the last five years (40% of growers surveyed). However, the regional case studies revealed a much more nuanced picture of how these labour supply challenges played out across Australia.

Assessing the extent of the labour supply challenges across the 13 case study locations is difficult.

The case studies exposed that in some regions there was an oversupply of workers, whereas in others there was a high degree of labour supply insecurity. Additionally, within regions there was evidence of intra-regional differences in supply challenges depending on the proximity of farms to regional population centres.

The regions that had access to a steady supply of WHMs, a permanent local workforce of recently settled migrants or the SWP appeared to have the most secure labour supply. These regions were generally characterised by fewer undocumented workers organised through non-compliant labour hire contractors. These regions also tended to be more active in developing innovative labour practices and formal and informal networks to encourage collaboration amongst key regional actors such as growers, accommodation providers, community groups and the local council. These issues are further elaborated in Chapter 8.

# CHAPTER SEVEN

# DEVELOPING A LOCAL

# HORTICULTURE WORKFORCE

## Introduction

**As an important stakeholder in farming communities, the local workforce should be given the first opportunity to work in horticulture where feasible.**

While the seasonal, remote and arduous nature of horticulture work means that it is not always possible to give local workers priority, perceptions of locals being overlooked for work opportunities have the potential to cause reputational damage to the industry, particularly at a time when negative public attitudes to immigration and to business appears to be rising.

This Chapter examines the steps that growers are taking to attract and retain local workers in the horticulture industry. 'Local workers' is a broad category that includes the following groups of people:

- Younger workers, including recent school leavers, who live in the towns and regions situated nearby to farms
- Long-term unemployed people who are residents of the towns and regions situated nearby to farms and who receive welfare support
- Recent migrants with permanent residency status, including those on humanitarian visas, who live in the towns and regions situated nearby to farms
- 'Permanent itinerants' and retirees or 'grey nomads' who move from location to location in response to seasonal demand.

This Chapter aims to identify the opportunities for and barriers to employment and careers for local workers, the pathways that exist between different types of horticulture work including between lower-skilled and higher-skilled positions, the effectiveness of training and welfare policies, and the potential for automation as a permanent way of solving labour supply challenges.

It is difficult to quantify how many local resident workers are employed in the horticulture industry. The National Survey of Vegetable Growers found that between 2011 and 2016, 84% of growers at some stage used local workers (mostly from their local region) and 78% had used temporary migrant workers. Only 21% of growers

used local workers exclusively and this was most common among 'micro' businesses employing fewer than five people. Larger businesses with greater labour needs were more likely to use both local workers and temporary migrant workers. However, this does not account for the extent of reliance on a local workforce.

Our research indicates that temporary migrants perform much of the seasonal lower-skilled jobs, such as picking and packing, which make up the majority of jobs in horticulture. However, on many farms, local workers account for a large share of the permanent higher-skilled and managerial workforce.

## Findings

**1. The Australian industry is not alone in experiencing a decline in local labour engaging in horticulture work, particularly seasonal work, with many other developed economies experiencing similar challenges and turning to temporary migrants to address these shortfalls.**

**2. Some growers and industry associations have gone to extensive efforts to recruit local workers but received very little interest. At the same time, growers tend to attribute the personal characteristics of locals, such as their perceived unreliability and unproductivity, as the reasons why relatively few are employed in horticulture. However, low wages, poor working conditions and an increasing preference for living and working in metropolitan centres are also among the reasons for falling numbers of local workers.**

**3. There is extensive research that 'high road' management strategies focused on improving job quality and fostering a highly committed workforce, including through direct employment, are likely to sustainably alleviate labour supply challenges. However, relatively few growers appear to have implemented strategies aimed at engendering long-term commitment of**

their workers, with 'low road' management strategies dominating the industry.

**4. The relatively low rates of locals employed in horticulture, including in regions with high unemployment, indicate that government programs aimed at assisting growers to recruit youth unemployed, including disincentives for work created through welfare assistance, are deficient and in need of reform.**

**5. While labour supply challenges are most acute for lower-skilled job roles, some growers also experience difficulties recruiting workers for higher-skilled positions. Local workers still make up a large share of these higher-skilled jobs, particularly where growers are prepared to invest in workers' skills to allow them to establish a career path between lower-skilled and higher-skilled jobs.**

**6. The absence of a responsive and coordinated system of structured vocational training hurts both growers and the workforce. Industry associations and local and state governments should strengthen engagement between local schools, vocational training colleges (particularly TAFEs) and growers in order to expose students to the work and career opportunities available in horticulture and allow growers to identify potential candidates more easily.**

**7. Automation of harvesting and production processes could potentially provide a permanent and socially-sustainable solution to labour supply challenges in horticulture by reducing the need for labour-intensive lower-skilled jobs while also helping to create new higher-skilled jobs. To improve the international competitiveness of Australian horticulture, industry and government should increase investment in research and development for new technology and coordinate grower adoption to minimise the adverse impacts on smaller businesses.**

## Historical and international context

For much of the 20th century, local workers composed a relatively large share of the horticulture workforce. Historical accounts depict working-class families combining their annual holiday with fruit and vegetable harvesting in a regional location and semi-skilled rural workers who would gravitate to higher paid harvesting work on a seasonal basis.<sup>175</sup> This approach saw local workers maintain connections with the same growers year after year. Itinerant harvesters who moved across the country depending on the season were also more common.

A 2003 analysis of the composition of the horticulture workforce found that close to half the workforce were local workers who were permanent itinerants and another 15–25% were grey nomads.<sup>176</sup> By contrast, a 2006 Senate inquiry found that local workers, consisting of grey nomads and permanent itinerants, made up a little over one-third of the workforce, with temporary migrants accounting for the majority.<sup>177</sup> According to one study, low wages, poor working conditions and an increasing preference for living and working in metropolitan centres are among the reasons for falling numbers of local workers.<sup>178</sup> Another likely factor relates to the expansion of the industry. With the increase in horticulture production in the recent decades particularly resulting from growing demand from export markets, the small populations of horticulture towns and regions have not been able to supply the necessary labour in the context of this increased demand. The perspective of industry stakeholders on the factors contributing to this decline to the local workforce are presented and analysed below.

International evidence suggests that the Australian industry is not alone in experiencing a decline in resident labour engaging in horticulture work, particularly seasonal work. Studies of the horticulture industry in Germany, the United States, the United Kingdom, Canada, Sweden, Italy, Greece and Spain have documented the declining presence of local workers and growers' increased reliance on temporary migrant workers to meet their

### 'INDUSTRIAL-CIVIC' STRATEGIES FOR IMPROVING WORKFORCE RETENTION AND PRODUCTIVITY IN KENYAN HORTICULTURE

Horticulture need not necessarily rely upon temporary migrant labour to meet its workforce needs. A study by Lone Riisgaard and Peter Gibbon highlights how growers in Kenya have developed an 'industrial-civic strategy' focused primarily upon retention and workforce development. The key elements of this strategy are:

- Secure employment through permanent contracts
- Stable working hours including restrictions on overtime
- Freedom of workers to join unions
- Wages negotiated through collective bargaining between employers and workers' representatives at the national level

- Compliance with strong workplace health and safety standards
- Provision of maternity leave and encouragement of women with caring responsibilities into horticulture work
- Job redesign including individual responsibility and discretion over tasks
- Rule-based payment systems
- Flat forms of supervision.

According to Riisgaard and Gibbon this strategy has resulted in long-term workforce retention and the cultivation of workers' skills and knowledge, which has improved productivity and reduced the need for constant recruitment.

labour needs. In all these studies, low quality employment and poor human resource management practices are identified as key contributing factors to this scenario, which implies that efforts by employers to improve the quality of work and management practices would help them to attract more local workers. However, some of these international studies identify that supply chain pressures, particularly through the commercial demands of food retailers, limits the ability of growers to achieve this.<sup>179</sup>

One of the few exceptions comes from Kenya where rather than relying on temporary migrants, growers in the horticulture and floriculture industries have addressed their labour needs by adopting strategies aimed at attracting and retaining their local workforce.<sup>180</sup>

### Skills and capabilities of the horticulture workforce

The skills and capabilities of the different job roles in horticulture are varied. In most farms, jobs can typically be distinguished between those that are lower-skilled and those that are higher-skilled. The lower-

skilled jobs are generally those that do not require formal qualifications or certifications, such as packing and packing, which are usually performed on a seasonal basis. They would generally be paid at Level 1 (the lowest level) under the *Horticulture Award*, with induction training the only training required to perform the job. Several growers we interviewed emphasised that even though workers do not need to be qualified to perform these jobs, they are not unskilled.

The higher-skilled jobs in the industry generally do require formal qualifications or significant experience, are more technical or managerial in their orientation, are typically year-round, and some may require university or advanced vocational training. Workers in these roles generally have a greater degree of ownership and control over their work, in contrast to those in lower-skilled jobs who are largely expected to work under the direct control and instruction of their supervisors.

Examples of higher-skilled jobs include accountants, engineers, agronomists, maintenance technicians, farm managers, irrigation specialists, diesel mechanics, fertiliser and spray technicians. Some

<sup>175</sup> Jayde Hanson and Martin Bell, 'Harvest Trails in Australia: Patterns of Seasonal Migration in the Fruit and Vegetable Industry' (2007) 23 *Journal of Rural Studies* 101; Peter Mares, 'Seasonal Migrant Labour: A Boon for Australian Country Towns?' (Paper presented at 2nd Future of Australia's Country Towns Conference, Bendigo, 11–13 July 2005).

<sup>176</sup> Hanson and Bell, above n 175.

<sup>177</sup> Senate Standing Committee on Employment, Workplace Relations and Education, above n 138, 21.

<sup>178</sup> Graeme Hugo, 'International Migration and Agricultural Labour in Australia' (Paper presented at Changing Face Workshop, California, 16–18 January 2001).

<sup>179</sup> See, eg, Philip Martin, *Importing Poverty? Immigration and the Changing Face of Rural America* (Yale University Press, 2009); Ben Rogaly, 'Intensification of Workplace Regimes in British Horticulture: The Role of Migrant Workers' (2008) 14 *Population, Space and Place* 497; Kerry Preibisch, 'Pick-Your-Own Labor: Migrant Workers and Flexibility in Canadian Agriculture' (2010) 44 *International Migration Review* 404; Majella Kilkey and Domenica Urzi, 'Social Reproduction in Sicily's Agricultural Sector: Migration Status and Context of Reception' (2017) 43 *Journal of Ethnic and Migration Studies* 2573; Susan E Mannon et al, 'Keeping Them in their Place: Migrant Women Workers in Spain's Strawberry Industry' (2012) 19 *International Journal of the Sociology of Agriculture and Food* 83; Migration Advisory Committee, *Migrant Seasonal Workers: The Impact on the Horticulture and Food Processing Sectors of Closing the Seasonal Agricultural Workers Scheme and the Sectors Based Scheme* (Report, May 2013) ch 4.

<sup>180</sup> Lone Riisgaard and Peter Gibbon, 'Labour Management on Contemporary Kenyan Cut Flower Farms: Foundations of an Industrial-Civic Compromise' (2014) 14 *Journal of Agrarian Change* 260.

## STAKEHOLDER PERSPECTIVES ON THE DECLINING LOCAL WORKFORCE

“We have been orcharding since 1986. To tell you the truth, we had never used any backpackers ‘til the year 2000. We always had enough travelling people around the countryside. But since 2000, they have either got too old or they have died. If we did need anybody, we used to go to the unemployment service, when it was run by the government, and we used to get people. But now we cannot get any. We desperately need the backpackers, because, out of about 40 people during our cherry harvest, which only goes for a maximum of five weeks — that is maximum — we employ four Australian citizens. Nobody else wants to come and pick cherries.”

**Grower (NSW)**

“In the 1990s ... the employment opportunities and the salaries [became] better in the city so lots of people moved towards the cities and worked there because you were going to get better take home pay, probably for want of a better word a few more luxuries in civilisation that you didn’t have in regional areas which is a bit sad because regional areas have got some great pluses for your family.”

**Union official (NSW)**

“For a number of years, we relied on grey nomads but although they were reliable, the productivity wasn’t great. And we were starting to supplement that with backpackers doing some of the harder manual labour in the field and we just found that from them, their work ethic was great. A lot of them have university degrees ... The issue that we had, young Australian workers, they were coming, largely those people were coming to us off unemployment programs and that sort of thing. It just wasn’t the same attitude to work.”

**Grower (QLD)**

growers also employ farmhands with intermediate skills such as licenses to operate or drive machinery on a year-round basis, who would generally be paid at Level 3 or above under the *Horticulture Award*.

Most operations seem to require more workers for lower-skilled jobs than higher-skilled jobs. For instance, one grower we interviewed operates on the basis of a “20/80 rule”, with roughly 20 per cent of their workforce consisting of higher-skilled jobs and the remaining 80 per cent of workers performing lower-skilled jobs.

There were other characteristics that growers deemed essential aside from qualifications necessary for their jobs, even for those classified as lower-skilled. The factors cited by growers include: reliability in terms of turning up on time and working as instructed by supervisors, the right ‘attitude’ and work ethic, the willingness to work in different types of weather, flexibility in terms of the number of working hours and the times they are required to work.

However, other stakeholders, such as trade union officials, questioned whether

## STAKEHOLDER PERSPECTIVES ON THE SKILLS AND CAPABILITIES FOR HORTICULTURE WORK

“Picking and packing are definitely skills. The picking is a physical skill. You’re out in the field, you’re bent over all day, pushing a fairly heavy trolley along, and you have to locate and pick all the fruit, without bruising any, because it’s very delicate. So we’ve got some people that I would say are incredibly skilled at that, and do it very quickly, and very well. Given that there’s a huge range of results out of a range of workers doing that same job, in my eyes, the good ones are skilled. Packing [workers] are basically putting together a small jigsaw puzzle every time they pack a punnet. They’ve got to grade the shapes and sizes, and then fit them in so that they present nicely, that the weight is correct, that the fruit doesn’t squash against each other, and that you can sort of close the lid without any fruit overhanging, or whatever. So there’s no tertiary skill, but you certainly do need to have nimble fingers, and a willingness to try hard, and do well, and improve the skills and methods ... It’s not just something you can throw anybody in, and they can do it. You do need the right sort of person to fit the job.”

**Grower (WA)**

“There’s three things [capabilities and characteristics that workers] need. One is reliability, the second one is reliability and the third one is reliability ... The reason why [growers] don’t like Australian workers, because they are overwhelmingly unreliable.”

**Harvest Labour Services official (SA)**

“[Employers] won’t have ‘lazy’ people. [But their] perception of lazy is: ‘head down, bum up eight hours of the day. Just keep your back bent and keep picking and keep working, don’t stop’. If they see you stop, you usually get a little mark against your name and then you’re probably let go. And it’s so easy to let people go. And it’s as easy as this: ‘I don’t need you tomorrow.’”

**Union official (QLD)**

employers’ expectations that workers should have these characteristics was reasonable, as it essentially meant a willingness to work in difficult conditions with minimal discretion and without complaint; in other words a group of workers over which employers could exert control.

### Employment and human resource management practices

The limited discretion of horticulture workers, especially those in lower-skilled jobs, in how they perform their work essentially reflects a control-oriented managerial strategy prevalent throughout the industry. Growers appeared to be less prepared to implement ‘high road’ strategies aimed at engendering the commitment of their workers.

For instance, the following view from a manager of a large operation appeared to be the exception rather than the norm: “We’re looking for long term commitment. We’re not looking for people who just want a job for one or two years. We’re looking for people who are going to ... take ownership over their role and their outcomes”.<sup>181</sup>

Conversely, there is a tendency within the industry to outsource the management of workers to labour hire contractors. This exemplifies a dominant ‘low road’ approach to the management of labour, which while potentially cheaper in the immediate term can produce unanticipated risks, costs and inefficiencies in the long-run, as the quotes below indicate.

While growers have expertise in producing fresh fruit and vegetables, they do not ordinarily possess the human resource management expertise and capability. However, the adoption of more commitment-oriented human resource management practices is likely to help their ability to attract and retain workers more effectively. A wide body of research in other industries has found that firms with ‘high road’ human resource management strategies focused on improving job quality and fostering a highly committed workforce are less likely to experience recruitment problems.<sup>182</sup>

A study by Nettle of the Australian agriculture industry identified various practices to help employers achieve these

<sup>181</sup> Grower (SA).

<sup>182</sup> Uschi Backes-Gellner and Simone N’Tuor, ‘Avoiding Labor Shortages by Employer Signaling: On the Importance of Good Work Climate and Labor Relations’ (2010) 63 *Industrial and Labor Relations Review* 271; Andrés J Marchante, Bienvenido Ortega and Ricardo Pagán, ‘Determinants of Skills Shortages and Hard-to-Fill Vacancies in the Hospitality Sector’ (2006) 27 *Tourism Management* 791.



## STAKEHOLDER PERSPECTIVES ON EMPLOYMENT AND HUMAN RESOURCE MANAGEMENT PRACTICES IN HORTICULTURE

outcomes, including paying employees above the award, providing non-monetary benefits, offering flexible work hours and rostered time off, employing them directly rather than through contractors, providing training and career development opportunities, using employee engagement strategies and recognition of good performance. According to Nettle, “the quality of jobs and the availability of real careers in agriculture [are] essential for building a reputation to attract people into agriculture”.<sup>183</sup>

Further, initiatives around corporate social responsibility and community engagement can also be effective in giving workers greater satisfaction and pride in their organisations, and thereby help to attract and retain staff. The adoption of such practices appears to be rare in Australian horticulture, particularly among smaller firms, and may be a difficult proposition given the seasonal nature of harvesting. However, industry associations can potentially play a stronger role in providing training to encourage their members to improve their management practices in this regard.<sup>184</sup>

Many regions recognise that horticulture work provides important opportunities for young Australians to enter the labour market and gain valuable employability skills and work experience. It also provides labour market opportunities for permanent migrants with overseas skills and qualifications that are not recognised in Australia and for refugees and partners of primary visa holders who are unskilled and have limited English.<sup>185</sup> For these practices to be effective, however, they need to be accompanied by supportive training and welfare policies (as discussed below). While these policies are generally seen as the responsibility of governments, our research identified several examples of growers and industry associations adopting their own innovative policies and working together and with local governments and training providers to tailor training policies to meet the needs of both employers and the workforce.

Improving pay and conditions is another human resource management strategy that can potentially help growers to attract and retain good workers. According to one union official we interviewed, “Growers argue that local workers don’t want to do the job but it’s about the low pay. If the pay is so low, they don’t want to do the work”.<sup>186</sup>

“We can say it all day long, yeah we need workers, blah, blah, blah, and the government can say, well get off your arse and go and get them. We can advertise, it doesn’t work. [But] as I said with farmers, we have a business to run, and part of our business project is to attract workers, maintain workers, engage with workers.”

**Grower (Vic)**

“We don’t use any labour hire in our company anymore. It’s all direct employment. We do that basically to make sure that we don’t get on the front page of the newspaper or A Current Affair with workers being exploited. We can control directly.”

**Grower (SA)**

“One of the driving factors of farmers ... to try to extend their season [is] to keep core staff... Trying to teach new people all the time really does put a strain on the profitability and viability of systems because ... it becomes a training exercise constantly and a lot of businesses have just, ‘Nup, we only employ backpackers’ ... They’re never going to get to a stable workforce and not get the efficiencies that a stable workforce can bring into a business.”

**Grower (NT)**

“We’ve had [employers] that want to pay people \$12 an hour ... Well if you’re employing people surely you have a responsibility to know what the laws are around employing people ... They know what they’ve got to do to satisfy spraying a thing so it can go to China or whatever; when the truck is coming and how it’s got to be loaded and how it’s got to be packed. Well part of that is you’re employing people. You need to know how to employ them too.”

**Hostel owner (Vic)**

This view is supported by international research finding that the disinclination of locals to work in lower-skilled horticulture work is compounded by poor working conditions, low wages, long and unsociable hours, lack of employer-provided training and minimal opportunities to progress into higher-skilled jobs.<sup>187</sup>

In our research we encountered growers who paid above the award rate in order to alleviate turnover challenges. Raising wages is not a practical option for all growers given many operate under tight profit margins, cost pressures from retailers, and relatively high labour costs in Australia by international standards. This point was acknowledged by a 1993 study of the industry by the Industry Commission, the predecessor of the Productivity Commission, which argued for the need to find ways to make Australian horticulture more productive.

*“Australian horticulture has high labour costs compared with many of its competitors in world trade. However, horticulture cannot be a low wage enclave in a high wage economy. Impediments to the efficient availability, use and pricing of labour in horticultural activities must be addressed. But the challenge*

*for Australian horticulture is to find ways to raise productivity in the growing, harvesting, distribution, marketing and processing of products so that it is efficient, internationally competitive and able to support wages commensurate with those paid for comparable skills elsewhere in Australia.”<sup>188</sup>*

Investing in ‘high road’ strategies to improve the management of labour is a proven way to raise productivity and ensure that local produce is competitive in international markets.<sup>189</sup> The ability of growers to invest in effective labour management strategies is contingent on being able to source a reliable supply of productive labour amid the seasonal fluctuations they face. Some growers adapted their production schedules to employ staff year-round and thereby reduce the effects of seasonality. But for growers who have not been able to do this, recruiting extensively from the large supply of temporary migrant labour in Australia has been a common way they have met their labour needs. This has generally discouraged employers from adopting more commitment-oriented human resource management strategies because temporary migrants are generally easier to control.

<sup>183</sup> Ruth Nettle, ‘More than Workforce Shortages: How Farm Human Resources Management Strategies Will Shape Australia’s Agricultural Future’ (2015) 12 *Farm Policy Journal* 17, 24.

<sup>184</sup> Richard A O’Brien, *The Horticulture Industry and Overseas Seasonal Workers: Guest Worker Schemes — A Desktop Study* (Report, Horticulture Australia, 2014) 18.

<sup>185</sup> For research on initiatives in the Sunraysia region analysing migrants and refugees’ food growing skills see Olivia Dun, Natascha Klocker and Lesley Head, ‘Recognising Knowledge Transfers in “Unskilled” and “Low-Skilled” International Migration: Insights from Pacific Island Seasonal Workers in Rural Australia’ (2018) *Asia Pacific Viewpoint* DOI: <https://doi.org/10.1111/apv.12198>.

<sup>186</sup> Union official (NUW).

<sup>187</sup> Sam Scott, ‘Migration and the Employer Perspective: Pitfalls and Potentials for a Future Research Agenda’ (2013) 19 *Population, Space and Place* 703, 706–7.

<sup>188</sup> Industry Commission, above n 37, 22.

<sup>189</sup> Inmaculada Martín-Tapia, J Alberto Aragón-Correa, and James P Guthrie, ‘High Performance Work Systems and Export Performance’ (2009) 20 *International Journal of Human Resource Management* 633.

Temporary migrants are generally more motivated to work in lower-skilled jobs for low wages and in poor conditions due to various factors, including fulfilling the conditions of their visa to allow them to extend their stay in Australia, or receiving income that is higher than they would receive in their home country.<sup>190</sup> Employers are unlikely to rationalise or explain their use of migrant labour in this way and are much more likely to talk in terms of the “good migrant worker” versus “workshy locals”.<sup>191</sup>

Uncertainty over the current and future workforce and market fluctuations lead many growers to outsource, both formally and informally, to labour hire contractors and/or accommodation providers. Relinquishing these activities to other intermediaries leaves growers vulnerable to potential reputational damage both to their farms and to the horticulture industry more broadly.

As the Productivity Commission indicates, outsourcing human resource management to labour hire companies increases the risk of horticulture workers being exploited, particularly temporary migrants.<sup>192</sup> This can increase the risk of reputational damage for individual growers and for the industry in general, which can make it more difficult to attract workers to the industry. Direct employment of workers can reduce these risks.

### Employment of local workers

The employment of Australian citizens and permanent residents in horticulture has declined in recent years, as noted above. Growers have recruited temporary migrants more extensively, particularly following the expansion of the WHM visa and the creation of the SWP visa. Local workers still make up a large share of higher-skilled jobs in the industry. This was particularly the case where growers were prepared to invest in the skills of workers to allow them to establish a career path, and even in some cases to create job opportunities for family members.

Several growers in the Lockyer Valley in Queensland provided examples of where they had recruited locals for lower-skilled jobs. One grower had recruited younger women workers and had adopted management practices to allow these workers to fulfil their primary care responsibilities, including flexible scheduling of working hours around school pick up times. Another smaller grower

recruited students from the local university who were each able to work two to three days per week. Flexible rostering arrangements allowed this grower to cover their labour needs relying primarily on this group of workers. Another grower had recruited workers straight from local high schools.

However, the vast majority of growers we interviewed experienced challenges sourcing their workforce needs locally, particularly for lower-skilled seasonal jobs. There were several reasons for this. Locals were widely perceived as unreliable and unproductive, particularly compared to temporary migrant workers who were prepared to work hard to fulfil the requirements of their visas. Problems with locals lacking motivation to work due to welfare dependency (discussed further below), substance abuse and intergenerational unemployment were also cited by a large numbers of growers.

Some growers and industry associations have gone to extensive efforts to recruit local workers but received very little interest. Of particular note is the Sweetest Job Campaign aimed at attracting workers to the Queensland strawberry industry. As discussed below, this campaign generated significant initial interest from locals but resulted in minimal recruitment and retention.<sup>193</sup> A similar and more successful campaign was launched in the Northern Territory in 2018 to attract local residents for the mango harvest with seven registered employers in the Greater Darwin region. All 21 positions registered under the program were filled from a pool of 80 local candidates.

Individual growers have also developed similar initiatives on a smaller scale. For instance, one Western Australian grower approached a non-profit job placement agency for unemployed people to advertise vacancies and encourage applicants through a wide range of channels. Using a database system to track all job applications over a four-year period, the grower found that only 5% of 8,000 applications were from Australian citizens and permanent residents, with the remainder coming from temporary visa holders.

While growers were often inclined to attribute the personal characteristics of locals as the reason why relatively few were employed in horticulture, poor working conditions was a contributing factor cited by stakeholders, including some of the growers we interviewed. As the quotes

### THE SWEETEST JOB CAMPAIGN – QUEENSLAND STRAWBERRY INDUSTRY

The Sweetest Job Campaign launched by Queensland Strawberry Growers Association in 2016 in conjunction with Morton Bay Regional Council and the Sunshine Coast Council was aimed at increasing employment of locals in a region with high youth unemployment. The industry was partly motivated by criticism it had received for employing large numbers of temporary migrants. According to one strawberry grower, “It was only about 10 years ago that the workforce on our farm was almost all local. These days, over 80% of our workers are from overseas”, she said. “As much as we value our foreign workforce who have played a pivotal role in growing this industry to the size it is today, we would love to see a significant increase in local workers who are willing to become a part of our farming family and return each year for strawberry season”. The campaign involved a media campaign promoting the job opportunities in the industry and a series of regional workshops where growers and the Fair Work Ombudsman provided information to potential job seekers about the nature of the job roles, wages and working conditions. Of the more than 2,000 people whom initially expressed interest, around 125 applied and gained employment in the industry. Of these only around eight people are still working on farms, according to industry association officials.

below attest, the prevalence of short-term employment contracts was widely seen as deterring locals who needed greater job security to meet their financial commitments. Some stakeholders viewed the reputation of the industry, particularly as shaped by media reports of exploitation and poor working conditions, as another factor deterring locals. Others cited the arduous and hazardous nature of the horticulture work, which locals perceived as an unattractive option in the context of the growth of service based work and general improvements in workplace health and safety.

<sup>190</sup> Bridget Anderson, ‘Migration, Immigration Controls and the Fashioning of Precarious Workers’ (2010) 24 Work, Employment & Society 300; Michael J Piore, *Birds of Passage: Migrant Labor and Industrial Societies* (Cambridge University Press, 1979).

<sup>191</sup> Scott, above n 187, 706–7.

<sup>192</sup> Productivity Commission, *Workplace Relations Framework*, above n 76.

<sup>193</sup> Sunshine Coast Council, *6000+ Sweet Jobs are Ripe for the Picking* (26 May 2016) <<https://www.sunshinecoast.qld.gov.au/Council/News-Centre/The%20Sweetest%20Job%20campaign%20launch>>; David Thomson, *Forced Labour is not the Answer* (15 October 2018) North Queensland Register <<https://www.northqueenslandregister.com.au/story/5702863/forced-labour-is-not-the-answer-for-hort/>>.

## STAKEHOLDER PERSPECTIVES ON THE EMPLOYMENT OF LOCAL WORKERS

“We don’t really have an issue finding permanent staff [locally] ... Where we really struggle is the seasonal workers, because the locals, they want job security. And working five months of the year with fluctuating hours ... you can’t really feed your family, and get a home loan, and all that sort of thing, doing that sort of work.”

**Grower (WA)**

“We’ve got a fair few young people. There’s probably a reasonable percentage of them are actually people who have family members already working for us ... especially in the remote areas. Once you get a family there working, if you don’t provide opportunities for their dependents, the dependents are going to move to capital cities seeking work. So while we’ve got people already in the community, if we can give them jobs then it makes it easier for us going forward because we don’t have to try to get people to relocate. So we actively try to find jobs for their dependents while they’re already in the community.”

**Grower (SA)**

“Local people, their orientation is social life first, we’ll fit the work in around it. Especially young people, they just don’t have the drive to focus on their job and really put their heart and soul in it. We have a huge problem there. Whereas, you get the Europeans, and I think there’s more competitiveness looking for a job, so they know that they’ve got to work and stand out to secure their job and keep their job.”

**Grower (WA)**

“You have a lot of locals that are willing and want to go and work but then there’s the locals that have let [growers] down. So [the growers] just go through the backpackers. There are some farms that do employ locals but generally it is a little hard for [local] people to get into the majority [of farms] because they tend to use the backpacker hostels.”

**Employment services provider (QLD)**

“If you’re a young Australian person in Bundaberg who’s unemployed and you see all these horror stories in the area about how backpackers and seasonal workers are treated and then you go and say to an employer ‘I’m willing to work but I’m not going to put up with shit. I want to be paid the award’, well that’s what I suspect they mean when they say they’re not suitable and they’re lazy. They’re not lazy. They just want to be paid right and they want to get decent conditions in their workplace.”

**Union official (NSW)**

“There’s a lack of desire by a lot of young people to take on the sort of work. It’s hot, it’s out in the sun, it’s fairly back breaking, you’re carrying heavy picking bags or lifting buckets and bending over picking tomatoes or strawberries or whatever for a long period of time and it’s not terribly appealing work to people who think this is what they’re going to do for their career.”

**Government official (NSW)**

The organisation of the horticulture labour market was also mentioned by other stakeholders as contributing to low levels of local employment. For instance, in some regions particularly those on the harvest trail, WHMs account for a large share of the seasonal horticulture workforce. Consequently, backpacker hostels have assumed responsibility for the recruitment and transportation of workers, which effectively locks out locals with their own accommodation and without private transportation from job opportunities on farms.

In short, there are a range of factors accounting for why growers have become increasingly reluctant to source their labour needs locally and why locals are deterred from working in horticulture. These various factors are succinctly captured by a labour hire operator from South Australia:

*“People don’t want to do farm work. It’s minimum wage work, it’s dirty, it’s in all weather conditions, it’s inconsistent because it’s stop-start most of the time... Anyone who’s a decent candidate for employment, they’ll go and get any other job but this. So the ones that you have left are the ones who are there for a reason because of issues that they have and they might be issues like drug and alcohol dependence or family violence, all those sorts of things or just low intellect, low capability.”*

Nevertheless, the low levels of local employment in horticulture, and particularly the dismissive attitude of many growers towards locals, was seen as unsustainable by some stakeholders because it could lead the populations of farming communities to decline and/

or contribute to local unemployment. According to one government official in Victoria who works closely with the industry, growers in farming communities are often “the biggest absorber of labour ... and if young people aren’t coming into this industry, that’s a problem”. In the following sections we canvass two possible solutions: stronger career pathways and automation.

## STAKEHOLDER PERSPECTIVES ON TRAINING AND CAREER PATHWAYS IN HORTICULTURE

“It’s critical that we grow people within the organisation. If you’re just going to bring people in and keep them at them at the bottom, and have to always recruit at the top, you’re going to have higher turnover and less success with your recruitment ... We’ve got people who were stacking boxes who we’ve trained up to be forklift drivers, and we’ve got forklift drivers we’ve trained up to be truck drivers. And we’ve got a similar sort of career path in our farming operations ... [Job rotations] makes people feel like they are developing ... through learning new skills. For other people they can see they can be following in those steps as well. They can see someone else making a journey up the chain.”

**Grower (SA)**

“There’s a major problem with horticulture education in itself. You have the TAFE system and it churns out people for conservation and land management and a few other things, I don’t think it churns out anyone for flower growing, vegies or anything like that.”

**Grower (WA)**

“Historically, a lot of the farmers haven’t come from a corporate background so they don’t know how to keep people interested. They don’t know how to put a career path in place or put training in place or give them proper decent salaries and vehicles to keep them in an industry.”

**State government representative (NSW)**

“Good employers offer [Certificate-level] courses because it skills their employees up and they pay them more money for it and surprise, surprise, they stay around. Whereas the dodgy employers who pay \$10 an hour will have two or three well qualified people who are their friends and permanent staff who they actually do pay properly and they’ll be supervisors as well. They’ll do all the difficult tasks or the complex tasks then they’ll effectively use the seasonal and migrant workers as cheap exploited labour.”

**Union official (NSW)**

“We’ve still got to have a workforce that is productive, and I’m not sure that our locals and our backpackers are job ready yet. The whole thing with horticulture is the skill set has never really caught up with say other industries where they train internally. You don’t hear about too many farmers or big businesses out there associated with horticulture that supply training. A lot of the training is on the job, but you certainly don’t see too much tertiary or education towards that side. [More locals would be attracted to the industry] if people could go to a job, especially the locals, with some kind of tertiary education behind them and demanded a better price for what they do.”

**Harvest Labour Office official (NSW)**

### Training and career pathways in horticulture

The development of pathways between lower-skilled and higher-skilled work to encourage workers to build careers in horticulture is another strategy that could help to address the industry’s attraction and retention problems. While labour supply challenges appeared to be most acute for lower-skilled job roles, several growers we interviewed reported difficulties recruiting workers to fill higher-skilled positions. The creation of ‘internal labour markets’ to encourage workers in lower-skilled positions to develop new skills and apply for promotions into higher-skilled roles was an effective solution implemented by one South Australian grower to address this. This involved the company investing in external training to allow workers to gain additional qualifications and job rotations so that they gained experience of different positions.

Employer investment in structured training appeared to be a critical ingredient for growers that had implemented similar pathways between lower-skilled and higher-skilled jobs for two reasons.

First, it signalled a commitment by the employer that was likely to be reciprocated by the worker in the form of productivity and retention, particularly since the skills acquired are generally linked to higher pay. Second, while it is clear that workers benefit from new skills, employers generally have greater financial capacity than an individual worker to invest in training. However, an examination of enterprise agreements registered in the horticulture industry

indicates that only a small minority actually contain training clauses with employers explicitly paying for training in an even smaller number (see table below).

Not all organisations in horticulture have enterprise agreements or formalise their practices in writing where they do have enterprise agreements. But this finding potentially suggests that training practices to support career pathways between lower-skilled and higher-skilled roles in the industry are relatively rare. This appeared to be the case particularly among smaller farms with very few higher-skilled positions which limited opportunities for promotion.

Nevertheless, we did identify several examples of growers and communities developing initiatives to encourage skilled training and career development. For instance, following a recent report from the Victorian Skills Commissioner,<sup>194</sup> the State government announced a significant funding investment to create new skilled training cadetships for agriculture and horticulture in the Mallee region. The skills delivered through this program are intended to facilitate career pathways for the recipients who are being encouraged to work on local farms. To ensure that this objective is fulfilled, the Victorian Skills Commissioner has developed initiatives to strengthen engagement between local schools, vocational training colleges (particularly TAFEs) and growers in order to expose students to the work opportunities available in horticulture and allow growers to identify potential candidates more easily. This is an initiative that industry and state and local governments could look to replicate elsewhere.

Similar engagement initiatives have occurred elsewhere in Australia. For instance, the Queensland Agriculture Workforce Network (QAWN) has developed relationships between growers, TAFEs and community organisations to enable structured training and work experience for unemployed people and refugees as the first steps towards skilled employment in horticulture. Through the assistance of QAWN, one Queensland grower established the Farm Ready Hub to promote engagement between growers and training providers involved in horticulture. This initiative develops programs to help connect job seekers with horticulture employers and training providers and provides information to all stakeholders regarding their rights and obligations at work.

One Western Australian grower is in the process of establishing an internal training college to deliver a wide variety of skills to workers, from English as a second language courses to new migrants from non-English speaking backgrounds to certificate and diploma-level qualifications. The grower explained the rationale underpinning this initiative:

*“We can bring somebody in from ... countries that have agricultural backgrounds and have people that actually want to learn about agriculture. We can bring them in with a very low level of English. They can study English with us, and at the same time, we will then make work available, both with us and also across the broader industry. And because our overhead costs are lower, we can charge a subsidised fee for doing the courses ... We end up with a four-year stream, where people come in with no English, and come out the other end with a Diploma of Horticulture, which if they are very good will mean that*

<sup>194</sup> Victorian Skills Commissioner, above n 167.

**TABLE 7.1 TRAINING CLAUSES IN ENTERPRISE AGREEMENTS REGISTERED IN THE HORTICULTURE INDUSTRY, 1995–2018**

Year	Number of horticulture enterprise agreements registered	Enterprise agreements with training clause	Employer explicitly pays for training	Training explicitly linked to wages
1995	2	0	0	0
1996	1	0	0	0
1997	1	0	0	0
1998	4	0	0	0
1999	3	0	0	0
2000	3	1	0	1
2001	4	1	1	0
2002	3	0	0	0
2003	13	2	0	1
2004	5	0	0	0
2005	3	0	0	0
2006	8	3	0	0
2007	6	2	0	1
2008	3	1	0	0
2009	104	4	3	0
2010	11	3	1	1
2011	7	2	1	1
2012	6	1	0	0
2013	8	2	1	0
2014	9	4	2	2
2015	9	5	3	0
2016	14	2	1	0
2017	5	1	0	0
2018	1	0	0	0
<b>Total</b>	<b>233</b>	<b>34 (15%)</b>	<b>13 (6%)</b>	<b>7 (3%)</b>

*they're eligible for sponsorship in Australia ... It fits in with all of the existing visa frameworks, because a person on a student visa can work 20 hours a week, and then during their school holidays they can work unlimited hours. So we're also scheduling the courses so that the holiday periods lie on the peak periods of production for seasonal industries."*

While employer provision of training is important for the development of career pathways in horticulture, the quality of structured training through TAFE and other providers is also critical. Many of the growers interviewed expressed satisfaction with the skills and knowledge that workers trained through TAFE for qualifications, certificates

and licenses, but said more could be done to expose them to on-the-job work experience.

Several growers and other stakeholders claimed that the wider reforms to the vocational training system were required to be more responsive to the needs of industry and the workforce. One South Australian grower went so far as to claim that the system is "broken" in that local TAFEs in some regions did not provide the courses that would locals to attain skilled jobs in horticulture.

Several Queensland growers claimed that the higher-level certificates were focused on agriculture rather than horticulture, despite important differences between these industries. This also appears to be the case with university-level qualifications,

a deficiency that is currently being addressed in New Zealand where Massey University is in the process of establishing a Bachelor of Horticulture.

A Harvest Labour Service operator from New South Wales claimed that the absence of a coordinated system of structured training in horticulture hurt both growers and the workforce, because it dragged down productivity and inhibited workers from demanding higher wages. These findings indicate that industry associations and state governments need to work together to improve the responsiveness of vocational training providers to the needs of growers and local workers.

## Effectiveness of the welfare system

There are various State and federal government programs that promote the employment of local workers in the horticulture industry. In most regions there are local employment services agencies accredited under the federal government's 'jobactive' program who work directly with growers to assist in sourcing local candidates. Wage subsidies are also available for employers who engage certain job seekers such as youth unemployed, parents and those from indigenous backgrounds.

The relatively low rates of locals employed in horticulture indicate deficiencies with these programs, which were derided by virtually all of the growers that were interviewed.

Another reported issue relates to the disincentives that welfare payments created for unemployed people to work in horticulture. Staggered reductions in income support payments for welfare recipients who engage in paid employment can discourage people from working long hours and to maintain employment in the industry. The creation of the Seasonal Work Incentives Trial is an attempt to address this, however initial evidence indicates that this initiative has not been especially successful.

Some stakeholders claimed that changes to the administration of government employment services had exacerbated challenges of encouraging unemployment local residents to work in horticulture. According to an official with the Harvest Labour Service, the privatisation of the functions of the Commonwealth Employment Service (CES) in the 1990s significantly reduced resources including the number of dedicated personnel for supporting locals and placing them into horticulture work. It also spurred a growth in labour hire contractors that are often less effective at meeting these objectives.

Another criticism from growers and industry associations of JobActive, which effectively has responsibility administering the functions once performed by the CES, is its lack of engagement with industry.

The welfare system also creates challenges in encouraging newly arrived humanitarian migrants on permanent visas into horticulture work. According to a community group representative, existing policy arrangements effectively channel these migrants into the welfare system, rather than into employment and skills development:

*"[Instead of having a pipeline] where we'll have English language training ... jobs [and] employability skills [and where migrants are] paid properly ... we're actually saying: come and sit over here for 13 weeks, after 13 weeks you'll go onto Centrelink payments if you're a family of six, you might get \$1,500 a fortnight [through arrangements that] creates dysfunction within the family."*

Even with extensive changes in employment and social policy it is unlikely that local workers who are long-term residents can be used as the sole or even as the predominant source for meeting the horticulture industry's labour needs. A key reason for this relates to inherent aspects of horticulture work that render it more challenging than many other types of work. This work often involves hard physical labour, early start times, long hours, inclement weather and remote locations. It is difficult to change these intrinsic factors that are likely to dissuade local job seekers from this industry.

## Automation of labour-intensive production

Automation of harvesting and production processes could potentially provide a permanent solution to labour supply challenges in horticulture, particularly for labour-intensive lower-skilled jobs where these challenges tend to be most

acute. The sensitive nature of many fruit and vegetable crops is a major barrier to the complete technological replacement of labour intensive jobs. However, recent advancements make increased mechanisation a more feasible solution in some parts of the industry, particularly at the sorting and packing stage. Where machinery cannot substitute for workers for the picking of sensitive crops, the use of labour-saving technology, for instance conveyor belts and table-tops in the fields, can reduce physical demands on workers and improve productivity thereby lowering labour costs. "With the declining price of computing power and robotics, a new wave of selective mechanical harvesters may be on the horizon", according to a US study by Calvin and Martin. They claim that this is particularly true for vegetables and perennial crops, as well as more sensitive crops and fruit often harvested for processing where improved mechanisation and use of advanced chemical compounds that are now more readily available.<sup>195</sup>

The process towards automation is already under way in parts of horticulture, particularly among larger businesses. The high acquisition costs make labour-saving technology less accessible for smaller businesses, which may eventually force them to adapt their market strategies to remain viable. However, the relatively high cost of labour was a key factor spurring technological adoption among some growers and prompting other growers we interviewed, including smaller ones, to investigate ways to adopt new technology.

Some stakeholders saw technological advancement as important for improving the competitiveness of growers and the Australian industry. One NSW industry official cited how the adoption of protective cropping and glasshouses had helped make the Netherlands one of the world's largest fresh food producers. According to a South Australian grower, "If you are not mechanised basically you are not competitive. Anybody who does not bring in technology is yesterday's news".

While automation of labour intensive production is leading to the replacement of lower-skilled horticulture jobs, this has contributed to the creation of new higher-skilled jobs in some organisations. Some growers that have automated production processes have found that their labour supply challenges have been reduced. In the words of one grower in Western Australia: "It was easier to attract labour because it wasn't hard work".

## THE SEASONAL WORK INCENTIVES TRIAL

The Seasonal Work Incentives Trial is an Australian government initiative operating from 1 July 2017 to 30 June 2019. Its aim is to encourage unemployed job seekers into short-term harvest work in horticulture. As such it seeks to address the remove the economic disincentives created by the structure of the welfare system that may deter unemployed people from working in horticulture. The Seasonal Work Incentives Trial allows eligible job seekers to earn up to \$5,000 each year from seasonal horticulture work, either through direct employment with a grower or via a labour hire contractor, without losing income support payments. They are also eligible for a \$300 annual living away and travel allowance if they undertake such work more than 120 kilometres from their home. While 3,800 positions are available under the Seasonal Work Incentives Trial each year, only 277 people had been placed into the program in its first year of operation.

<sup>195</sup> Linda Calvin and Philip Martin, *The US Produce Industry and Labor: Facing the Future in a Global Economy* (Economic Research Report Number 106, United States Department of Agriculture, November 2010).

## STAKEHOLDER PERSPECTIVES ON THE AUTOMATION OF LABOUR INTENSIVE PRODUCTION

“There will always be roles for a human workforce. [But] technology is changing the way we do things: how we spray chemicals; how we grade fruit; how we pack and sort fruits and vegetables; how we transport them. We’re already seeing a contraction in the way certain parts of the supply chain operate, as technology enables things to work differently. You don’t necessarily need to have 20 people in a packing shed anymore. You might need two.”

**Industry association official (NSW)**

“We’re probably going through a transition where we’re reducing our unskilled labour needs through automation ... We’ve made redundant a number of people who were previously stacking boxes and doing grading... We still need those people but we need less of them ... But as a result we’re hiring more skilled labour to run this automated equipment ... We’ve implemented more optical graders ... We’ve put in palletisers to stack cartons and track packing to put the bags automatically into the cartons as well.”

**Grower (SA)**

“The automation will get better and they’ll be able to pick more crops with machines as we go on, there’s no doubt about that and sort more crops ... that will certainly have an effect on the labour shortage in the industry. But also there’s a pattern in Australia where lots of the small/medium sized farms are being bought out by larger farming operations.”

**Union official (NSW)**

“I used to work in the onion factory here growing up as a kid. They used to put me in with dust clogging my nose and I’d come home at night and I’d blow in my hankie and it would be black. I’d have dust blocking my ears. I’d be breathing it in all day long. I don’t want people to work in those situations and now with the new modern factories or packing houses that we’ve got, people don’t have to work in that situation. Do I want people in the future to be going out on a 40-degree day and doing work out in the sun that could be mechanised? No. Fundamentally, no. If we’re lucky enough to be born here on this planet, you shouldn’t have to do that to get by. So long term I hope we solve those problems.”

**Government official (NSW)**

According to one government representative in New South Wales with a background in horticulture, the replacement of lower-skilled jobs with technology is an important goal for social progress:

*“Mechanisation and technology is not a threat in this industry because we should not be doing these jobs ... We shouldn’t have people out in 40-degree heat pulling bloody carrots out of the ground ... We’ve mechanised a lot of those things for a purpose and I think it’s a good thing. We shouldn’t be encouraging low-skilled people to go back into those jobs.”*

Indeed, there is an analogy to be drawn between the labour-intensive picking and packing in horticulture and the replacement of similar work in other parts of agriculture such as cotton harvesting.

In the United States, the arduous and remote nature of work in this industry made it virtually impossible to attract a sufficient number of workers locally. This prompted cotton farmers to lobby for the creation of public policies that delivered them supplies of indentured controllable labour, initially through slavery and later through sharecropping. The advent of mechanical cotton picking machines have “drastically reduce[d] once and for all [cotton farmers’] risky association with farm labour”,

according to one study.<sup>196</sup> Of course, there is no direct comparison between slave labour on 19th century cotton plantations and contemporary Australian horticulture. However, the longstanding difficulties that growers in Australia and elsewhere in sourcing workers for low-skilled jobs, which might not be addressed in the absence of policies that enticed temporary migrant workers into the industry, suggests that technological solutions might be the optimal ones.

Mechanisation of harvesting involves significant research and development, capital investment and risks for early adopters of new technology that individual farmers generally cannot sustain alone.

As such, there is a need for investment by industry and perhaps government and coordination by industry associations to ensure new technology is evenly adopted and to minimise the adverse impact on smaller businesses. This would have manifold benefits: it would improve the international competitiveness of the Australian industry; it would provide a permanent and socially sustainable solution to low-skilled labour supply challenges; and it would create new opportunities for higher-skilled and better quality jobs.

## Conclusion

There appears to be a declining number of local workers, who are long-term Australian residents, attracted into the horticulture industry and a perception held by growers that these workers are less reliable and motivated. Although it may be difficult for growers to improve the pay associated with low-skilled work in the industry, there are opportunities to develop more attractive career pathways and more sophisticated management strategies with a greater focus on training to improve worker commitment and retention.

Growers should also seek the adoption of labour-saving technology as a permanent solution to low-skilled labour supply challenges. This would have the added advantages of improving the industry’s international competitiveness and creating opportunities for higher-skilled jobs to manage the technology. Industry should also work with government and other stakeholders, such as education providers, to identify ways that vocational training and welfare policies can be reformed to make them more responsive to grower and community needs.

<sup>196</sup> Pietra Rivoli, *The Travels of a T-Shirt in the Global Economy: An Economist Examines the Markets, Power and Politics of the World Trade* (Wiley, 2nd ed, 2009).

# CHAPTER EIGHT

# REGIONAL INITIATIVES TO SUSTAIN LABOUR SUPPLY AND SUPPORT COMPLIANCE

## Introduction

Horticulture is an industry defined by significant localised geographical variations resulting from various factors including differential proximity to urban and tourist locations and weather patterns.

The solutions that growers and stakeholders identify to the challenges they face need to account for these variations. This Chapter examines how challenges with labour supply and compliance with labour standards are addressed at a local level. It utilises four in-depth case studies in Mildura and Robinvale (Sunraysia, Victoria), Mundubbera (North Burnett, Queensland), Stanthorpe (Granite Belt, South East Queensland), and Griffith (New South Wales, Riverina).

Our research involved interviews with multiple stakeholders involved directly or indirectly in the horticulture industry. These included growers, recruitment businesses, local, state and federal government representatives, accommodation providers, workers, church representatives and other community members.

We sought to investigate and analyse regional responses to two interrelated challenges: first, how growers and others in their region responded to challenges faced in securing and maintaining a dependable labour force; and second, how regional initiatives might result in positive interventions to maintain compliance with labour standards.

## Findings

Our central finding is that a multi-stakeholder approach is essential for ensuring a consistent supply of labour in the Australian horticulture industry and for ensuring widespread compliance with labour standards.

Existing literature suggests that industry networks champion and implement change to improve business processes in a variety of diverse contexts. These formal and/or informal networks (often facilitated by local and industry knowledge) play an invaluable role that many others outside the industry cannot.

For example, in relation to non-compliance with labour standards, it is not only important to explore the underlying reasons for non-compliance but also factors that may mitigate non-compliance. Australian law scholar Tess Hardy notes that firms and their representatives hold specialist critical knowledge and access to business information, where governments are unable to identify and manage labour law violations.<sup>197</sup>

Indeed within Australia the system of employment regulation nationalised and moved from one reliant on co-regulation (involving unions, albeit perhaps never a very strong presence in horticulture compared to other industries) to 'command and control' with the Fair Work Ombudsman (FWO) (and its predecessor) never sufficiently resourced to undertake the job assigned to it.<sup>198</sup>

However, as this Chapter finds, there are many examples of successful regional partnership initiatives associated with the horticulture industry which address some of the shortcomings of traditional reactive strategies to addressing non-compliance based on complaints from mistreated workers to government regulators. In particular, we observed that in regions where there was a serious, multi-stakeholder attempt to rid the industry of opportunistic and often non-compliant intermediaries who supplied labour to growers, this greatly reduced costs, misinformation and exploitation.

In some regions individual growers, supported by a network of local individuals and community organisations, had made decisions to hire labour from reputable sources and to expose non-compliant growers. This was an important, foundational step to reducing non-compliance with laws and to creating a level playing field for growers.

These regional stakeholder networks were not only invaluable in promoting compliance with labour standards, but also to ensuring a consistent supply of labour.<sup>199</sup> Our research demonstrates that, given the varied nature of the industry in each region, stakeholders will participate in different ways with no 'one' way of addressing the challenges. This is because regions have differing labour supply challenges which reflect a number of factors, including but not limited to:

<sup>197</sup> Tess Hardy, 'Enrolling Non-State Actors to Improve Compliance with Minimum Employment Standards' (2011) 22 *Economic and Labour Relations Review* 117.

<sup>198</sup> Clibborn and Wright, above n 20

<sup>199</sup> Stephen Clibborn, 'It Takes a Village: Civil Society Regulation of Employment Standards for Temporary Migrant Workers in Australian Horticulture' (2019) *University of New South Wales Law Journal*, 42(1) (forthcoming).



- the region’s crop variety,
- distance from major cities,
- labour flows,
- distribution markets,
- local infrastructure,
- eligibility of the region’s postcode for the 417 visa extension for WHMs, and
- its attraction as a tourist destination.

We found that in regions that had developed formal and informal multi-stakeholder networks to address compliance with labour standards, this also created a more sustainable approach to managing horticulture labour supply.



## CASE STUDY #1: SUNRAYSIA REGION: MILDURA AND ROBINVALE

### Background to the Region

The cornerstone of the Sunraysia region’s economy is horticulture, particularly almonds, citrus, stone fruit, olive, wine, dried fruit, carrots, potato, mandarin, asparagus, avocado and table grapes.

Horticulture is the biggest sector in the region, accounting for almost 20% of gross value added and 16% of the region’s employment. The region grows around 98% of Australia’s dried vine fruit, 75% table grapes, 69% almonds, 48% pistachios,

24% citrus, 20% of wine grape crush, 13% carrots and 9% of asparagus. Other industries include hospitals, supermarket and grocery stores, secondary education, local government administration, aged care residential services. The region is an approved location for the WHM 88 day program and the growers rely on a variety of temporary migrant workers in the area.

Many growers export their produce, particularly the larger corporate farms and there is significant growth in export opportunities. For example, Dried Fruits Australia shipped 40,000 tons of citrus in 2016 even though there was no market five years previously.<sup>200</sup>

The official population of the Sunraysia region is around 32,738, and the ethnic profile includes Australian, English, Italian, Indian, New Zealand and Afghani-born residents. The local languages includes Italian, Turkish, Tongan, Hazaraghi, Mandarin and English. Unemployment rates in recent years have fluctuated between 4–7% and youth unemployment is calculated at around 11%.<sup>201</sup>

### Sustaining consistent labour supply in the region

A survey of 176 growers in Swan Hill, Robinvale, Mildura and surrounding areas in 2006 found that half of all growers surveyed said that it was ‘difficult’ to find enough seasonal workers to meet the needs of their enterprise and one tenth said that labour shortages were preventing the expansion of their business. While there was a mix of harvest labour, alarmingly, more than one quarter surveyed admitted that they found it necessary to employ undocumented immigrant workers.<sup>202</sup>

Given the range of crops in the area it is possible for workers to secure employment on farms within the industry for 11 or 12 months of the year. Moreover, projections are that growth in the horticulture industry in the region is set to double in the next decade, increasing demand for pickers, packers, irrigation technicians machine operators and orchard hygienists.<sup>203</sup>

### STAKEHOLDER PERSPECTIVES: REGIONAL GROWTH

“The area seems poised for continuing growth. Fueled by investment in horticulture, solar and other industries, the region is forecast to experience future workforce demand of between 2,900 and 4,400 new workers from 2017 to 2020, and as such will experience significant labour challenges ahead.”

**Victorian Skills Commission Report**

<sup>200</sup> Victorian Skills Commissioner, above n 167, 31.

<sup>201</sup> Ibid 12.

<sup>202</sup> Peter Mares, *Labour Shortages in Murray Valley Horticulture: A Survey of Growers Needs and Attitudes* (Report, Pacific Labour and Australian Horticulture Project Institute for Social Research, 2006).

<sup>203</sup> Ibid.

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## STAKEHOLDER PERSPECTIVES: STAFFING FUTURE GROWTH

“I think the industry is relatively clean, and I would hate to think that there are growers out there using contracts that they know are ripping people off. You hear of people that say they’re crammed into a house and then they’re charged \$20 shoved into a minivan and taken it to work ... paid \$15 an hour, I’ve got no doubt it happens. I don’t know anyone that does it, but I’ve got no doubt it happens, and I hope that gets cleaned up. I don’t know how many of them are out there, I really don’t ... there’s a percentage of workers around here that don’t have work visas, I get that, that’s a real worry for us, because if you take them away, I don’t know what Plan B is.”

**Grower (Mildura)**

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While the number of undocumented workers engaged in horticulture is impossible to calculate, many stakeholders interviewed claimed their population was significant (as it was in 2006). Not only were these workers prevalent but they were also considered necessary. One grower felt that even if 50% of the current undocumented workforce disappeared overnight the industry would collapse. Notwithstanding the limited clear statistics, this vulnerability of the industry in the region is concerning on a number of levels. As with other regions, the potential for further industry growth will only put additional pressure on an already stretched system that struggles to recruit and retain labour. The negative attention that the region has already attracted will also intensify.<sup>205</sup>

One health worker employed in the local Heath Centre suggested that most of the farm labour in the Robinvale area was Malaysian (70%), Vietnamese (15%), Filipino (2–3%) with the remainder of workers from Pacific Island countries such as Tonga, Fiji or the Solomon Islands. During peak season backpackers were common but the lack of hostel accommodation, and other factors, discouraged this labour supply engaged in the industry.<sup>206</sup>

## Ensuring compliance with labour standards

There were many examples of non-compliant labour hire contractors operating in the region. One contractor noted the well-known dilemma: “If the growers start to do the right thing, they start to fall behind the ones that are doing the wrong thing ... because their costs aren’t as high as the growers that are doing the right thing. So, you’ve got this endless cycle a vicious cycle. It will continuously do a spiral, back and forth, back and forth ... growers have to hire cheap labour in order to get the fruit off ... so the vicious cycle starts again.”<sup>207</sup> The negative publicity about the surrounding area reflects continued bad practice with this contractor describing Robinvale as the ‘Bermuda Triangle’ of non-compliant labour standards.

Recent changes to the contractor licensing industry in Queensland, South Australia and Victoria, and recent reforms to the *Fair Work Act 2009* (Cth) and the implementation of a Modern Slavery Act will help guide contractors for how to treat their workers. Labour hire contractors wishing to operate will have to pass a ‘fit and proper person test’ in order to be allowed to hold a licence, and those hosting workers will be required to only use licensed providers with large fines for non-compliance. However, enforcement is the key here.

One contractor stated:

*“It really boils down to how they’re going to police it. Will the government send out a team, go and knock on every door and check if you got his rate ... with this registration number, it’ll be the same I dare say, it’ll be the same as your ABN number. He’ll spread his ABN number around, he’ll probably have four or five different ABN number and he’ll change it every three months, and all the costs will just disappear”.*<sup>208</sup>

The enforcement of labour standards for workers in the horticulture region across Sunraysia seems very patchy. As elaborated below there were many successful farmers across the region, however these operators struggled to compete with less reputable ones. A submission by a legal representative to a recent government enquiry estimated that there were approximately 3,000 to 4,000 Malaysians living in Robinvale, many of whom were unaccounted for in any population census. He stated:

*“I found out that the working conditions and the living arrangements were shocking and deplorable. The middlemen and the syndicates were basically operating an indentured labour system which yoked these victims in a cyclical process that took advantage of harvest time. It was a multi-million-dollar industry which was rotten to the core.”*<sup>209</sup>

The legal representative went on to explain how the methodology they used was a ‘con’. Workers would initially enter Australia via a tourist visa for three months, when the syndicate would charge A\$700 for an extension, then an additional \$800 for a bridging visa while awaiting a protection visa. As the bridging visa expires, a protection visa (which is rarely issued) is sought requiring a further cost of \$6,000–\$8,000.

These descriptions suggest that the picture in Robinvale is particularly bleak with evidence of undocumented workers working on farms, hidden from official population statistics and civic management. However, these examples do not represent the full picture and there is considerable reason for optimism about the sustainability of food production in the area.<sup>210</sup>

## Sustainability of local initiatives

A charitable view of this predicament would be that the Sunraysia area is a victim of its own success. However, there is no doubt that the area struggles to keep up with developments in the industry.

There are many in the region who have identified and implemented local initiatives designed to support the horticulture industry into the future. These initiatives often

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## STAKEHOLDER PERSPECTIVES: COLLABORATION

“Nothing was built to cater for it. The town wasn’t built to cater for it, essential services weren’t built to cater for it. No one knew it was going to get as big as quick as it did, I think. The town just wasn’t ready for the explosion of development, and therefore, the requirement for labour.”

**Grower (Robinvale)**

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<sup>204</sup> Grower (Robinvale).

<sup>205</sup> McKenzie and Baker, above n 9. The story also received wide coverage in Malaysia, see: Vicknaraj Thanarajah, *Ending the Hypocrisy – ‘Modern Day Slave Labour’ in the Fruit Picking Industry in Australia* (30 October 2017) Fides Lawyers <[http://static1.1.sqspcdn.com/static/f/556710/27751088/1510870006047/Raj\\_Slavery\\_submission.pdf?token=y7wcBa5LO6l3B0WuLDgKHJuFlyE%3D](http://static1.1.sqspcdn.com/static/f/556710/27751088/1510870006047/Raj_Slavery_submission.pdf?token=y7wcBa5LO6l3B0WuLDgKHJuFlyE%3D)>.

<sup>206</sup> Health worker (Robinvale).

<sup>207</sup> Contractor (Robinvale).

<sup>208</sup> Labour hire contractor (Robinvale).

<sup>209</sup> Evidence to Joint Standing Committee on Foreign Affairs, Defence and Trade, House of Representatives, Mildura, 30 October 2017, 14 (Vicknaraj Thanarajah).

<sup>210</sup> Ibid.

brought together industry and business, local government and other stakeholders across the region to meet the rapid changes in industry resulting from free trade agreements and other opportunities. These opportunities were particularly relevant to crops such as table grapes, citrus and dried fruit which contributed strongly to increased investment in the local region.

Horticulture within the Sunraysia region accounted for 10% of the workforce, however it only accounted for 5% of the region's training activities. Low pay rates, poor working conditions and the aging workforce (only 6% aged between 16–24 and 61% aged over 45) made local recruitment and retention difficult. Also, because current training did not adequately address baseline skills that were transferable across horticulture, a collaboration was established between the Robinvale Employment Network and the Sunraysia TAFE which included the operation of a Skills Passport; rotational based traineeships that spanned multiple horticulture sectors that catered for the fluctuating demand.

A formal collaboration between Swan Hill Department of Education and Training, Rural City Agribusiness and Sunraysia TAFE together piloted a Certificate IV in agribusiness across several farms. Sunraysia TAFE and SMGT, a community-based skills and job centre, partnered in the piloting of 40 horticulture cadetships suitable for school leavers or young people to undertake a TAFE certificate in production horticulture in August 2018.

While embryonic at this stage, initiatives such as these offered pathways for locals to progress to farm manager or irrigation manager earning packages between \$150,000 and \$200,000.

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## STAKEHOLDER PERSPECTIVES: TRADE UNIONS

“We’d rather work with growers to get a resolution if there’s any issues, rather than just go in all guns blazing. I think there’s a lot of good relationships that have been repaired and are growing, but I think there’s still a lot of local employers that are very anti-union, but I think that’s more because of having to pay agreement pay rates, rather than award pay rates. I can appreciate the employer’s stance on obviously trying to minimise costs, but at the same time, you know, if they’ve got a happy team that’s working, then they’re obviously going to be more efficient and more productive.”

**Trade Union Official (Mildura)**

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## STAKEHOLDER PERSPECTIVES: GOVERNMENT REPRESENTATIVE

“Of the hundred industry leaders we spoke to, every one of them talked about employability attributes, rather than actual skills. You give us someone who will turn up on time, work ethic, work in a team, and got a bit of common sense about them, we’ll take them and we’ll train them. But it comes back to the school environment. Every industry leader talked about the interface between their industry and school, and that...they felt that the schools weren’t promoting or even talking about their industries locally... So, we need to do more around getting kids out to have a look at industry more opportunities around kids actually doing training in industry, particularly in bigger corporates who have got the capacity. We need to make sure that kids have industry mentors, that opportunity to make decisions. But this ongoing exploitation won’t go away. The media’s just going to continue to pound at every opportunity to make governments accountable. It’s about resources on the ground and it’s alright to have the laws, but it’s about enforcement and all of that sort of stuff.”

**Government Representative (Robinvale)**



They also offered pathways between less skilled positions to semi-skilled to a skilled layer on top involving STEM, cadetships, collaboration and career advice. As in other industries, mechanisation also offered additional opportunities, especially for local workers. For example, one large carrot producer was trialling new machine packing technologies to convert some of the less skilled jobs to mechanised and skilled positions.<sup>212</sup>

These initiatives also involved collaborations with stakeholders such as trade unions, who had secured a constructive relationship with many growers and a major labour supplier in the region. Although unions had not yet registered a single new member from a Seasonal Worker Program (SWP) briefing, their strategy within the industry was constructive and conciliatory.

Given the nature, scale and potential growth of industry in this region, initiatives around the provision of training and technology, and providing advice to young local people about what horticulture careers might look like are

an important first step in negotiating a bright future for the industry in the area. However, as indicated above, the negative reputation that clings to segments of the horticulture industry should be addressed to ensure that this does not overshadow the positive developments emerging within the region.

Many initiatives, including one spearheaded by the Victorian Skills Commissioner, gave the region a profile that could lead to financial incentives for further collaborations that would both ensure the on-going supply of additional labour for the industry and the potential that compliance with labour standards be met by the entire horticulture industry in the region. Such initiatives were dependent on local and state governments support, however it did include some important grassroots stakeholder support that emerged within the broader community, including local business, church groups and growers determined to improve the reputation of the region.

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<sup>211</sup> Government representative; Victorian Skills Commissioner, above n 167, 34; *Sunraysia Daily*, June 2018.

<sup>212</sup> Interviews with carrot grower and table grape farmer.

# CASE STUDY #2: NORTH BURNETT REGION: MUNDUBBERA AND GYANDAH

## Background to the Region

Horticulture is Queensland's second largest primary industry, worth more than \$2.8 billion per year and employing about 25,000 people. The neighbouring Bundaberg region is one of the largest horticulture production regions in Australia and is estimated to have an annual farm gate value of more than \$500 million, injecting over \$1 billion into the local economy and playing an integral role in the nation's food security. Within that the North Burnett region, situated in the northern catchment of the Burnett River approximately one hour west of Bundaberg and four hours' drive north of Brisbane, services around 25 small towns and farming catchments.

The population of the Mundubbera area is 1,261. The area is well regarded for citrus, table grapes and more recently blueberries. It also supports other industries including agricultural and fishing support services, retail, government administration and aged care services. The region is an approved location for the WHM 88 day program. Growers relied on a variety of temporary migrant workers, however SWP workers featured strongly. Within Mundubbera there was a highly diverse local population. 75.3% of locals only spoke English at home. Other languages spoken at home included Tongan (3.8%), Korean (3.1%), Nepali (2.2%), Mandarin (2.0%) and Italian (0.9%).<sup>213</sup> Census data reveal Australia, New Zealand, Korea, Nepal, Tonga and Taiwan are the most common countries of birth.

## Sustaining consistent labour supply in the region

The neighbouring Bundaberg region has often received negative publicity about working conditions, particularly for WHMs. This area has been popular for backpackers in the past, however over the last five years there has been a 23% drop in backpackers seeking horticulture work, largely attributed to its poor reputation for labour

exploitation.<sup>214</sup> As one local grower noted: *"there's a bit of a notion going around that's been passed on word of mouth that Bundaberg has been a difficult place to work and make money"*.<sup>215</sup>

The two small towns of Mundubbera and Gayndah, have initiated several activities designed to resurrect the reputation of the area through integrating and supporting their diverse horticulture workforce. The labour utilised in the area included local workers, WHMs, SWP workers, international students and undocumented workers.

However, there had been a significant shift away from the predominant use of WHMs to SWP workers in the region, particularly in the citrus farms. Blueberry farms were more likely to engage international students and/or use labour hire contractors to supply (Indian and Nepalese through one contractor and Taiwanese through another), and the table grape orchards were more likely to hire WHMs. Most farms also had a core number of permanent local workers.

The North Burnett and Bundaberg region has relatively high unemployment, particularly youth unemployment, which is around 26%. One of the primary barriers for local youth is transport because farms are poorly served by public transport. As one industry representative noted: *"Most unemployed locals would not own cars. Most of them might not even have a licence. They might not have a family member who holds an appropriate licence to help them with getting one. Unfortunately, because of the stigma that's associated with the unemployment rate and the cohort of people that fit within that perceived image, the majority who actually are legitimately looking for work are outshined by the minority"*.<sup>216</sup>

A dominant source for the horticulture workforce in the region is the SWP. In 2008 the federal government introduced financial incentives to establish programs that could support the inflow of SWP workers into this community. Through this engagement with

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## STAKEHOLDER PERSPECTIVES: LOCAL WORKERS

"One obstacle is the inadequate services to make locals job ready. It is achievable, it is manageable, and you can get employment outcomes out of it. It's about a career development. It's about identifying that pathway or the alternative pathways and how they can actually get to it. It'd be like 'okay, this is where you are, these are the skills that you have, and these are the types of jobs that you could use what you've got right now'."

### Queensland Agricultural Workforce Network (Bundaberg)

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the SWP the region initiated collaborations that drew on the region's long history of ethnic diversity to address current challenges. One large citrus grower within the Mundubbera region volunteered to employ the first pilot group of 32 SWP workers and by 2018 this group had become a central feature of the horticulture workforce in the area, particularly on citrus farms.

Ten years later, some from the original SWP group maintains enthusiastic support for the program and many in the industry felt that SWP were preferable to WHMs. As one observer noted: *"The Tongans 'don't need the days, they need the money. So they want to work every single hour if they can. So of course, that's the thing. On the same level, it's really good because they send money home"*.<sup>217</sup>

Growers were exasperated by the unpredictability of WHMs due to fluctuating exchange rates, and the fickleness of their preferences, and their focus on having a holiday rather than having to work: The popularity of WHMs amongst growers is mixed. One major citrus grower outlined the numerous problems with the unpredictability of WHM. She noted:

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<sup>213</sup> Australian Bureau of Statistics, 2016 *Census QuickStats: Mundubbera* (3 September 2018) <[http://quickstats.censusdata.abs.gov.au/census\\_services/getproduct/census/2016/quickstat/SSC32086?opendocument,%20https://www.northburnett.qld.gov.au/industry-focus/](http://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/SSC32086?opendocument,%20https://www.northburnett.qld.gov.au/industry-focus/)>.

<sup>214</sup> Peter Hunt, 'Millennial Backpackers Place Horticulture Harvest under Threat', *The Weekly Times* (online), 28 February 2018 <<https://www.weeklytimesnow.com.au/news/millennial-backpackers-place-horticulture-harvest-under-threat/news-story/32e77dbc9def92ebb12143e36cfa4dfb>>.

<sup>215</sup> Interview with grower; Marty McCarthy, 'Local Growers Say Bundaberg Fruit Picking Reputation Tarnished by Farm Worker Exploitation Revelations', *ABC News* (online), 6 May 2015 <<https://www.abc.net.au/news/rural/2015-05-06/childers-growers-react-to-four-corners-labour-exploitation-story/6448122>>.

<sup>216</sup> Interview, QAWN.

<sup>217</sup> Interview with caravan park manager.

*“I think there was an Aussie dollar change, we used to have a lot of South Koreans coming and there was a big drop-off in the South Koreans because the exchange rate made it less economic to work here. That sort of gave me thought for thinking if this is a permanent situation, because they’re really good workers and we enjoyed having them, but what if they decide they’re not going to come anymore? While employing a mix of PSW, locals and WHM she felt that WHM are ‘here for a holiday. It’s a holidaying visa. They’re not here to work for six months, and that’s a problem with the backpacker visa, is it’s not really what the intention of it was. There are some people who use it as a working visa and there are other people who use it as a holiday visa. So, it’s not really purpose-built for what we want.”<sup>218</sup>*

The reputation amongst WHM themselves was also a factor that led to declining numbers in the area. One ex-WHM stated, “I think it’s (the WHM is) finished.”

### Labour hire contractors

There were very diverse responses from interviewees about the legitimacy of labour hire contractors in the area. Within the region there were some well-known farms that managed their fields poorly and engaged the use of non-compliant contractors. Poorly managed farms had particular problems attracting workers as word got around amongst the WHM community that farms do not pay properly due to poor vine farm and people management. Non-compliant contractors were also most likely to be found here. There also seemed to be a big difference between contracted and non-contracted labour. We found that the SWP workers, who worked directly for growers, were more satisfied than the ones working for the contractor, who were less likely to voice their views.

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## STAKEHOLDER PERSPECTIVES: WHM

“When I was in Europe four years ago, the only thing you could hear was how good Australia was. I went there in August last year and the voice has changed, “don’t go to Australia”. From a tourist point of view they are always attracted to Australia because you’ve got something that no-one else got. But as a working experience, they are choosing not to come anymore. In a way Asians they get the message a little bit later on. It’s just a flowing through- the trend will start in Asia.”

### Ex-WHM (Mundubbera)

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## Ensuring consistent compliance with labour standards in horticulture industry

Given some of the reputational challenges that the area had faced with poor labour compliance over the years, and the type of horticulture labour living in the community, a number of individuals and groups initiated strategies to bring the industry together and tackle community issues such as compliance with labour standards and encourage better treatment of temporary farm workers. The most influential stakeholders within this community included local council, the growers, accommodation providers, labour hire contractors, church and community groups.

Collectively, the town formalised an important collaboration to further these efforts. In order to better manage the SWP, a Social Cohesion Steering Committee (SCSC) was established within the North Burnett Shire Council under the Community Social Cohesion Project (CSCP) in 2011. The CSCP, initially funded by the Department of Immigration, implemented and managed regional social cohesion through a strategy that recognised the increasing diversity of their workforce, particularly the new arrival of SWP workers between 2010 and 2012.

Key issues tackled by the SCSC were:

- Developing links with key community groups and representatives, including local churches, sporting and recreational groups, volunteer bodies like Rotary, government such as Queensland Police, non-government organisations like the local Youth Services, Community Development Organisations and local businesses.
- Introducing key activities centred around worker orientation, communicating health information on a community electronic noticeboard, a disseminating information strategy and collaborating with key community groups to coordinate and support ways to bring culturally and linguistically diverse (CALD) residents together. This group initiated a ‘Welcome Hub’, at the beginning of the picking season which was designed to assist workers with information and support.
- Developing a Drop-In centre and a communal meeting space for Tongan workers in the town’s centre.
- Introducing a ‘bush camp’ which housed any overflow of WHMs waiting for the picking season to commence.
- Monitoring of conditions through the SCSC; conducting itinerant workers surveys twice a year; regular bed audits and providing land to the local Tongan community to establish a community garden.

The SCSC communicated with the FWO requesting investigation of any workplace regulation issues that emerged for horticulture workers. This strategy of engaging diverse stakeholders provided successful, measurable and tangible outcomes for the horticulture industry and the local community.<sup>219</sup> With the steady and increasing influx of CALD community members choosing to locate to North Burnett both temporarily and permanently, the need for bodies like the SCSC has meant that while funding for this initiative has now expired, the Committee has remained an important part of the town’s infrastructure. Importantly, it was also cited by growers as a major reason that labour supply was well-managed and non-compliance lower than in other neighbouring regions.

### Sustainability of local initiatives

That is not to say that non-compliance does not exist. Despite the efforts of the CSCP, issues around labour exploitation remain, many of which relate to weak enforcement. One CSCP committee member noted:

*“I had to call the Fair Work, maybe 30 times just to get someone to talk with. I called once and they said, ‘yeah fill out the form’. I fill out the form, sent to them, what happened to the form, who knows? I had 150 backpackers to sign a claim and went around during my days off. ‘Okay let’s send everything to the Fair Work’, which I did with my private money to do an express post and sent all of the documentation. Nothing! ... Fair Work called and they said, ‘okay we’re going to come to check on the farm. It was like, oh good’. The picking was December to January, you know when they came, in February ... when the farm was shut. There were no people here the first time. The second time they came. That was two years ago, to check on the farm but the farm gave them enough reason and enough documentation. But they didn’t talk to these 150 people because they were already gone. Also, to follow up with these people, they tried to call them after months. Half of them are back in their country, the other half maybe changed their number because they are backpackers.”<sup>220</sup>*

Both as members of the CSCP, and as individuals, the manager and owner of the Mundubbera caravan park’s role was key. They stated:

*“I’m very honest with them when they call me. I tell them that this farm is not a good farm; you might get some days towards your visa, but the pay rate is terrible, the conditions are really poor. I’m really honest with them because I don’t think it’s fair just to drag them here for a week’s accommodation for them to lose*

<sup>218</sup> Interview with grower.

<sup>219</sup> Social Cohesion Steering Committee, Minutes, 2017.

<sup>220</sup> Interview with caravan park manager.



money. It's a pain for everybody. Then, they walk away going, Mundubbera's a shit place. It's not just the farm, it reflects on the whole community."<sup>221</sup>

It appeared that the Mundubbera caravan park's active role was to compensate for the less active role (in their view) of the local Harvest Office and FWO. They assisted horticulture workers with tax and visa issues and provided invaluable local knowledge. Both the owner and manager of the caravan park felt that: "It's just too much ... you try to do something good and no-one is supporting you."

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## STAKEHOLDER PERSPECTIVES: SWP

"I think the reason why council wanted to make sure that we had a finger on the pulse it is because we would have a cascade of visibly different people arrive overnight. Over the years we've had lots of people from Sudan, Thailand and Korea. So, we've always had such a diverse influx of people that arrive every year. While we weren't concerned about the community accepting them, we were concerned about making sure that this group (SWP) were made to feel welcome and that they really felt like they were welcome with open arms."

**Deputy Mayor (Mundubbera)**

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*The Harvest Office should be more on track ... should be more out there talking with the farmers ... going to check if the guys are being well paid."*

Similarly, local growers recognised and valued their good work.<sup>222</sup> There was a collective sense that everyone had to ensure they were not "part of the illegal equation".<sup>223</sup> Church members on the SCSC also played an important role in supporting (particularly SWP) workers. We were told, "for many, church is not just about spirituality. It also represents a place of trust, where people can talk about their problems and seek assistance. It can be place where food is provided and is an important institution that reduces vulnerability and social isolation".<sup>224</sup>

The SCSC had been in operation for six years, and while it was a formal entity run through the Local Council, its sustainability cannot be guaranteed. Government funding had ceased and the genuine commitment to ensuring that horticulture workers were protected from non-compliant employers required vigilance and close monitoring.

The SCSC had a positive effect on the town and raised the profile of the industry and brought growers and the community closer together. However, there remained pockets of non-compliance. One well-known farm operating within the community continued to underpay workers and engage non-compliant contractors, which frustrated those trying to clean the industry up:

*"We sit on the Social Cohesion Board and I have raised it many times, but what do you do? How can you fix it? Fair Work can't fix it. The only way is to tell people not to work there. If they can't get workers, they can't get the fruit off and then suddenly they go, well, what's wrong?"<sup>225</sup>*

There was a view in the town that farms originally employed Europeans, but that these workers had been replaced by undocumented workers from countries such as Taiwan and Korea. This small number of undocumented workers appeared to be hired by labour contractors. By contrast, there were clearly individuals and collective organisations that had invested time and energy to bring about positive change, most particularly the Deputy Mayor of Mundubbera, various local growers and accommodation providers. However, the foundation of these initiatives was fragile. Local initiatives such as the ones found in Mundubbera, therefore, are important to maintaining a level playing field for the industry. However, such initiatives must be formalised and built into the structure of the town to sustain the industry in the future.

<sup>221</sup> Interview with caravan park owner.

<sup>222</sup> Interview with grower.

<sup>223</sup> Interview with caravan park owner.

<sup>224</sup> Interview with Salvation Army.

<sup>225</sup> Interview with caravan park manager.

# CASE STUDY #3: GRANITE BELT REGION: STANTHORPE

## Background to Stanthorpe (and the Granite Belt Region)

Stanthorpe is a town of about 5,500 population in south-eastern Queensland in a region known as the Granite Belt, within the Southern Downs Regional Council area. It is located 218 km south-west of the nearest major city, Brisbane. There are no major tourist attractions in the region. At an altitude of about 1,000 metres above sea level, the Granite Belt has a cool climate for Queensland which makes it suitable for growing a range of fruit and vegetables.

Horticulture is a major contributor to the region's economy. 40.1% of the region's businesses are in agriculture, forestry and fishing, followed by construction (12.1%) and rental, hiring and real estate services (7.6 per cent).<sup>226</sup> Horticulture accounts for the region's main export, valued at \$265.1 million.<sup>227</sup>

The unemployment rate in Stanthorpe was 7.3% at the time of the 2016 Census. This was slightly higher than the national unemployment rate at the time of 6.9% but lower than for Queensland (7.6%).<sup>228</sup>

Apples and wine grapes have traditionally been the main crops. However, over recent years this has changed and the region now also grows a diverse range of produce including stone fruit, strawberries, tomatoes, capsicum, broccoli and leaf vegetables. Farms in the region ranged in size but a number of growers interviewed reported that it is increasingly difficult to maintain a small farm and that there are not many left in the region. Small farms have been bought by neighbouring farms over the years to maintain viability. The region had farms that supply direct to Woolworths and Coles, exported and supplied to the general market.

## Sustaining consistent labour supply in the region

The farms around Stanthorpe demand seasonal labour to perform jobs such as picking and packing produce. The main demand for labour comes during the peak harvest time

from November to March and fewer workers are required at other times. The region is an approved location for the second-year extension for the 417 visa and growers rely heavily on temporary migrant workers.

The region's growers had a few main options for sourcing seasonal labour apart from directly recruiting themselves. A harvest recruitment office operated in the town. As part of the government-funded program, it provided a free recruitment and placement service and visa checks. Additionally, two of the caravan parks and one backpacker hostel referred their guests to work on farms. The backpacker hostel operated as a 'working hostel' where guests could only stay if they were working for one of the hostel's small network of farms. The two caravan parks, however, also welcomed non-working guests as well as those who had obtained work through the harvest recruitment office. A small number of labour hire contractors also operated in the region. While interviewed growers reported that labour hire contractors had contacted them, a number of informants suggested that there were fewer operating in the area than in neighbouring regions. This appeared to be due, at least in major part, to the ready availability of seasonal labour through the harvest recruitment office and accommodation providers.

The vast majority of seasonal workers were WHMs. However, this workforce was supplemented by a community of permanent immigrants, based closer to Brisbane, who provided a steady source of seasonal labour to some of the region's farms. We found no evidence of growers using labour from the SWP and some use of undocumented workers including 27 caught in a 2017 raid by Border Force, apparently sourced from a labour hire contractor.<sup>229</sup>

The FWO had a presence in the area, operating from their Toowoomba office, 143 km to the north of Stanthorpe. That office had three Inspectors plus a Senior Inspector, responsible for Southern Queensland incorporating the area of the State south of Mackay, not including Brisbane and the Gold Coast. At the time of interviews,

the office was spending most of its time on the FWO's Harvest Trail initiative. In our interview with the Toowoomba Office's Senior Inspector, she suggested that, while the FWO does visit the Stanthorpe area, they do not consider it a problem area and therefore do not give it as much attention as other regions. Indeed, in 2016 the FWO successfully prosecuted a large strawberry farm in the Stanthorpe area, obtaining a \$70,000 penalty order from the Federal Circuit Court.<sup>230</sup> There was no notable union presence in the area.

Overall, the region seemed to have done quite well with labour supply for low-skill, seasonal jobs, relying mainly on WHMs. With the presence of the harvest recruitment office, accommodation providers and other sources of seasonal workers, labour supply appeared to be well managed. Additionally, the geographical location of Stanthorpe meant that it was a manageable drive of under three hours from Brisbane so, while the area was not popular tourist destination

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## STAKEHOLDER PERSPECTIVES: REPUTATION

"Are backpackers necessary for the area? Yes, they certainly are. Is there exploitation going on? Yes, there certainly is. Is that exploitation damaging the reputation of Stanthorpe as an area to come to? I'd say it's probably damaging a lot of areas. A lot of the kids see it as a necessary evil. They'll certainly report it. They'll do their 88 days and suffer or they might do 20 here, 30 there and 30 there to get their 88 and find one good area and a couple of bad areas. The bad area will get reported. Now if that bad area happens to be Stanthorpe that they ended up with the wrong farmer it taints the whole district. That's the big problem. I don't think the older farmer has woken up to the fact that social media a) exists and b) goes at the speed of light. They think that they can do what they've done

**Accommodation provider (Stanthorpe)**

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<sup>226</sup> Southern Downs Regional Council, *Southern Downs Socio-Economic Profile* (Report, AEC Group, May 2016) 15.

<sup>227</sup> 'Other agriculture' is defined as "which are not Sheep, grains, beef and dairy cattle, Poultry and other livestock, or Aquaculture": see ibid 33.

<sup>228</sup> Australian Bureau of Statistics, *2016 Census QuickStats: Stanthorpe* (3 September 2018) <[http://quickstats.censusdata.abs.gov.au/census\\_services/getproduct/census/2016/quickstat/SSC32680](http://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/SSC32680)>.

<sup>229</sup> Liana Turner, 'Workers to be Deported after Strawberry Farm Raid', *Stanthorpe Border Post* (online), 8 February 2017 <<https://www.stanthorpeborderpost.com.au/news/workers-to-be-deported-after-strawberry-farm-raid/3141037/>>.

<sup>230</sup> Fair Work Ombudsman, 'Farmers Penalised Almost \$70,000 for Short-Changing 417 Visa-Holders \$2600' (Media Release, 26 September 2016) <<https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/september-2016/20160926-i-luv-penalty>>.




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## STAKEHOLDER PERSPECTIVES: COMMUNITY REGULATION

“[The supervisor] works beside them and quietly says rude things. So we only ever send boys out there.”

**Caravan Park owner (Stanthorpe)**

“[I told a male worker] ‘if you have any trouble or you see any of the girls being spoken to badly, then as far as I’m concerned you all leave.’ [The farmer] would have no workers.”

**Caravan Park owner (Stanthorpe)**

“[The harvest recruitment office] knows when they come here, they’re going to be looked after, they’re going to be treated well, they will be treated almost like another family member as much as you can and so we tend to get a really, really good quality of backpackers because we look after them.”

**Council Representative (Stanthorpe)**

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like, say, Bundaberg, it was considered close enough to the nearest urban centre to be a popular choice for WHMs seeking to do their 88 days work.

Those farms within a moderate distance from a caravan park near Stanthorpe could rely on its proprietors to transport workers from the caravan park to and from the farms each day. Some farms, particularly those further from town, offered on-farm accommodation and some transport, e.g. for the workers to visit town once per week.

However, at the time of the research there was fear amongst some growers and community stakeholders about future labour supply. This fear arose from concerns that two things in particular would damage the region’s reputation and scare away future WHMs. These included the impending introduction of the ‘backpacker tax’, which at the time was being proposed at a rate of

32.5%; and the underpayment and other mistreatment of WHMs by some employers.

### Compliance with Legal Standards

A range of civil society stakeholders, including growers, accommodation providers, harvest recruitment office and local council were taking steps to ensure that itinerant farm workers (mainly WHMs) were treated well. This included taking steps to ensure compliance with minimum wage laws, sexual harassment laws and safe accommodation.

In the Stanthorpe community, a number of key stakeholders became aware of the threat to the region’s economy presented by the risk of poor reputation spread amongst WHMs that would reduce future labour supply. They took steps both individually and collectively to value the interests of the whole region by ensuring compliance with labour standards and better treatment of temporary farm workers, in particular WHMs. The most influential stakeholders were the local council, the harvest recruitment office, a local caravan park and some growers.

An employee of the local council recognised that WHMs were being treated poorly in relation to their accommodation and work. She became concerned, both for the workers’ welfare and the impact of a poor reputation on labour supply for the region.

The council took a number of steps with the aim of protecting workers and the region’s reputation. First, it formally regulated short-term accommodation to make registered dwellings more accessible and safer for seasonal workers. Second, it built a network of state regulators (including the FWO, Anti-Discrimination Commission, Fire Service, etc) to influence positively the treatment of temporary migrants at work and in accommodation. Third, the council coordinated a number of specific activities to raise awareness amongst the region’s stakeholders of the risks posed by poor reputation. These included two community forums including farmers, accommodation providers, harvest recruiters, local police and fire services, FWO, Anti-Discrimination Commission and the Department of Immigration and Border Protection. Finally, the council held a number of welcome barbeque events for WHMs at which the police and FWO attended and provided information about rights and sources of help. These efforts achieved some success in raising awareness of reputational risks and influencing the actions of stakeholders to better comply with labour standards.

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## STAKEHOLDER PERSPECTIVES: REPUTATION

“The fact that [WHMs] will be mistreated and that in the end our growers won’t have the backpackers coming to our region to assist them in the harvesting of their crop.”

**Council Representative (Stanthorpe)**

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## STAKEHOLDER PERSPECTIVES: GROWERS ENSURING COMPLIANCE

“You’ve got to look after your people’ and I got it through to [farmer’s name] and he’s doing it now which is good. ... He’s worked out to keep his core workers, you’ve got to look after them. If you don’t look after them, they walk.”

**Grower (Stanthorpe)**

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The Harvest Recruitment Office located in the town took steps to ensure that employers complied with their legal obligations and treated their workers well. The office encouraged workers who had been victims of non-compliance to report to state authorities such as the FWO and Anti-Discrimination Commission. Both the Harvest Recruitment Office and a local caravan park chose not to refer workers to non-compliant growers. As well as making labour supply more difficult for non-compliant growers, this also encouraged other growers to continue to comply with labour standards and treat workers appropriately in order to maintain labour supply.

## Sustainability of local initiatives

Farmers played a role in maintaining the region’s reputation and continuing labour supply in a number of ways. Some were influenced by the Harvest Recruitment Office and caravan park’s actions. Some also influenced the actions of other growers in the region by encouraging them to comply with labour standards and treat their workers better, making them aware of the bigger picture.

The simple act of hiring labour from reputable sources was perhaps the single biggest step taken by growers. Many growers had received offers from labour hire contractors to provide labour at non-compliant rates. By continuing to source workers from reputable sources such as the caravan park and the Harvest Recruitment Office, and to reject clearly non-compliant offers from labour hire contractors, these growers were taking steps to safeguard the region’s reputation.

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## STAKEHOLDER PERSPECTIVES: REPUTABLE SOURCES OF LABOUR

“I reckon the whole of them are shonky myself. ... How can they just come to me and say, it’s only going to cost me \$21 an hour [when] workers [are] costing me about \$26 [including all additional costs].”

**Grower (Stanthorpe)**

“We’d pay the contractor \$21 but [the labour hire contractor will] pay his people between 15 and 18 bucks an hour. That’s all he pays you see. So if [the workers] can come here and then all of a sudden they’re up on \$24-25 an hour, well they’ll stay here too.”

**Grower (Stanthorpe)**

“Happy caravan parks have happy people too ... I think they’re good to them in there, they’ve all been fair ... They don’t have any trouble because of it too.”

**Grower (Stanthorpe)**

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# CASE STUDY #4: NORTH-EAST RIVERINA REGION: GRIFFITH

## Background to Griffith (North-West Riverina)

Griffith is a city in the Murrumbidgee Irrigation Area in the north-west of the Riverina region. It has a population of about 20,000<sup>231</sup> and is located 574 km (about six hours) drive west of Sydney. There are no major tourist attractions in the region. The region grew as a farming community after the end of the World War II with modest farming land grants within a small radius around the town of Griffith. Outside of that radius, larger farms were available. Over time, many smaller farms expanded with the purchase of neighbouring farms.<sup>232</sup>

The Griffith economy is currently strong and there were resulting skilled labour supply challenges. A number of interviewees said words to the effect, “*if you can’t find a job in Griffith, you don’t want a job*”. For example, there was a new solar farm paying \$30 to \$40 per hour for low/semi-skilled labour.<sup>233</sup> Skilled and semi-skilled work was available in work relating to water use infrastructure. A number of large employers in the region demanded a large number of permanent low-skill jobs. These included Baiada, which operated a large chicken processing plant, and a few large wineries such as De Bortoli, Casella and McWilliams.

Griffith has historically been known as a citrus growing area and its main crops in

which harvesting labour is required are citrus, onions and cherries. However, many farms have diversified or moved completely away from citrus, due to recent periods of low citrus prices (although prices are considerably higher now) and the availability of mechanisation for other crops. There are now a lot of nut crops grown along with cotton, neither of which requires much low-skill labour. Griffith also has a very large production of wine grapes for bulk wine that is exported from the region in large bladders or tanks. Given the bulk nature of this production, picking of these grapes is mechanised. There remains demand for packing labour but this is also minimised on the mechanised farms.

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<sup>231</sup> Australian Bureau of Statistics, 3218.0 - Regional Population Growth, Australia, 2016-17 (24 April 2018) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3218.02016-17?OpenDocument>>.

<sup>232</sup> Interview with local industry expert.

<sup>233</sup> Interviews with labour hire provider and grower.

## Sustaining consistent labour supply in the region

Despite the changes in some crops and increased mechanisation of harvesting, the region's farms still demanded significant supply of labour to perform low-skill roles in picking, packing and grading. The range of crops and the nature of citrus meant that the labour demand was relatively consistent across most of the year.

The region has received several waves of permanent migration over many years. Italians, the main group, have been in the region for decades and descendants of these early immigrants own many of the farms. Indians and Pacific Islanders are also present in significant numbers. Many people from each group started out in low-skill jobs before moving up to own farms or work as labour hire contractors. There are apparently many undocumented workers in the Indian and Pacific Islander populations who have arrived on tourist visas, overstayed or absconded from the SWP.

The region is an approved location for the 417 visa extension and growers rely on temporary migrant workers. Because of the relatively great distance from the nearest major city and the lack of local tourist attractions, migrant workers in Griffith tended to be focused on work, either for the 88 days (417 visas) or longer-term for the money (in the case of undocumented workers in particular). The distance from Sydney also meant that many temporary migrant workers had their own vehicles. If not, their options for work were more limited to staying in a hostel that offered transportation to farms, or relying on labour hire contractors' accommodation arrangements.

Griffith offered a wealth of options for growers seeking temporary labour for low-skill jobs. These included multiple backpackers' hostels, a Harvest Recruitment Office, multiple formal labour hire contractors with offices in the city and many smaller, informal labour hire contractors. The Harvest Recruitment Office located in the city was not a major supplier of labour but was very involved as a sponsor of the SWP. Backpacker hostels were more major suppliers of WHM labour to farms. Hostels operated either as free recruitment agents or as labour hire contractors when providing WHM labour to farms. The many informal labour hire contractors operating in the region provided a strong supply of undocumented labour, many of whom were from the local permanent and semi-permanent Pacific Islander community.

Large farms could benefit from the SWP and local labour due to their purchasing power and demand for long-term labour. They also enjoyed the benefit of being able to supply their products direct to international buyers, thus avoiding the local supermarket

oligopoly and local market opaqueness and uncertainties. Of course selling internationally added the issue of negotiating currency foreign exchange fluctuations. However, such fluctuations also potentially impact domestic prices in any event and was considered insufficient disincentive to export given the issues with local markets and supermarkets. For small farms, the SWP was not practical for direct hire due to shorter picking seasons and economies of scale with the efforts and costs involved in using the SWP. Therefore, smaller farms needed to access SWP workers via labour hire or use WHMs or other labour hire. There was no evidence from the farms interviewed of efforts to address labour supply challenges by making low-skill jobs more attractive to workers.

The FWO did not appear to have a strong presence in the Griffith area. One accommodation provider/labour hire contractor had received only one phone call from the FWO in 12 years of operation. There was no notable union presence in the area.

## Labour supply challenges

The local economy was strong at the time of research and there were several large employers demanding permanent, low and semi-skilled labour. Therefore, it seemed that there was little practically-available supply of low and semi-skilled labour amongst the local permanent population with legal right to work. However, this did not seem to have increased pay or conditions in low-skill jobs due in part to growers' limited capacity to pay more.

Consistent with our survey findings that crops are sometimes left unharvested due

to unreliable supply of labour, reported in Chapter 6, one grower spoke of this happening. This farm was located almost an hour's drive from the major accommodation housing workers. The backpackers' hostels would not drive workers beyond a certain distance and it was apparently difficult to convince workers with their own transportation to travel long distances. This grower would often have only 45% of promised workers attend on a given day. However, the major cause of crops being unharvested for this grower was the sale price dropping below the cost of harvesting. This grower of zucchini, pumpkins and onions said that this happened about 40% of the time. For him, 80% of the total cost of production was in the harvest. This lack of control and information available to growers about market prices and factors that influence the market price was a cause of frustration, uncertainty and wastage, as well as preventing them from increasing pay and conditions to attract workers.

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## STAKEHOLDER PERSPECTIVES: REPUTATION

“Most of them have at least one story to tell. I mean we backpackers — I think what comes up the most is cities like Bundaberg or Mildura or — yeah I don't know, cities like that, Griffith ... These are places where all the backpackers say, ‘Don't go there, don't go there...’”

**WHM (Stanthorpe)**

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## **STAKEHOLDER PERSPECTIVES: COLLABORATION**

“I don’t think there’s anyone else in the community that can provide the service that [we do] at the moment. There are people in the community who are assisting migrants to fill in forms and they will charge them extra amount of dollars to do the job that I am doing for nothing ... They are immigration forms. For a bridging visa, the 108, some of our people are charging \$200, \$300, \$800 for this kind of work when I am doing it for the love of helping people.”

**Community Centre representative (Griffith)**

“It’s part of our support. If they want sugar and we have sugar, we can provide them with sugar or with flour. But if they don’t need it, then we don’t provide it. It’s just emergency need.”

**Reverend (Griffith)**

“Look, there’s one particular [employer] that we haven’t dealt with for a while. It got to the stage where some of the girls were being harassed by some of the employees, so we talked to the employer, and said, ‘Okay, what we’re going to do is put nothing but blokes in here. Nothing but guys.’”

**Accommodation provider and labour supplier (Griffith)**

“We ring the contractor first and you know, solicit his side of things, and if we can’t get a satisfactory conclusion, then we get the person in here, we write out a report and we send it to Fair Work ... then it’s up to Fair Work then to take it on with the job seeker ... I have lost contractors over things like that, and I have withdrawn services to contractors over things like that, if it’s pretty apparent.”

**Harvest Recruitment Office (Griffith)**

“They said they weren’t paid for quite some time. They didn’t even have a cent with them, when they came on the bus. When I picked them up, first thing they asked me, was if I could buy them a smoke. They were dying for a smoke. They had no money to buy smokes. I took them to a McDonalds and bought them a feed, took them home. Most of the time they were working, they never got any money. So I just asked the people around here that I used to go to school with, see if they can give them work at the farm, so they can make some money.”

**Individual community member (Griffith)**

“I had people come to my home at any time of the day, 6 o’clock in the morning, 7 o’clock, 9 o’clock, 10 o’clock at night. I never turn anyone away because it’s my experience that these people genuinely need help. If they come at this time I understand because they need to work to support their family.”

**Community Centre representative (Griffith)**

“I met one, two, three person out there in the [church] been here even more than 25 years ... they still doing the work. ... I’ve seen this with my own eyes, a person just, old men, pull it out. They nearly got all the teeth out ... I said to them, there’s Panadol, just buy from the shop.”

**Former undocumented worker (Griffith)**

“Often they don’t access health services very often. So usually when they come in, we see them when they’re acutely unwell, because generally they’re frightened to come to the hospital. ... because they don’t tend to get any pre-natal care, and then by the time they come in, there could be things wrong with the baby, or diabetes, things like that. Often, they’re still out working [fruit picking] at eight and a half months pregnant.”

**Hospital social worker (Griffith)**

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## Compliance with Legal Standards

There was little evidence of coordinated/organised/formal collaboration or regulation to ensure compliance with labour standards. Unlike in Stanthorpe, and to a degree Mundubbera, the local council did not consider there to be a major problem of non-compliance with labour standards and was taking limited steps to address it. However, there were many examples of informal collaboration and other efforts to regulate compliance with labour standards and to support workers. These related to supply of labour, regulation of minimum employment standards and support for vulnerable workers. See the ‘Stakeholder perspectives: Collaboration’ textbox for examples of such activities by a range of stakeholders.

Similar to Stanthorpe, Mundubbera and Mildura, two labour suppliers, the Harvest Recruitment Office and one hostel, had taken the responsibility on to cease or limit their supply of labour to non-compliant growers and labour hire contractors. At times this could be at a personal and economic loss to those involved. Many of these actions relied on reports from workers of underpayment, non-payment or other mistreatment.

Members of the Pacific Islander community in Griffith had provided support in the form of food, housing and work introductions for strangers or relatives who had run away from the SWP or other exploitative work

situations. These workers had suffered non-compliance in relation to low pay, unpaid wages, excessive pay deductions and poor accommodation. They left these bad situations in the region or travelled to the region as they knew its reputation for having a large Pacific Islander community. This kind of support was strong in the Pacific Island community and was provided in cases of acute need and, in some cases support was given long term over many years. This was particularly the case with long term undocumented workers who had no access to social services and were reluctant to contact a range of formal support providers.

Community groups provided migration advice, such as helping to apply for bridging and protection visas (and providing clothing and food) for undocumented workers living in the region. Churches and community groups provided clothing and food.

Churches and a hospital social worker provided assistance to migrant workers (both undocumented and those with valid working visas) to access social services. The social worker guided WHMs without Medicare or health insurance to make hardship applications to reduce or avoid medical bills. She also tried to encourage the local undocumented population to use hospital services, particularly early in their pregnancies as there was a problem with late presentation to hospital with acute problems.

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## STAKEHOLDER PERSPECTIVES

“Farmers say there are labour shortages but that is not accurate. Their service has worked hard to diversify into conventional recruitment to provide services to everyone not just backpackers — this is the true value of being in a place like ... Some growers sensationalise what’s going on. This may be their reality, but it’s their conditions of employment i.e. their wages and accommodation that gives them a shortage.”  
**Manager (Labour Recruitment Office)**

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The Salvation Army recently conducted workshops in Griffith to inform the local community about their work rights and signs of modern slavery. They ran a workshop, attended by hundreds of Pacific Islanders from the local area and who travelled from surrounding regions. The efforts of the Salvation Army appear to have been a good initial source of information and to have sparked some hope amongst both the Pacific Island communities and community support workers. However, at the time of the workshops, there was not yet any evidence of a plan for formal, ongoing arrangements and that program is no longer funded.



## Harvest Labour Services

Within 11 regions in Australia, the Harvest Labour Services and the National Harvest Labour Information Service connect workers with growers to help minimise local labour supply challenges. For growers, this service is designed to screen and match workers to available farm work.<sup>234</sup> Having interviewed representatives of seven of these regional offices, we found that each operated slightly differently. While some operators supplied labour directly to growers, many offices also supplied to labour hire contractors. In some cases, the offices did passport checks and VEVO eligibility and provided FWO brochures to workers. However, the relationship was not always cordial as many offices felt that the FWO, “*don’t do much to investigate after they are contacted*”. In terms of the challenges the recruitment offices face, there was a mixed response. Some felt that growers did not treat their workers well and that growers would not face labour shortages if they treated their workers properly.<sup>235</sup>

Most Harvest Labour Services offices met growers, their associations and visited farms to assess operations so that “*it’s easy to tell who is a good operator and who is not*”. The signs of a good operation were usually apparent. Similarly, the Harvest Labour Services checked local accommodation services, pay rates and the supervision of workers and many offices report that 95% of farmers are “*doing the right thing*”.<sup>236</sup>

These services engaged with all types of horticulture workers, however a lot of their work was with WHMs (around 90%), with the remaining 10% involving local workers. There seemed little collaboration between these services and the FWO and Federal Police, although they did encourage some workers to report to the FWO. One manager stated that the FWO “*blow into town once or twice a year but I’ve not seen them do anything constructive in cleaning up unscrupulous operators and reporting names of unscrupulous operators to the FWO results in no action being taken*”.<sup>237</sup> Some providers reported the existence of good cooperation and collaboration between stakeholders in the area and many suggested that their offices had contributed significantly to coordinating and “*cleaning up the industry*”.<sup>238</sup>

## Conclusion: How to grow multi-stakeholder collaboration within regions

These four cases indicate that regional solutions have helped to address the two biggest challenges facing the horticulture industry: ensuring a reliable supply of labour; and ensuring that employers, accommodation providers and other relevant actors comply with the law and otherwise treat workers well. These goals should be seen as interrelated to protect the industry from reputational damage and address sources of current labour supply challenges.

This Chapter has indicated that much is already being done by a range of stakeholders to ensure a sustainable supply of labour and to ensure widespread compliance with labour standards in some locations.

Existing literature suggests that both formal and informal networks must operate in tandem to sustain industry knowledge, co-regulation and enforcement of labour standards. Through successful regional partnerships it is possible to address the twin challenges of labour supply challenges and non-compliance with labour standards.

These four cases show that each region will approach these challenges differently, drawing on their particular strengths and local knowledge in a variety of ways to attract and retain a dependable labour force operating in a compliant industry. Moreover, regional differences will often demand differing regional responses to these challenges. Much of this relies on a genuine multi-stakeholder attempt to rid the industry of disreputable and often illegal non-compliant intermediaries to remove excessive costs, misinformation and non-compliance.<sup>239</sup>

For those wishing to replicate community collaboration in a wider range of regions, there is much to learn from these case studies. Certainly there are regionally specific reasons for more successful collaboration in some locations than in others. These include geographical, crop timing, eligibility for WHM extension 88-day work, and existence of tourist attractions, each of which may impact the attractiveness of an area to WHMs and therefore labour supply. They also include the presence of individual community leaders who see the value, and shared regional interests, in treating workers

well. Identifying these individuals should be possible through existing networks such as regional FWO offices, Harvest Labour Service offices and, in some cases, local councils. The 11 locations in which Harvest Labour Services operate offer a strong possibility for a collaborative connection between growers, workers and regulators.<sup>240</sup>

Finally, while our case studies found differing levels of interest in the issue within local councils, they remain a potentially influential actor, and point of contact for stakeholders, within regions. Educational facilities (schools and further education and training agencies) are also important stakeholders that could help to attract younger Australians into the industry. For instance, this could take the form of a gap year offering the opportunity for Australians to get life experience before deciding or committing to graduate studies, apprenticeship or employment.

Community stakeholders do play an important role in helping to regulate labour markets and labour standards. Equally, the simple act of hiring labour from reputable sources and calling out those that do not is the single biggest step that growers can take to reduce non-compliance. By working together with accommodation providers, religious and welfare agents as well as local, State and federal governments, growers are well positioned to reclaim directly their industry as ethical, dynamic and sustainable across all regions in Australia.

<sup>234</sup> Interview with Department of Education. See also Department of Jobs and Small Business, Australian Government, *Harvest Labour Services* (3 September 2018) <<https://www.jobs.gov.au/harvest-labour-services>>.

<sup>235</sup> Interview with director (Harvest Labour Service).

<sup>236</sup> Interview with multiple harvest offices.

<sup>237</sup> Interview with managing director (Harvest Recruitment Office).

<sup>238</sup> Ibid.

<sup>239</sup> Graeme Hugo, ‘Best Practice in Temporary Labour Migration and Development: A Perspective from Asia and the Pacific’ (2009) 47 *International Migration* 45, 58.

<sup>240</sup> Clibborn, above n 199.

# CHAPTER NINE

# REGIONAL INFRASTRUCTURE: ACCOMMODATION AND TRANSPORT SERVICES

## Introduction

**Accommodation providers play an important role in sustaining the horticulture industry not just by providing accommodation, but also by providing transportation to and from farms as well as important information about the availability and nature of farm work.**

However, there is significant variation in the nature, quality and cost of accommodation for different types of workers in different geographical regions in Australia.

Further, while growers may have traditionally managed their labour needs through direct employment, many growers now engage workers through labour hire companies who either supply their own accommodation or work closely with accommodation providers to recruit and house workers on their behalf. As such, growers are often unaware of how workers experience accommodation and transport services despite the fact that the business model of many accommodation providers has depended heavily on 'building relationships' with growers.<sup>241</sup> While this can present positive opportunities for workers and growers, it can also entrench the vulnerabilities of farm workers and undermine grower's ability to secure a dependable workforce for their farms.

Different types of workers engage in accommodation and transport services in different ways. For example, working holiday makers (WHMs) rely heavily on hostel and caravan park accommodation where transportation are provided as an add-on cost. By contrast, the Seasonal Worker

Program (SWP) requires employers to detail accommodation and transportation services as part of their sponsorship arrangement. While housing is rarely provided for local workers, there is also limited or no provision of public transportation for local workers to access farms in remote locations. There is also some evidence that undocumented workers are housed in substandard and illegal premises, however the scale of this problem is difficult to quantify.

When looking at transport services, most farms, by their very nature, are located in very remote areas and most fall outside main public transportation hubs. For example, Darwin's growing region is over one hour south of the central business district and public transport is minimal to non-existent, while other regions might be more accessible. Therefore, notwithstanding geographic variation, the provision and nature of transportation is an important component of ensuring horticulture regions have a secure labour supply.

Research indicates that access to transportation services can differ between local and foreign-born residents accessing farm work and also differ on gender lines.<sup>242</sup> Because there is a strong relationship

between access to transport and economic outcomes both for workers and firms, there is therefore an urgent need for more localised research which analyses the disparate transport challenges facing different regions within the horticulture industry.

In many respects, accommodation and transport are inseparable from horticulture work itself because they can contribute to positive interactions within the industry, or entrench further vulnerabilities.<sup>243</sup> As with the horticulture industry in many other countries, access to accommodation and transport services is segmented by the type of labour and visa status of the worker.<sup>244</sup> For example, approved employers under the SWP are required to provide accommodation and transportation services as well as pastoral care, however this differs slightly from New Zealand's Recognised Seasonal Employer scheme (RSE) where the exact amount of deductions taken from wages for accommodation and transportation is formalised in the contract and provided to both the worker and the government prior to the worker's employment.<sup>245</sup> While the dependence of SWP on employers to supply these services can create vulnerabilities when exorbitant deductions are made, case

<sup>241</sup> Underhill et al, above n 23.

<sup>242</sup> Lynn Dobbs, 'Stuck in the Slow Lane: Reconceptualizing the Links between Gender, Transport and Employment' (2007) 14 *Gender, Work & Organization* 85; Evelyn Blumenberg, 'Immigrants and Transport Barriers to Employment: The Case of Southeast Asian Welfare Recipients in California' (2008) 15 *Transport Policy* 33.

<sup>243</sup> Clibborn, above n 199.

<sup>244</sup> O'Brien, above n 184, 43.

<sup>245</sup> Howe et al, *Sustainable Solutions*, above n 4, 66; Department of Jobs and Small Business, *Seasonal Worker Programme – Useful Links* (7 November 2018) <<https://www.jobs.gov.au/seasonal-worker-programme-useful-links>>.

study data collected in this report suggest that accommodation and transport for SWP workers were more regulated than for other workers such as WHMs and other temporary migrant workers.

As indicated above, accommodation providers, often offer many more services than just accommodation. Some may operate as a labour hire paying workers directly from growers, and many others provide transportation and employment advice as part of their service. However, we found that the ability of different types of workers to access and benefit from these services was bifurcated.

The evidence from the case studies in this report suggests that different workers and visa types have different experiences of accommodation and transport services. For example, when looking at WHMs there was a tendency for these workers to be housed in accommodation arrangements which supplied transportation to farms. This contrasted with other farm workers, particularly local workers. For example, in Chapter 7 we examine numerous reasons why local workers may not be attracted to the horticulture industry. One representative from the Queensland Agriculture Workforce Network (QAWN) believed that transportation was one significant barrier for locals sourcing farm work. She stated that:

*“Most of them [locals] wouldn’t have cars. Most of them might not even have a licence. They might not have a family member who holds an appropriate licence to help them with getting their hours up. We’re a bit blind — well not we specifically, but there are some employers that are blindsided by the stigma around regional job seekers and transport. Transport is the biggest issue.”<sup>246</sup>*

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## STAKEHOLDER PERSPECTIVES: TRANSPORT

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“In terms of the cohorts that we are looking at there are the primary barriers, the lack of licence because our farms are not within walking distance. Our public transport system is irregular and it’s sporadic and it doesn’t go where our farms are located.”  
**QAWN (Bundaberg)**

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International research indicates that car ownership increases the likelihood of local workers being employed and therefore leaving welfare. Access to vehicles also leads to increased hours of work for welfare recipients.<sup>247</sup> Within rural and regional areas, these issues are more acute and will become even more potent if public transportation is not improved. For example, in areas where investment in horticulture is expected to increase significantly there are major concerns regarding the provision of transport and other infrastructure that could potentially inhibit this growth. A report on the future viability of the Sunraysia region noted that: “current challenges around the availability of affordable accommodation, transport, healthcare and childcare across the region will need to be addressed to support workforce participation and growth.”<sup>248</sup>

Within the Mildura area, there is also evidence that labour hire contractors influence how accommodation and transport services are used by farm workers. One government report stated that contractors could give workers envelopes with wages from which accommodation, transport and often a finder’s fee had already been deducted. This could result in workers getting hourly rates ranging from \$10 to \$15 an hour. Another study reported that there

were instances where workers ended up with only \$20 to \$40 a day after expenses were deducted, for a full day’s work.<sup>249</sup>

## Findings

1. Working hostels and other accommodation providers play a central role in managing labour supply challenges in many regions by supplying farm workers to growers. Some of these also play a role in fostering greater compliance with labour standards by selectively choosing growers and only sending workers to farms with a reputation for compliant labour relations.

2. There is considerable variation in the costs of privately-operated accommodation and transportation services both between and within different groups of workers. The more vulnerable the worker, the more likely they are to be exposed to exploitation through being forced into poor quality, high cost accommodation close to farm locations. The variation in accommodation and transport arrangements, and the degree of vulnerability of different workers, means regulation of accommodation and transport needs to be sensitive to local circumstances, and the most effective response to problems with exploitation of workers is through collaboration of the various stakeholders.

<sup>246</sup> Interview with Queensland Agriculture Workforce Network (QAWN) representative. For information about QAWN see: Queensland Farmers’ Federation, *Queensland Agriculture Workforce Network (QAWN)* <<https://www.qff.org.au/projects/rural-jobs-skills-alliance/queensland-agricultural-workforce-network-qawn/>>.

<sup>247</sup> Paul M Ong, ‘Car Ownership and Welfare-to-Work’ (2002) 21 *Journal of Policy Analysis and Management* 239; Tami Gurley and Donald Bruce, ‘The Effects of Car Access on Employment Outcomes for Welfare Recipients’ (2005) 58 *Journal of Urban Economics* 250.

<sup>248</sup> Victorian Skills Commissioner, above n 167, 12.

<sup>249</sup> Forsyth, above n 76, 154.

<sup>250</sup> Howe et al, *Sustainable Solutions*, above n 4, 88.

# FINDING #1 ACCOMMODATION SERVICES PLAY A CENTRAL ROLE IN MANAGING LABOUR SUPPLY CHALLENGES

Growers rely heavily on accommodation providers to access temporary migrant workers. The National Survey of Vegetable Growers revealed that 40% of growers surveyed had used labour hire firms to access workers and 29% had recruited through hostels. Growers who used hostels to recruit were most likely to employ temporary migrants compared to Australian workers. Among growers surveyed, 15% had a formal business relationship with a hostel that provided accommodation to their workers.<sup>250</sup>

Accommodation providers are an important part of how growers conduct their business and how they access available labour, particularly during short intense harvesting times when labour needs fluctuate. While each region and type of farm had different labour requirements, survey data revealed that growers who had less difficulty recruiting labour were significantly less likely to recruit workers through ‘youth hostels’. The propensity to recruit through hostels was also significantly higher than average among those growers who only needed workers for less than six months.<sup>251</sup>

Similarly, growers reported that for some crops, they required dozens, if not hundreds, of workers at short notice, and then at other times the demand almost completely fell away. The case studies found that many accommodation providers played an important role in supporting labour supply in situations of fluctuating grower demand for workers. They used local knowledge of growers needs, as well as labour demand in previous seasons, to inform workers via social media of up-coming work opportunities.

For example, one grower reported that they will “*get the same people back every day for months [in] potatoes and sweet potatoes or strawberries or capsicums*”, but then draw on

lists of workers supplied by hostels to meet the changing demands each day based on the crop being picked.<sup>252</sup> Workforce needs could fluctuate from 55 return local workers and family members, to the need for 400 temporary workers that were required during the peak picking season. The need for such flexibility in labour allocation meant that growers had to rely on sourcing different workers each day to pick crops where the harvesting process was more physically demanding and unattractive.

While accommodation providers maintain a central role in housing workers employed in the industry, they have attracted criticism due to their ability to control access to horticulture jobs. Since many WHMs gained work exclusively through hostels and given they were generally employed casually, hostels had an exclusive power to supply work to, and withdraw work from, WHMs. This is supported by media reports which have recorded cases where hostels attract workers to their hostels via social media on the promise of work which may never eventuate, leaving workers to pay accommodation costs while waiting for work to flow through.<sup>253</sup>

The Victorian Inquiry into the Labour Hire Industry also found considerable evidence of non-compliant labour hire and inadequate accommodation providers, particularly in regional areas that relied heavily on WHMs and other seasonal workers. One submission relating to the Sunraysia region noted a hostel that housed over 400 workers, who were paid \$12 an hour with deductions of \$5 for transport each way every day and \$130 for accommodation with half a dozen people in one room.<sup>254</sup>

## STAKEHOLDER PERSPECTIVE: ACCOMMODATION

“I can only imagine what it would do to a farmer trying to work, sleep and manage his (sic) operation while being squeezed by supermarkets, worrying about the threat of or actual storm damage smashing his (sic) livelihood and coordinating pickers, packers, transport agents, box suppliers, equipment bureaucracy, a mechanic, his wife and family and the bank.”

**Hostel owner (Mildura)**

<sup>251</sup> Ibid 89.

<sup>252</sup> Ibid 42.

<sup>253</sup> Underhill et al, above n 23.

<sup>254</sup> Forsyth, above n 76, 178.



## FINDING #2 THERE IS CONSIDERABLE VARIATION IN THE PROVISION OF ACCOMMODATION AND TRANSPORT SERVICES

There is considerable variation in the quality of accommodation provided in the industry, particularly where accommodation providers take on multiple roles, blurring the line between labour contractors and accommodation providers.<sup>255</sup> The exercise of dual roles can be both beneficial and detrimental to the welfare of workers and the industry more broadly. In one case we found that accommodation providers played a vital regulatory role in the industry, by spending considerable time and effort connecting workers to trusted contractors and growers.<sup>256</sup> One caravan park owner in Queensland stated:

*“We now rarely will touch a contractor who’s got one name and a mobile phone number and even if they ring us, we’ll go “no we haven’t got anybody”, because you can’t track them down later on.”<sup>257</sup>*

Hostel owners can also use their central place in the labour supply chain to ‘screen’ workers. One hostel owner in New South Wales stated:

*“We just spend most of our time turning people away, but we can also be selective as well about who we say ‘yes come’ and who we say ‘no’ to. We take a dim view of people who get drunk and fight with each other. We take a dim view if we have work for people and they don’t go for varying reasons, because that’s our relationship with a farmer that gets screwed around and ultimately that is more important than they are.”<sup>258</sup>*

This hostel owner stated clearly on its website that the hostel could not guarantee work and that workers were discouraged from visiting the area when work is scarce. The hostel also stated that they are ‘picky’ with growers, collecting a database of over

### STAKEHOLDER PERSPECTIVES

“There are difficulties identifying how to overcome some of the problem with accommodation in the horticulture industry. ‘While there is a limit to the number of people you can have on a premises...the problem with all of those laws is that if you want to inspect somebody’s premises, you’ve got to tell them that you’re coming. So, then they chase all of the people out, and then they only have the right amount of people on the premises when you turn up. Under that sort of system, you’ve got to be pretty stupid to get caught.”

**Local government official (Mildura)**

“Now, first of all, the bloody sheds shouldn’t be stuck against the house. This one caught on fire. You’d want to see the wires under there where the kids were and everything. They couldn’t get enough power to come to the back bedrooms, so they stuck a three-inch nail into the box as a fuse. So, the bloody thing melted down and the house caught on fire. There’s about a dozen or more people living in there. This one here is just chock-a-block. They all work at the farms. That house over there has just been bought. This one here, there’s about 12 people in there or more out the back. Have a look up there. Caravan over there on the lean-to, that’s against the law. Another one over there. A caravan over there, there’s about 15 or 20 people in it, the same bloody family.”

**Local government official (Swan Hill)**

“Some of the big firms ... that employ a lot of people with really good jobs and good salaries. If you came here (to Robinvale) you’d probably go and live in Mildura and drive down here, because there’s no accommodation. But a lot of the workers will just live anywhere. The more middle-rung employees to highly skilled, they want a good house. Some of the others are prepared to get something a bit dodgy...The firms in the area admit that they get really poor value from their employees, who have to drive long distances to get to their properties ... So maybe the bigger horticultural producers, in time, will build some more accommodation; but it won’t be enough.”

**Local business operator (Robinvale)**

600 trusted growers in the area. This hostel owner also related that on occasion he had ‘rescued’ backpackers from unsatisfactory employment or housing situations. The owner felt strongly that there was a need for legislation to identify those people (in illegal share housing) so that all accommodation providers were on the same playing field.<sup>259</sup>

These examples show that accommodation providers often mediate relations between workers and farms and represent an important vetting stage for growers and workers to understand and assess the nature of their employment. Accommodation providers also educate workers about the availability of work which assists WHM, and other temporary workers, to decide which regions to visit. There is also evidence that accommodation providers work closely with local councils and growers to ensure that there was sufficient local accommodation by undertaking regular bed audits that synchronise with picking schedules. Some accommodation providers also assist with tax and visa advice, as well as considerable pastoral care, for temporary farm workers.<sup>260</sup>

Indeed, in one of the regional case studies we were told that the checking-in process for one caravan park could take up to an hour due to the detailed information provided about available work. As the owner noted:

*“Because we are going to explain everything to you. Which farm, what are they doing, how much do they pay and which one should suit you better. If a big guy was coming here, we’d go to him and say look you can go to this farm because they have high trees, you won’t have any problem. You are a small girl, go and talk with this farmer because maybe they will put you in the shed or they have a small tree, you won’t have a problem there. It’s time consuming.”<sup>261</sup>*

On occasions, accommodation providers offer information leaflets outlining their legal rights including advice about how best to prepare for work in the horticulture industry. Many local growers were appreciative, as well as highly dependent, on these efforts to orientate their workers. One caravan park manager had designed and distributed a detailed map of the local area, which was subsequently copied by the local Harvest Recruitment Office to give to their clients.

<sup>255</sup> Interview with hostel owner (Mildura).

<sup>256</sup> See also Clibborn, above n 199.

<sup>257</sup> Interview with caravan park owner (Mundubbera).

<sup>258</sup> Interview with hostel owner (Mildura).

<sup>259</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade, above n 11, 24.

<sup>260</sup> Interview with caravan park manager.

<sup>261</sup> Interview with caravan park manager.

In one region, when there was a lack of accommodation to house workers for the imminent picking season, the owner of the local caravan park initiated a collaboration with the local council and growers to set up a temporary camping area for WHMs and other temporary farm workers. Part of the arrangement was that workers could access an overflow camping site facility at the cheaper rate of \$5 a night in exchange for the visitors undertaking some voluntary activities with the local Rotary Association.<sup>262</sup> However, while there are examples of good practice within the industry, accommodation providers have also attracted adverse attention, including reports that horticulture workers are being exposed to exorbitant rents in illegal share houses.<sup>263</sup>

These types of share houses, of which one hostel owner claimed there were over 100 in the Bundaberg region, are often difficult to locate. However, their existence undercuts legitimate and ethical operators. For example, undocumented workers tended to be housed in share houses often owned or leased by their contractor. As one labour hire contractor reported, “*They [undocumented workers] just hide. Like let’s say, you rent a house and something like that and you can hide easy.*”<sup>264</sup> A former undocumented worker described how contractors are vigilant in ensuring undocumented workers do not make local connections and remain concealed, describing how “*the contractor will just sleep in the car outside [the houses of undocumented workers] and watch them. So no-one walks outside.*”<sup>265</sup>

One witness told an Inquiry into labour hire that a house owned by a labour contractor with three bedrooms was housing approximately 20 people. The kitchen had been taken over as accommodation and the residents were cooking in the yard.<sup>266</sup> These reports are commonplace with suggestions that hostel networks are experiencing higher vacancy rates due to illegal contractors that house their workers in their own accommodation that is out of sight to the general population.<sup>267</sup>

In one of the regional case studies presented in this report, a local government official drew attention to the main street of the town where there were many painted-out shop windows, indicating where shops had been converted into illegal accommodation. He lamented, “*one of those used to be a very large menswear shop, and God knows how many bunks are in there, that’s what will be in there.*”<sup>268</sup>

Accommodation providers can have a very positive impact on the horticulture industry by assisting growers to source labour efficiently. Working hostels ensure that “*people aren’t sitting around*”<sup>269</sup> and in many respects growers have come to rely heavily on accommodation providers to secure workers particularly during the chaotic harvest period.

However, these dependencies can also have a negative effect on the employment of local workers. Outside of the ‘core’ workforce of local non-seasonal workers, the hostels can often have monopoly control over the supply of seasonal labour coming from outside the area, thereby making it difficult for other groups of workers to gain access to local employment. As far back as two decades ago, the Bundaberg Fruit and Vegetable Growers stated that the practice of employers approaching hostels directly for workers can disadvantage the local labour force, particularly as hostels coordinate WHMs and transport them to farms.

These issues remain a concern today. According to one local employment services manager, “*there are some farms that do employ locals, but generally it is a little hard for people to get into the majority because they tend to use the backpacker hostels.*”<sup>270</sup>

While accommodation impacts different groups of workers in different ways, housing does have an influence on the reputation of the whole industry. The numerous media accounts of substandard housing, unauthorised deductions and reports of withholding workers passports can only serve to entrench problems with attracting and retaining labour within farming regions.<sup>271</sup>

## STAKEHOLDER PERSPECTIVE: ACCOMMODATION

The current arrangements of hostels supplying WHM to growers discriminates against the local labour force who find it difficult to access the work sources. The Commonwealth Employment Service does not seem to be playing an active role in promoting and training local labour to fill the positions on farms.

**Joint Standing Committee on Migration, Working Holiday Markers: More Than Tourists, 1997**

It is interesting to note that some growers in California are addressing labour shortages by returning to onsite accommodation. Research indicates that some Californian farmers are increasingly building accommodation on their farms to attract and retain farm labour given the drop in Mexican farm workers coming to the area looking for work. For example, Californian vegetable grower Tanimura and Antle are constructing an 80-100 bed apartment building designed for single men and larger apartments designed to house up to eight residents to attract and retain farm labour. While this option is more viable for the larger firms or firms who combine their needs, it does indicate that growers recognise the importance of accommodation in attracting labour into the area.<sup>272</sup>

<sup>262</sup> Interview with caravan park owner.

<sup>263</sup> Frances Adcock, ‘Illegal Hostels Hurt Backpacker Region’ *ABC Rural* (online), 10 December 2013 <<https://www.abc.net.au/news/rural/2013-12-10/illegal-hostels/5147054>>; Marina Freri, ‘Working Holiday-Makers “Exposed to Exploitation”’, *SBS News* (online), 28 February 2014 <<https://www.sbs.com.au/news/working-holiday-makers-exposed-to-exploitation>>.

<sup>264</sup> Labour hire contractor (Orange).

<sup>265</sup> Former undocumented worker (Griffith).

<sup>266</sup> Forsyth, above n 76, 179.

<sup>267</sup> Underhill et al, above n 23.

<sup>268</sup> Counsellor (Swan Hill).

<sup>269</sup> Hostel owner (Mildura).

<sup>270</sup> Howe et al, *Sustainable Solutions*, above n 4, 90.

<sup>271</sup> ‘More Than \$1m in Lost Wages Recovered for 2,500 Fruit Farm Workers’, *The Guardian* (online), 22 November 2018 <<https://www.theguardian.com/australia-news/2018/nov/22/more-than-1m-in-lost-wages-recovered-for-2500-fruit-farm-workers>>; Joshua Robertson, ‘Mia Ayliffe-Chung’s Mother Battles Exploitation of Backpackers in Australia’, *The Guardian* (online), 11 July 2017 <<https://www.theguardian.com/australia-news/2017/jul/11/mia-ayliffe-chungs-mother-battles-exploitation-of-backpackers-in-australia>>.

<sup>272</sup> Phillip Martin, *Immigration & Farm Labour*, UC Comparative Immigration & Integration Program (Forum on migrant workers in agriculture, The University of Sydney, 15 November 2018).

# **PART 3: VISA OPTIONS AND REFORM**

# CHAPTER TEN

# THE WORKING HOLIDAY MAKER PROGRAM

## Introduction

The Working Holiday Maker (WHM) Program was introduced as a bilateral agreement with the UK in 1975 to facilitate the movement of young people between the two countries for the purpose of work and travel.

As of June 2018, the program had expanded to include 42 countries, 19 on subclass 417 visas, and 23 on subclass 462 visas. The government also has uncompleted agreements with Papua New Guinea, Greece and Ecuador.

The program has a dual purpose of providing a reciprocal opportunity for young people from Australia and partner countries to travel and work. WHMs travelling to Australia have always been permitted to work for the full 12 months of their visa, but until 5 November 2018 for a maximum of six months with any one employer.

WHMs have contributed to the horticultural workforce since the inception of the visa. Their significance as a source of labour for the industry has increased over time, and particularly since 2005, when the subclass 417 visa was amended to provide the opportunity for WHMs to apply for an extension of their visa for a second year if they completed 88 days of work in specified industries in regional Australia. A further amendment in 2017 enabled subclass 462 visa holders to apply for a visa extension for a second year if they completed 88 days of work in northern Australia.

On 5 November 2018, the government announced further amendments to the visa, providing the opportunity for subclass 417 visa holders to apply for a third year of work if they complete 6 months of work in their second year. This opportunity is also available for subclass 462 visa holders in regional areas throughout Australia (and not only in northern Australia), including the whole of South Australia and Tasmania. The government has also foreshadowed that it will increase the cap on numbers for some countries in the subclass 462 visa program.

**TABLE 10.1 WORKING HOLIDAY VISA ELIGIBLE COUNTRIES**

### 417 visa eligible countries (uncapped)

Belgium	Finland	Italy	Norway
Canada	France	Japan	Sweden
Republic of Cyprus	Germany	Republic of Korea	Taiwan
Denmark	Hong Kong	Malta	United Kingdom
Estonia	Republic of Ireland	Netherlands	

462 visa eligible countries	Visa caps (462 visa)
Argentina	1500
Austria	200
Chile	2000
China	5000
Czech Republic	500
Hungary	200
Indonesia	1000
Israel	500
Luxembourg	100
Malaysia	100
Peru	100
Poland	500

462 visa eligible countries	Visa caps (462 visa)
Portugal	200
San Marino	100
Singapore	500
Slovak Republic	200
Slovenia	200
Spain	1500
Thailand	500
Turkey	100
United States of America	No cap
Uruguay	200
Vietnam	200

The 2005 changes to the conditions of WH visas coincided an increase in the number of WHMs travelling to Australian between 2005-06 and 2012-13 in the order of 223%. Between 2012-13 to 2017-18 numbers of WHMs have declined by 23%. Despite this recent decline, the number of WHMs granted visas in 2017-2018 is still very high by historical standards. These variations demonstrate that there is considerable fluctuation in the numbers of WHMs, which has implications for their reliability as a source of labour for the horticulture industry.

The changes announced in November 2018 are also likely to result in a dramatic rise in WHM numbers in both the subclass 417 and 462 visa programs. The precise impact on the horticulture labour market will depend on how attractive a three year visa with unlimited work rights is to young people

### VEISE ENTITLEMENT VERIFICATION ONLINE (VEVO)

- Employers must have an Australian ABN to register for VEVO
- Employers must have good evidence of a person's identity — such as sighting their passport
- Employers must request and retain the visa holder's permission to check their details in VEVO.
- If an employer is not registered with VEVO, they can still check a worker's visa status by requesting that the worker send their visa status directly from VEVO. VEVO enables the worker to send an email with information on their visa status.

**TABLE 10.2 VISA GRANTS IN THE WORKING HOLIDAY VISA PROGRAMS** <sup>273</sup>

	Subclass 417 (first year visa)	Subclass 417 (second year visa grants)	Subclass 462 (from 2005)	Subclass 462 (second year grants)	Total
1995-96	40,273				40,273
2000-01	78,642				78,642
2005-06	114,693		751		115,484
2006-07	127,171	7,822	1,812		136,805
2007-08	142,516	11,826	3,488		157,830
2008-09	166,132	21,775	6,409		194,316
2009-10	150,431	25,315	7,422		183,168
2010-11	162,980	22,500	7,442		192,922
2011-12	184,143	30,501	8,348		222,992
2012-13	210,369	38,862	9,017		258,248
2013-14	183,428	45,950	10,214		239,592
2014-15	173,491	41,339	11,982		226,812
2015-16	159,409	36,264	18,910		214,583
2016-17	157,858	34,097	18,647	409	211,011
2017-18	152,622	32,828	21,667	3,339	210,456

from agreement countries, and also which countries in the subclass 462 visa program have the caps lifted.

The evidence from the national survey and regional case studies presented in this Chapter relate to research conducted prior to the November 2018 changes to the WHM program.

There are no dedicated regulatory requirements for the employment of WHMs. WHMs are entitled to the same wages and conditions as local workers and the *Fair Work Act 2009* (Cth) applies equally.

Employers are expected to take reasonable steps to ensure they are not allowing work in breach of the *Migration Act 1958* (Cth). This is supported by the employer sanctions provisions in the *Migration Act* sections 245AB–245AEB. One way that employers can check visa status of WHMs and other non-citizen workers is to use Visa Entitlement Verification Online (VEVO),

although these checks are not mandatory for employers.

WHMs who wish to qualify for a visa extension must provide payslips as evidence of having completed the requisite 88 days of work. This places an obligation on employers to provide payslips detailing the days and hours of work.

The horticulture industry is heavily reliant on WHMs. However, there are challenges for growers in relying on WHMs as a primary source of labour and there have also been increasing reports of exploitation of WHMs. Both of these aspects provide risks for the horticulture industry in relying on WHMs to pick, pack and grade fresh produce. These two regulatory challenges are explored below, with reference to evidence from the case studies, the National Survey of Vegetable Growers, the scholarly literature and media reports.

<sup>273</sup> Senate Standing Committee on Employment, Workplace Relations and Education, above n 138; Department of Immigration and Citizenship, 'Working Holiday Maker Visa Program Report' (Australian Government, 30 June 2011); Department of Immigration and Citizenship, 'Working Holiday Maker Visa Program Report' (Australian Government, 30 June 2012); Department of Immigration and Citizenship, 'Working Holiday Maker Visa Program Report' (Australian Government, 30 June 2013); Department of Immigration and Border Protection, 'Working Holiday Maker Visa Program Report' (Australian Government, 30 June 2014); Department of Immigration and Border Protection, 'Working Holiday Maker Visa Program Report' (Australian Government, 30 June 2015); Department of Immigration and Border Protection, 'Working Holiday Maker Visa Program Report' (Australian Government, 30 June 2016); Department of Immigration and Border Protection, 'Working Holiday Maker Visa Program Report' (Australian Government, 30 June 2017); Department of Home Affairs, 'Working Holiday Maker Visa Program Report' (Australian Government, 30 June 2018).



**TABLE 10.3 WHM PROGRAM – REGULATORY CHALLENGES AND SUMMARY OF FINDINGS**

	<b>Challenge #1: Addressing the horticulture industry’s reliance on WHMs</b>		<b>Challenge #2: Addressing concerns of worker exploitation</b>
<b>Finding #1</b>	WHMs are the primary source of labour supply for the horticulture industry.	<b>Finding #8</b>	The WHM program has been associated with a significant incidence of horticultural worker exploitation
<b>Finding #2</b>	WHMs are an effective labour supply for growers with crops with short or stop-start seasons as these growers necessarily experience a high turnover of workers because of the nature of their crops.	<b>Finding #9</b>	Underpayment of wages and poor conditions of work is a core element of the exploitation of WHMs engaged in horticulture work.
<b>Finding #3</b>	Some subclass 417 visa holders, particularly from Taiwan and South Korea, wished to work beyond six months in horticulture and were hampered by the restriction of six months work for a single employer.	<b>Finding #10</b>	Although piece rates can be an important tool in encouraging and rewarding greater productivity, there is evidence of an inappropriate use of piece rates in the employment of WHMs.
<b>Finding #4</b>	The heavy reliance on WHMs as the primary source of labour poses risks to the sustainability of the horticulture industry’s labour supply.	<b>Finding #11</b>	There is evidence of WHMs being overcharged for accommodation, food or transport, with these secondary expenses used to tie WHMs to farms in order to cover these expenses.
<b>Finding #5</b>	The opportunity for growers to realise productivity gains for training and investing in WHMs are limited because of the one-off, time-bound nature of the WHM visa.	<b>Finding #12</b>	There is more exploitation of workers in regions with an oversupply of WHMs.
		<b>Finding #13</b>	There is inconsistent worker induction and occupational health and safety (OHS) training of WHMs.
<b>Finding #6</b>	The incentive of a visa extension for WHMs working in horticulture means that many WHMs work in the industry for the purpose of earning a migration outcome rather than an interest in horticultural work.	<b>Finding #14</b>	The 88-day requirement encourages exploitation by attaching a migration outcome to the performance of work.
<b>Finding #7</b>	Limiting the locations in which WHMs can engage in eligible work for the visa extension distorts the labour market .	<b>Finding #15</b>	There is a lack of oversight of the conditions of work of WHMs in the industry.
		<b>Finding #16</b>	WHMs find it difficult to find horticultural work and the absence of a regulated, centralised portal listing farm work vacancies has led to the proliferation of unofficial sources, some of which seek to take advantage of WHMs’ vulnerability.

# CHALLENGE #1: ADDRESSING THE HORTICULTURE INDUSTRY'S RELIANCE ON WHMS

## Finding #1: WHMs are the primary source of labour supply for the horticulture industry.

There is no precise data on the number of WHMs working in horticulture. However as early as 2006 it was noted that WHMs were the 'backbone of the harvest labour supply'.<sup>274</sup>

In the intervening decade, WHMs' labour contribution has become even more profound as the size of the WHM program has increased and in particular, because of the introduction of a second-year visa extension for WHMs who complete an 88-day period of 'specified work' in 2005. The program has also been opened up to new partner countries, many with far lower minimum wages than Australia, for example Taiwan and South Korea.

In recent times, reforms have been introduced to the WHM program to increase its uptake in the horticulture industry. In particular, there is now the potential for WHMs on the 462 visa to work in the horticulture industry in Northern Australia for 88 days in order to receive a second year visa extension. The reforms in November 2018 represent a significant liberalisation of the program, and are likely to lead to an even greater level of industry reliance on WHM labour.

These recent reforms to the subclass 417 and 462 programs have significant risks. All of the countries in the 462 program are less economically prosperous, have far lower minimum wages and/or have less regulated labour markets than Australia. Therefore, the financial gain from working in horticulture through the subclass 462 visa is likely to be significant for WHMs from some of these countries (for example, Indonesia, Bangladesh, Thailand and Malaysia). This substantially increases the risk that these visa holders will be exploited, which in turn damages the reputation of the industry and attraction of workers into it.

The case studies revealed that reliance on WHMs is not uniform across the horticulture industry. For example, in locations like Katherine, Munduberra or Virginia where other forms of horticulture labour were sourced by growers, there was far less reliance on WHMs.

However, growers in a number of the other case study locations exhibited a strong reliance on WHMs. This was most pronounced in regional locations which were

## HOW RELIANT IS THE INDUSTRY ON WHMS?

- In 2015–16, 93% (33,666) of second-year visa applicants worked in agriculture to satisfy the 88-day requirement.
- Curtain et al estimated in 2018 that WHMs and other visa holders (except SWP workers) comprise 60% of the horticultural workforce.
- Yan Tan et al's research suggests that WHMs consistently make up between 50 and 85% of the low skilled seasonal workforce in horticulture.
- 72% of growers in the National Survey of Vegetable Growers reported employing WHMs in the past five years.

### See more:

Richard Curtain et al, 'Pacific Seasonal Workers: Learning from the Contrasting Temporary Migration Outcomes in Australian and New Zealand Horticulture' (2018) 5 *Asia & The Pacific Policy Studies* 471.

Yan Tan et al, 'Evaluation of Australia's Working Holiday Maker (WHM) Program' (Paper, National Institute of Labour Studies, Flinders University, 2009).

eligible postcodes for the 417 visa extension, were close to metropolitan centres, or were more desirable for tourists. As these regions had a steady flow of WHMs, growers had come to be heavily reliant on WHMs. Of all the case study locations, growers in Orange, Gingin, Binninyup, Bundaberg, Darwin, Griffith, Lockyer Valley and Mildura reported the greatest reliance on WHMs.

## Finding #2: WHMs are an effective labour supply for growers with crops with short or stop-start seasons as these growers necessarily experience a high turnover of workers because of the nature of their crops.

Most growers in the case studies expressed the view that the WHM visa extension was a vital source of workers for picking and packing work in the industry.

The success of the WHM program in meeting the industry's labour needs was most evident in the case study in Orange. There were 20 farms in Orange that specialised in cherries which cumulatively required a workforce at picking time of 1,500 to 2,000 workers. The picking season for cherries was short and intense, usually lasting six weeks beginning in late November. Growers in Orange reported that each year there would be a strong influx of WHMs at the start of the cherry season and that this had increased significantly since the introduction of the 417 visa extension

## STAKEHOLDER VIEWS

"If we don't have the Asian backpackers coming to Australia then I think the strawberry industry will fold."  
**Grower (Griffith)**

"The 88 days works to our advantage because it takes them out of the cities. Most of the backpackers would love to stay — especially Asians, they would love to stay in the city. They don't want to come out doing rural work. So if they get rid of that [the 88 days], I think we're going to lose a lot of pickers."  
**Grower (Orange)**

"The [WHM visa] system's great but I reckon it should be longer. Three months is not really enough to finish a season. The 88 days is a great idea but it should be increased to four months."  
**Grower (Griffith)**

in 2005. Prior to this, growers reported they relied on a mix of workers, including grey nomads, itinerant local workers, international students and WHMs during the harvest, but that most of these other sources had now been replaced by WHMs. Growers in Orange reported positively about the productivity, reliability and aptitude of WHMs.

<sup>274</sup> Senate Standing Committee on Employment, Workplace Relations and Education, above n 138, 14 [2.6].

### **Finding #3: Some subclass 417 visa holders, particularly from Taiwan and South Korea, wish to work beyond six months in horticulture and were hampered by the restriction of six months work for a single employer.**

Many growers require workers for more than six months, and some growers expressed frustration that WHMs could not work for more than six months on their farm. As a Binningyup grower stated, *“We need people for longer periods than six months ... that’s the silly part, at the moment they can do six months for one grower and then six months for another grower down the road. Why not just let them do 12 months in the one place?”*

Despite this constraint, growers were using more sophisticated recruitment techniques to ensure they employed WHMs who were willing to work for the full six months, or even for 12 months through doing six months at the end of their first year, and six months at the beginning of their second year visa. A well-established labour hire contractor we interviewed in Gingin had a business model of supplying WHMs to growers who were able to stay on the one farm for a longer period of 12–13 months:

*“Now with the WHM visa the way it works, technically you can have one backpacker at one place of employment for 12 months. You know six months for the first visa, apply for the second visa, in the bridging period they could still work for the one employer, and then they’re granted their second visa so they can work for the same employer for another six months. That can go almost seamlessly if you plan it properly or do it through someone like us.”*

Changes in November 2018 to the WHM visa have extended work with any one employer to the whole 12 months of the visa, and if the visa is extended for a second and a third time, workers can continue to work for the same employer for those subsequent years.

Evidence from the case studies suggests that it is Asian backpackers who are most likely to take up the option of full-time work for up to 3 years, with European backpackers more intent on using horticulture work as a way to gain an extension on their visa for a second year.

A concern about the changes to the WHM visa program requirements is that they are likely to transform the visa from specifically targeting labour needs in areas with short term harvest periods for up to three months to being tailored to meeting all labour needs in the industry. This is likely to be particularly attractive to Asian backpackers, including the enlarged pool of backpackers from developing countries in the subclass 462 visa program. As we discuss elsewhere, these backpackers are more vulnerable to exploitation. It will also exacerbate the

### **STAKEHOLDER PERSPECTIVES**

“There’s two classes of backpackers – there’s guys that are coming in for the purpose of working more, mainly from Asian countries and they’ve developed a reputation as harder general workers, as opposed to European backpackers who are just here for a good time and they need to do the 88 days to get their second visa.”

**Grower (Katherine)**

“We do have the ones out picking broccoli and that in the rain and you usually find that the backpackers that end up doing that are the ones that are here to work. They’re not here on a holiday. They’re here to work. They’re sending money home. You just know that from what they talk about, that their families are struggling so they’re working here and sending money home.”

**Grower (Binningyup)**

“From the backpackers we go for the Taiwanese, South Korean ... they’re definitely the main countries we’ll target for backpackers because they’re usually here for six to 12 months.”

**Grower (WA)**

existing substitution effect for workers in the horticulture industry between the WHM visa program and the SWP program.

### **Finding #4: The heavy reliance on WHMs as the primary source of labour poses risks to the sustainability of the horticulture industry’s labour supply.**

WHMs who choose their travel destination for the purpose of work are affected by circumstances beyond the control of growers, such as changing economic conditions in either the sending and receiving countries, the incentive schemes in other countries, tax rates, wage rates and exchange rates.

In the case studies, many growers expressed a concern that the number of backpackers working in horticulture was falling. A grower from the Orange case study stated, *“We’re now running a fine line. Four to five years ago we used to get gluts of backpackers coming through. You had to lock the gates sometimes to stop people coming in and wasting time and you felt sorry for them trying to get a job. But in the last few years we are running a fine line - we’re just managing with a little bit of sharing.”*

The perception that the number of WHMs is falling is consistent with first and second year WHM grants in last five years. However, as is evident from **Table 10.2** above, before 2012–13, the number of first and second visa grants in the program had steadily risen. The 258,248 WHM visas granted in 2012–13 represented half of all WHM visas in OECD countries.<sup>275</sup> But between 2012–13 to 2017–18 numbers of WHMs have declined by 23%. Furthermore, while the 417 visa numbers have fallen, 462 visa numbers have been consistently rising since the introduction of the visa in 2005–06, and the 462 visa extension in Northern Australia in 2016–17.

The number of WHMs fluctuates as a result of unpredictable global factors. One of the key deficiencies of the WHM visa from an employment policy perspective is its design as a program for cultural exchange rather than as a labour market program. This means that the number of WHMs travelling to Australia is not connected to labour shortages or employer demand. It is not possible, therefore, for growers to rely on a guaranteed supply of workers on WHM visas in any given year.

One NSW labour hire contractor stated, *“So there was a lot of people at that stage [2013] who were in the backpacker cohort who were coming basically to get a job and that was really reflected in the presence of the Irish. They were the second-top country doing the second-year visas in that 2012/13 period but they just dropped off the charts in 2016/17.”* These developments are most likely accounted for by the recent strengthening of Ireland’s labour market, which has diminished the incentive for young Irish nationals to seek work in other countries.

Growers also reported a decline in the quality of WHMs seeking to do horticulture work. Many expressed a view that WHMs were not as productive or reliable as they had previously been and a concern that the program was not a sustainable future source of labour for the industry.

Recent changes to the backpacker visa mean that it is now more clearly a labour market program, tapping into vast pools of labour in the Asia Pacific region through the subclass 462 visa program. As a result of the 2018 extension to the visa, it is far less likely that there will be a risk to the industry’s labour supply as a result of a downturn in numbers of backpackers travelling to Australia.

<sup>275</sup> OECD, ‘International Migration Outlook 2015’ (OECD Publishing, 2015) 26



## STAKEHOLDER PERSPECTIVES ON THE RELIABILITY OF WHMS

“We’re coming across now all the entitled kids who can’t leave phones alone and it’s a real issue. We’ve had to ban them and they’re still out sneaking around ... don’t get me wrong you still get some goodies (WHMs), but you know I used to probably say there was one or two in ten but now I’m turning away three or four within that first period when I’m trying to get my guys in for the season, to get an ideal — you know the ones that are willing to work, willing to listen.”

**Grower (Griffith)**

“The backpackers were a reliable workforce 10 years ago. They would mostly do a season — we had very little turnover back then.”

**Grower (Katherine)**

“The doom in this program is very much in line with the decline in the work ethic of the backpacker over the last probably 3-4 years. It has become really noticeable that there’s less reliability with backpackers. There’s still some good ones out there but there’s not that much commitment, there’s not the motivation or that reliability that they used to demonstrate.”

**Labour hire contractor (Katherine)**

### **Finding #5: The opportunity for growers to realise productivity gains for training and investing in WHMs are limited because of the one-off, time-bound nature of the WHM visa.**

The lack of experience of WHMs meant that growers reported a considerable investment of time and resources for training WHMs. As one contractor from Griffith stated, “They just weren’t job ready in any shape or form, and I just think 18, 19 year olds are better off having worked somewhere in their own country before they’re given work visas in Australia.”

Given that many WHMs only remained working in the industry for the period required to qualify for a visa extension, some growers reported that the training required was not in proportion to the contribution WHMs made to productive work on farms. A Wanneroo grower reported, “In my organisation I have three full-time trainers. All they do is train backpackers because the average stint of a backpacker is four weeks. Now that is just not viable. By the time they sort of become almost up to a decent level of competency and speed they’re leaving. The transient nature is difficult.”



As a result of the November 2018 amendments to the WHM visa program, backpackers are able to work for up to three years for the one employer, providing a greater incentive for growers to properly train workers.

### **Finding #6: The incentive of a visa extension for WHMs working in horticulture means that many WHMs work in the industry for the purpose of earning a migration outcome rather than an interest in horticultural work.**

Growers reported that a lack of intrinsic interest in horticulture work meant that WHMs were reluctant to work hard and did not respond to incentives to do so. Many growers observed that if WHMs did not like the work they would simply leave and seek work elsewhere. A concern of stakeholders that WHMs were not motivated to work hard was not universal. Some growers expressed the view that WHMs were excellent workers, and that the visa extension incentive was sufficient to encourage them to work hard.

The turnover of WHMs means that growers have to continuously retrain workers which acts as a disincentive to properly invest in workforce development. As a large grower in our Virginia case study revealed, “we don’t employ backpackers — they are less productive and once they are trained their visa is often expired and they have to go or they choose to go elsewhere”. This is supported by the evidence gathered in other regions and also provided by many growers and their representatives to the Joint Standing

Committee on Migration’s inquiry into the SWP. This inquiry highlighted both the industry’s dependence on WHMs as a labour source and many growers’ concerns around the ongoing sustainability and suitability of WHMs to meet their labour needs.

*“Backpacker labour has its advantage and fits in with seasonal elements of our workforce requirements, but the backpackers tend to only want to be around for short periods before heading off to the next region as many have a pre-planned itinerary of exploring Australia. This often left us short of labour and caused issues on critical days of harvest and getting the crop picked in optimum condition.”<sup>276</sup>*

*“The backpackers are unskilled. They generally care little for the work and are very unreliable. On average, they work for us for about a month — maybe two months if we are lucky — and then move on. Every time they leave, we have to retrain and reskill staff, which costs us money and time. Further, a lot of our trees get damaged...”<sup>277</sup>*

*“I know from having worked in the industry that one of the big problems with backpackers is that farmers feel they have to retrain them all the time. They get some people on the farm, they explain how to do it and then backpacker says, ‘Actually, I don’t really feel like picking strawberries. It’s all much too hard work,’...”<sup>278</sup>*

The amendments to the WHM visa program announced in November 2018 maintain the connection between regional work and the opportunity to apply for a visa extension, but extend these arrangements to a six month work requirement in the second year to qualify for an extension of the visa into a third year.

<sup>276</sup> Vernview Pty Ltd, Submission No 13 to Joint Standing Committee on Migration, *Seasonal Change: Inquiry into the Seasonal Workers Program*, 10 July 2015, 2.

<sup>277</sup> Evidence to Joint Standing Committee on Migration, Parliament of Australia, Melbourne, 28 October 2015, 41 (Jonathon Moss, Manager of Mossmont Nurseries).

<sup>278</sup> Evidence to Joint Standing Committee on Migration, Parliament of Australia, Canberra, 14 October 2015, 2 (Rochelle Ball, Fellow, Labour Mobility, State, Society and Governance in Melanesia Program, ANU).

## Finding #7: Limiting the locations in which WHMs can engage in eligible work for the visa extension distorts the labour market.

Although restrictions on the work locations eligible for the visa extension have succeeded in channelling WHMs into remote regions in Australia, they have also produced distortions in the labour market. In some areas there is an oversupply of WHMs where growers report being inundated by approaches from WHMs looking for work, and in adjacent areas, growers have labour supply challenges.

An industry representative from MADEC identified excess WHM labour in the horticulture industry, presenting evidence to the Joint Standing Committee on Migration inquiry that, “[w]e believe there has been a significant oversupply of backpacker labour wanting to do horticulture work for a number of years”.<sup>279</sup>

The distortion created by the designation of areas as regional, and the movement of WHMs into those areas will be further exaggerated as a result of the amendments to the WHM visa program in November 2018. Under the new arrangements, subclass 462 workers will be able to work in the same regional areas as subclass 417 visa holders in order to satisfy the work requirement for a visa extension for a second and third year.

## STAKEHOLDER PERSPECTIVES

“They [WHMs] go on my website and they say ‘I’m available’. We get emails all the time. We are inundated. We’ve got plenty of choice with European and Asian backpackers here.”

**Grower (Binningyup)**

“Look here in Bundaberg we get lots of backpackers. There’s never been a problem here.”

**Grower (Bundaberg)**

“We’re more in a balance situation in relation to overall numbers but ....they’re not evenly spread. That’s probably the key thing. They will go where the best tourist offering is. What they’ll chase, you know, Queensland in the middle of winter is a lot more attractive than say where I am in the Riverland in South Australia where it’s very cold in the middle of winter for citrus picking. So it is unevenly spread.”

**Labour Hire Contractor (Riverina)**

“Our postcode here is compliant with the WHM visa, which is fantastic. Without that we would not have a workforce, that’s the honest truth. You’ve got farms down at Werribee which are half an hour out of Melbourne but because their postcode doesn’t comply with the WHM visa they struggle because they can’t attract backpackers because there’s no reason for them to go. They can’t get their 88 days signed off. They have very different challenges to what we do and we don’t want our WHM visa to go because we just cannot operate without it.”

**Grower (Lockyer Valley)**

## CHALLENGE #2: ADDRESSING CONCERNS OF WORKER EXPLOITATION

WHMs have experienced a significant degree of exploitation in the horticulture industry. This is well documented in the popular media as well as previous academic studies,<sup>280</sup> and was confirmed in the empirical data collected for this report.

In addition to the focus groups and interviews with growers, we conducted focus groups with WHMs in some of the case study locations and also in some of the metropolitan cities, detailed in Appendix A.

Although it is difficult to verify the scale and extent of the exploitation of WHMs, in this section we examine our findings about the employment of WHMs in the horticulture industry.

### Finding #8: The WHM program has been associated with a significant incidence of horticultural worker exploitation.

Exploitation of WHMs has been exposed anecdotally through media reports, through research by academics,<sup>282</sup> and in a comprehensive report the Fair Work Ombudsman in 2016 following a two-year inquiry into the performance of work by WH visa holders, and in its Harvest Trail report released in November 2018.<sup>283</sup> The 2016 FWO report was highly critical of the 88-day period incentive for WHM visa holders in creating the opportunity for exploitation. The FWO concluded that:

*“The 417 visa program created an environment where: unreasonable and unlawful requirements are being imposed on visa holders by unscrupulous businesses ... exploitative workforce cultures are occurring in isolated and remote workplaces ... [and] employers are making unlawful deductions from visa holders’ wages, or are unlawfully requiring employees to spend part or all of their wages in an unreasonable manner.”<sup>284</sup>*

The WHM program does not contain any of the in-built protections that exist in the SWP, discussed in Chapter 11. Horticulture employers of WHMs are subject to the standard requirement that they comply with the *Fair Work Act 2009* (Cth), which is applicable to all workers in Australia. They are also required to register with the

<sup>279</sup> Evidence to Joint Standing Committee on Migration, Parliament of Australia, Melbourne, 28 October 2015, 58 (Robert Hayes).

<sup>280</sup> McKenzie and Baker, above n 9; Fair Work Ombudsman, ‘417 Visa Inquiry’, above n 12; Laurie Berg and Bassina Farbenblum, *Wage Theft in Australia: Findings of the National Temporary Migrant Worker Survey* (Migrant Worker Justice Initiative, 2017); Howe et al, ‘Sustainable Solutions’, above n 4.

<sup>281</sup> ABC, above n 9.

<sup>282</sup> Alexander Reilly, ‘Low-Cost Labour or Cultural Exchange? Reforming the Working Holiday Visa Program’ (2015) 26 *Economic and Labour Relations Review* 474; Underhill and Rimmer, above n 10.

<sup>283</sup> Fair Work Ombudsman, ‘417 Visa Inquiry’, above n 12; Fair Work Ombudsman, *Harvest Trail Inquiry: A Report on workplace relations along the Harvest Trail* (2018).

<sup>284</sup> Fair Work Ombudsman, *417 Visa Inquiry*, above n 12, 4

**TABLE 10.4 SAMPLE OF WHM REPORTS OF THEIR LOWEST WAGE WORKING ON A FARM**

\$5 an hour	"I did 11 days picking raspberries and for the first week we probably earned just over \$200 doing 8 or 9 hours a day." (Katherine WHMs focus group)
\$6 an hour	"I got just \$3 a bucket and this would take half an hour, forty minutes a bucket because the crop's just not there." (Katherine WHMs focus group)
\$5 - \$9 an hour	"I worked for three different farms. The first one was piece-rates and it was terrible. They like didn't pay. They had no fruit bushes and so I worked for 8 hours and made 40 bucks. I stayed for 3 days and they didn't want to pay us, so we left. And then the next farm I found paid \$9 an hour. I did a lot of work for him because he had steady work. And then I eventually found a blueberry farm and they paid \$20 an hour and they had breaks." (Melbourne WHMs focus group)
<\$10 an hour	"I had a piece rate job where we ended up getting less than \$10 an hour. The farms don't care if people leave after a few days because there are always new backpackers who try the job or even stay working despite the bad money because they can't find something else." (Sydney WHMs focus group)
\$3 an hour	"We got \$3 an hour ... we had four people I think on one bin and it took us two hours. So we did two hours for four people and we got \$27 for everybody. And the farmer said, 'I won't pay more, I can get Asians, they do it'. And so he didn't even pay us. He didn't pay us." (Stanthorpe workers focus group)
\$3 an hour	"There was one instance where we got a little bit late to the farm and there was only one bin left and there was only about 3 oranges on each tree and he [the farmer] wanted every orange off the tree. So you know, it was two minutes going up and down each tree, so I think we were there about four or five hours to fill the bin and it worked out to be \$3 an hour." (Adelaide WHMs focus group)
\$1 an hour	"[I was paid] by piece-rates and it effectively was one dollar an hour...I had no choice because I needed to get 88 days first." (Orange WHMs focus group)

Australian Taxation Office as an employer of WHMs.<sup>285</sup> Neither of these requirements provide substantial protection to visa holders, many of whom are open to exploitation in the Australian labour market, particularly when engaged in remote farm work

**Finding #9: Underpayment of wages and poor conditions of work is a core element of the exploitation of WHMs engaged in horticulture work.**

Despite the requirement for WHMs to provide payslips when applying for a visa extension, there is significant evidence of the underpayment of wages of WHMs. This suggests that the requirement to provide payslips does not provide meaningful protection to ensure WHMs are remunerated in compliance with the Horticulture Award.

The evidence from the focus groups suggested that the underpayment of WHMs is widespread. Most of the WHMs we interviewed had past experience of being paid below the legal wage for horticultural work, and indicated that underpayment was standard on the farms on which they worked. Many reported acquiescing to falsified pay records in order to gather sufficient evidence in support of a visa extension application.

**Table 10.4** summarises some of the reports of below-award wages by WHMs in the focus groups and interviews.

These comments from the focus groups are consistent with other reports of underpayments of WHMs working in the horticulture industry.

As mentioned above, a comprehensive report was released by the Fair Work Ombudsman in 2016 following a two-year inquiry into the performance of work by WHMs.<sup>286</sup> This found that:

- more than one-third of WHMs surveyed were paid less than the minimum wage;
- 14% had to pay to secure regional work;
- 6% had to pay an employer to 'sign off' on their regional work requirement.

In 2017 an online survey of 4,322 temporary migrants in Australia found that the worst paid jobs are in fruit and vegetable picking, where 15% of respondents said they had earned \$5 an hour or less and 31% had earned \$10 an hour or less.<sup>287</sup>

It is important to note here that piece rate provisions in the award allow hourly rates of pay under the minimum hourly award rate as long as there is a piece rate agreement in place and the average competent worker could earn 15% more than the minimum award rate.

This means that some of the underpayments reported above might be allowable under the

award if these conditions were met.

Thus, there is now a considerable convergence of evidence establishing that the practice of underpaying WHMs is widespread in the horticulture industry.

**Finding #10: Although piece rates can be an important tool in encouraging and rewarding greater productivity, there is evidence of an inappropriate use of piece rates in the employment of WHMs.**

A key challenge with respect to piece rates is that the Horticulture Award stipulates that piece rates should allow a worker to earn 15% more than an 'average competent worker' being paid the relevant minimum hourly rate. The meaning of this term 'average competent worker' is subjective and can allow employers to set low rates.

In the focus groups WHMs reported receiving as little as \$1 per hour for piece rate work despite working at a consistent and steady rate. A reason for this low level of payment is that farmers and workers had very different perspectives on what was an appropriate and attainable level of productivity in setting a piece rate.

Some workers reported that piece rates were not adjusted to account for changes in the density of crops at different stages of the harvest. A WHM from the Katherine focus group stated, "You're being forced to work piece-rate but the crops wouldn't be very good. So they'd say, 'don't pick any of these because it's

diseased.' And you'd spend all day walking up and down and looking for fruit to pick and you'd be expected to do all of that in your own time."

A common practice among growers was to give workers a period of time, commonly a week, to achieve the required speed to earn the minimum wage, and if a worker did not attain this level of performance, dismissing them. This could mean that workers earned a very little amount for a week's work and then receive no future work on the basis that they were not sufficiently productive. A Gingin grower stated:

*"Maybe they'll need 50 people. They'll put 200 on the first couple of days and work through that. So everybody's excited, they've got this three months of pruning. Little do they know that most of them will get the sack because they're not fast enough. That's quite normal, because otherwise you're going to end up [putting more] and more on, and then you don't actually get started. Whereas, if you put a heap on and say, 'Look, you've got to get faster,' you know, and you only need 50, and they all get faster really quick, because they don't want to be the ones who left behind. I mean, that's the only way you get them to work. That's ... the reality. Often a lot of them can't even believe that they could work that well. I mean, a lot of them will say, 'I've lost 15 kilos since I've been here,' or whatever it might be, and you know, they're happy to be leaving, but they'll put that down as an amazing experience and a great appreciation for where their food comes from."*

<sup>285</sup> Treasury Laws Amendment (Working Holiday Reform) Act 2016 (Cth) sch 2.

<sup>286</sup> Fair Work Ombudsman, 417 Visa Inquiry, above n 12.

<sup>287</sup> Laurie Berg and Bassina Farbenblum, Wage Theft in Australia, above n 280.

We also found evidence that piece rates were used by some growers to enable different cost structures for different categories of workers, a practice known as ‘labour market segmentation’. Some employers request workers of particular ethnicity through labour hire contractors, a phenomenon depicted as employers having ‘ethno-specific cost demands’.<sup>288</sup> One stakeholder reported that different categories of visa holders were paid different wage rates commensurate with the level of regulation of their visa. A community representative from Griffith stated:

*“It’s very easy, obviously to come up with a piece rate that’s quite low. Or varying piece rates. That’s the other one that I came across in Queensland recently ... so it was different visa categories and different ethnicities got different bin rates for the same work. So locals got \$90 a bin, Seasonal Workers got \$70 a bin and it kind of went down from there ... Backpackers, then, mostly Taiwanese and Hong Kong and undocumented got the least.”*

**Finding #11: There is evidence of WHMs being overcharged for accommodation, food or transport, with these secondary expenses used to tie WHMs to farms in order to cover these expenses.**

There is a lack of regulation of secondary service provision, in particular transport and accommodation. Providers of these services used their connection to farmers or labour hire firms to tie certain accommodation and transport services to particular employment opportunities. Workers found that they were faced with high fixed costs for accommodation regardless of their daily wage, and regardless of whether they were employed at all. Workers described

having to remain in employment once it was forthcoming to pay off debts owed to secondary service providers. WHMs also reported substandard accommodation and unsafe transport. A WHM from the Sydney focus group stated:

*“They would squeeze people into cars to pick us up from the hostel and we’d end up being like nine people in a car made for five people, and we’re just totally squished in trying to get a ride. But he [the farmer] didn’t care at all, we just had to get the blueberries picked”.*

**Finding #12: There is more exploitation of workers in regions with an oversupply of WHMs.**

The focus groups of growers and workers suggested that worker exploitation was most acute in areas where there was an oversupply of backpackers. With workers requiring work to be eligible for a second visa, having limited time to attain the days required to qualify for a visa extension, and work being scarce, WHMs were forced to accept whatever wages and conditions were on offer. Many WHMs reported feeling that they were ‘easily replaceable’ because of the constant stream of WHMs looking for farm work to complete their 88 days.

**Finding #13: There is inconsistent worker induction and OHS training of WHMs.**

The focus groups revealed considerable variation in the level of induction and OHS training offered to workers. In some instances, WHMs were given equipment and expected to work out how to use it on the job, in other (much rarer) instances, farms employed dedicated trainers to ensure

workers understood how to use equipment effectively and safely.

Many WHMs reported unsafe work practices but were unwilling to challenge their employer on the basis that they needed to complete farm work in order to earn a visa extension. A number of WHMs said they had ‘no choice’ but to accept the farm work on the employer’s terms.

This is consistent with a study by Australian scholars Elsa Underhill and Malcolm Rimmer which found that there is widespread non-compliance with OHS obligations in the employment of WHMs in the horticulture industry with workers “exposed to dangers from machinery, climate, chemicals and other factors”.<sup>289</sup>

**Finding #14: The 88-day requirement encourages exploitation by attaching a migration outcome to the performance of work.**

A significant majority of WHMs in the focus groups reported that they would not have worked in the horticulture industry without the incentive of earning a second year visa. One WHM described completing the 88 days as a “prison sentence”. Other WHMs referred to having “no choice” but to accept exploitative work because of the need to complete farm work in order to get a visa extension.

A survey by the Fair Work Ombudsman found that many WHMs engaged in unpaid work on farms, and that almost half of WHMs who completed this unpaid work would not have done so if they were not trying to secure 88 days of specified work in regional Australia.<sup>290</sup> This illustrates how migration-related incentives influence the work behaviour of visa holders.

The Fair Work Ombudsman also observed the impact of the 88-day requirement in giving employers a sense of substantial power and control over their workers:

*“Amongst the many instances of non-payment and underpayment of wages found in the course of the Inquiry, of greatest concern is the disclosure of a cultural mindset amongst many employers wherein the engagement of 417 visa holders is considered a license to determine the status, conditions and remuneration levels of workers without reference to Australian workplace laws”.*<sup>291</sup>

Thus, the need to complete 88 days of farm work in order to earn a visa extension is a key driver for why WHMs work on farms and acquiesce to legally non-compliant or exploitative conditions.

**STAKEHOLDER PERSPECTIVES**

“One farm was particularly horrible. You didn’t have a break all the day and you have to work very hard. You use chemicals without protection and the work is very hard.”  
**WHMs focus group (Darwin)**

“One farm we were on would transport us on a take-up with no sides, so we would just hold on these ropes while they drove us up a hill. It was just like the most ridiculous scenario.”  
**WHMs focus group (Sydney)**

“It got to 40-something degrees one day and it was really humid because Coffs [Harbour] can get really humid and we were still working in the full sun and we couldn’t really have water breaks as we were only allowed one break a day. And there was no shade and we were all having heat stroke but the farmer eventually called us off when he realised we were going so slow so there was no point paying us per hour because we couldn’t pick fast enough for him. And he wouldn’t let us put sunscreen because he said it could damage the blueberries’ wax.”  
**WHMs focus group (Sydney)**

<sup>288</sup> James Buchan, Mireille Kingma and F Marilyn E Lorenzo, ‘International Migration of Nurses: Trends and Policy Implications’ (International Council of Nurses, 2005).

<sup>289</sup> Rimmer and Underhill, above n 126, 163.

<sup>290</sup> Fair Work Ombudsman, above n 12, 29.

<sup>291</sup> Ibid 33.

## STAKEHOLDER PERSPECTIVES

“They [the growers] really didn’t care about labour laws because they knew there were literally hundreds of backpackers coming through all the time that they could exploit.” **WHMs focus group (Melbourne)**

“The farms don’t care if people leave after a few days because there are always new backpackers who try the job or even stay working despite the bad money because they can’t find something else.”

**WHMs focus group (Sydney)**

“Totally getting ripped off by the farmers and not being treated with respect was the worst aspect of farm work. They have the power because in the end they can always decide not to sign your visa application papers. Also they know that other backpackers are lining up to take over your job.”

**WHMs focus group (Sydney)**

“Going back even only less than two years, we’d have 300 or 400 people looking for work. The file would just be full pretty much all the time. Not the winter months. There was just always so many people looking for work. So that’s when the labour hire thing all started to get out of control, and people saw an opportunity to scam people and rip people off.”

**Accommodation provider (Stanthorpe)**

## STAKEHOLDER PERSPECTIVES

“I felt like I never saw government officials any time on a farm — they were never inspected for safety. There needs to be more of an official presence, checking it out and maybe this would encourage farmers to behave better.”

**WHMs focus group (Sydney)**

“A lot of the trouble has been from the expansion of [the WHM scheme] and the inability of the government to actually police it, and the inability of the tax department to police their side of things too. They put these things into place, but they don’t give the departments enough staff to monitor things properly. It seems to be very haphazardly done those sorts of things at the high level, I reckon. The tax department know that there’s heaps of things going on, but they just don’t have the manpower to investigate it I think.”

**Accommodation provider (Stanthorpe)**

### Finding #15: There is a lack of oversight of the conditions of work of WHMs in the industry.

The regulatory design of the WHM visa makes it very hard for regulatory agencies such as the Fair Work Ombudsman to monitor conditions of work. Because it is a program of cultural exchange, there is no record of individual employment contracts between growers and WHMs, no registered sponsorship arrangements, and no licensing or registration schemes controlling the employment of WHMs in the industry. This makes it difficult for enforcers to effectively monitor pay and conditions of WHMs.

Most of the WHMs in the focus groups reported being unaware of the Fair Work Ombudsman or not knowing how to contact them. Those who were aware of the Fair Work Ombudsman reported being reluctant to contact them about exploitative work because of their need to complete 88 days work in the industry.<sup>292</sup>

Furthermore, WHMs rarely reported problems with their employment as they were prepared to put up with inadequate pay and conditions for the short period of time they intended to work in the industry.

Four of the WHMs we interviewed had experienced instances of sexual harassment. One of these reports involved the harassment of over 20 WHMs by a labour hire contractor. When it was reported to the grower, the contractor was moved to another farm. Although these WHMs contacted the Fair Work Ombudsman, they reported that they did not receive any support from contacting this

service. This was consistent with a number of WHMs who reported being unaware of the role of the FWO or who had not been helped by the Fair Work Ombudsman when they had contacted them for assistance.

Not one of the 124 workers we interviewed had successfully resolved a complaint using the Fair Work Ombudsman’s services. This is consistent with an assessment by Australian scholars Bassina Farbenblum and Laurie Berg who found that migrant workers face substantial difficulties in contacting Fair Work Ombudsman and triggering the agency’s direct intervention to remedy workplace exploitation.<sup>293</sup>

### Finding #16: WHMs face difficulties finding horticultural work and the absence of a regulated, centralised portal listing farm work vacancies has led to the proliferation of unofficial sources, some of which seek to take advantage of WHMs’ vulnerability.

The regional nature of the 88-day requirement and the difficulties finding alternative paid employment in small horticulture regions where employers and accommodation providers are closely linked can make WHMs feel tied to their employer. In the focus groups, many WHMs reported only attempting to complete their 88 days towards the end of their first year on the visa. This pressure of their visa expiring has the potential to foster greater vulnerability to exploitative farm work.

There is no official, comprehensive site of horticulture job vacancies for WHMs so many are reliant on unofficial sources such as social media, Gumtree, hostels, labour hire and word of mouth to find work. This has created potential for unscrupulous intermediaries to exploit the need of WHMs to find horticulture work for monetary gain.<sup>294</sup>

At present the Australian government contracts industry service providers to coordinate Harvest Labour Services (HLS). Although HLS only operates in areas where the local labour pool is insufficient to meet grower labour requirements during seasonal picking periods, at present, growers in other regions can list vacancies with HLS and with jobactive providers, which automatically become listed on the Harvest Trail jobs board.

The Harvest Trail jobs board provides a database of some, but not all, job vacancies in the horticulture industry. According to a recent description of HLS provided in a joint submission by three federal government departments:

*“Harvest Labour Services provides between 20,000–24,000 placements annually. Harvest Labour Services operate in specific harvest locations and place people legally able to work in Australia into harvest jobs. Workers are referred by Harvest Labour Services to a harvest position which could include harvesting, cleaning or packing of horticultural products and operating harvest equipment. Harvest Labour Services help with ongoing advice and information about seasonal harvest work in regions across the country and screen job seekers to make sure they are able to work in Australia and are suitable for harvest employers”.*<sup>295</sup>

<sup>292</sup> Ibid 17.

<sup>293</sup> Bassina Farbenblum and Laurie Berg, ‘Migrant Workers’ Access to Remedy for Exploitation in Australia: The Role of the National Fair Work Ombudsman’ (2017) 23 *Australian Journal of Human Rights* 310.

<sup>294</sup> Underhill et al, above n126, 163.

<sup>295</sup> Department of Employment et al, Submission No 2 (Supplementary Submission 2.1) to Joint Standing Committee on Migration, Parliament of Australia, *Seasonal Change: Inquiry into the Seasonal Worker Program*, 10 [2.7].

## STAKEHOLDER PERSPECTIVES

“He [the grower] was advertising in Taiwanese language on a Taiwanese blog site with rate of pay of \$12 and \$13 an hour, that’s how blatant it was.”

**Labour hire contractor (Gingin)**

“It needs to be easier to find farm work. There needs to be some kind of incentive for farmers to advertise a bit more or just like a larger agency to get a big website together to help people out in finding work. So you don’t have too many people going to one area than they need and not enough in another area that they don’t ... everywhere you look, everything seems to be different — the information is different from everybody, every employer we spoke to, all the backpackers we spoke to, what’s available online. It just seems to be a mix of everything, a lot of which is just not true.”

**WHMs focus group (Katherine)**

“That’s where it would be so helpful to have an official website instead of all these third-party websites or whatever. It would be so beneficial for everyone to see those positions that are available and if there was easier access for companies to post those things, like in one consolidated area. I think that definitely would help so much.”

**WHMs focus group (Melbourne)**

“First farm was on Gumtree, second through my boyfriend’s friend who was on the WWoofing farm, the third farm was through my farm buddy’s family friend.”

**WHMs focus group (Sydney)**

“We checked out a place called [name of working hostel] and the woman told us I’ve got no-one on the waiting list, I’m looking for girls, I need you ... We spoke to several of the girls, and they told me exactly the same thing, they’ve been there for like two or three weeks, no work. So we just stayed there until Friday and left because there was just no work.”

**Interview with WHMs (Stanthorpe)**

“You answer these Gumtree adverts and you have no idea who they are or where they are, so I think having a good website, like TripAdvisor where you can leave reviews on it — that would be a great thing.”

**WHMs focus group (Adelaide)**

The National Survey of Vegetable Growers found only a small minority (11%) of vegetable growers with difficulties finding workers used the Harvest Trail jobs board. In both the survey and case studies, most growers reported use of a variety of other methods to notify the labour market of prospective vacancies including through traditional job advertisement websites such as seek.com.au, social media and other websites such as Gumtree, and engaging intermediaries such as labour hire firms, backpacker hostels and recruitment agencies.

This evidence from WHMs in the focus groups suggests that the potential of the Harvest Trail website is not presently being fully realised, as only one WHM out of the 124 workers we interviewed reported using the HLS website to organise farm work. All the other WHMs sourced farm work through friends, social media, their accommodation provider or Gumtree. A WHM from the Melbourne focus group who had relied on the HLS to organise farm work spoke very favourably about her experience with this service:

*“I used it [HLS] once I knew I had only five months to get my 88 days and so I gave them a call. I’d just finished a job and they told me to go to the town and I had a job within two*

*weeks. The season hadn’t quite started so I went early because they recommended getting there ahead of time and they were pretty good. I actually am glad I talked to them because I had met a lot of people who wasted time going to the wrong places.”*

### Conclusion

The horticulture industry is heavily reliant on WHMs as the primary source of horticulture labour. WHMs are able to be employed effectively by growers of crops with short or stop-start seasons as these types of crops necessarily experience a high turnover of workers.

However, for growers with crops requiring a harvest of over three months, and in particular, for growers with labour needs over six months, the WHM program has not been able to meet the ongoing needs of this group of growers as effectively. Over-reliance on WHMs has led to many growers feeling insecure about the desirability, viability and sustainability of this source of labour.

Additionally, the WHM program is associated with a significant degree of worker exploitation. WHMs are a vulnerable source of overseas labour and are often employed in non-compliance with the Horticulture Award. The transient nature

of WHMs’ involvement in the horticulture industry means they are less likely to report exploitation because of a desire to complete 88 days of farm work in order to earn a visa extension.

**The liberalisation of the WHM visa announced in November 2018 will profoundly alter labour supply in horticulture.**

First, there is likely to be an increase in supply, particularly of workers from South-East Asian countries. Many growers are likely to welcome this development, as we received consistent feedback from growers in the survey and case studies preferring farm workers from Asian countries. But given the problems relating to the treatment of WHMs, increasing the supply of workers at high risk of exploitation is likely to have unintended consequences.

Second, it is easier for WHMs to work in horticulture for the duration of their visa, and for a maximum of three years instead of two years. This possibility has been extended to subclass 462 visa holders which includes a wide range of developing countries in South-East Asia, South America and Europe. Growers have welcomed this development because it means that they can recruit a WHM to work for a three year period on their farm. This reform addresses labour supply challenges of growers who have non-seasonal labour needs and have been reluctant to use either the Pacific Labour Scheme or rotating teams of SWP workers to achieve a trained and committed workforce. Again, there are potential risks associated with this policy change.

It is likely then that there will be more WHMs working in the horticulture industry and that a greater proportion of WHMs in horticulture will be from developing countries.

**Given the inherent existing vulnerability of these migrant workers, and the absence of any dedicated labour market protections for WHMs, it is likely that these changes will lead to an increased incidence of non-compliance in relation to wages and conditions of work.** The potential for non-compliance is magnified if the amendments lead to an over-supply of WHMs seeking horticulture work to qualify for a visa extension for a second or third year.

Increased competition for horticulture jobs to qualify for a visa extension further distorts the power imbalance between employers and workers, increasing the vulnerability to exploitation of workers desperate to find employment to satisfy the criteria for an extension.

# CHAPTER ELEVEN

# THE SEASONAL WORKER PROGRAM

## Introduction

The Seasonal Worker Program (SWP) creates a pathway for workers from select Pacific Island nations to work in Australia. It was established in 2008, operated as a pilot until 2012 and has been fully operational since.

Although the SWP accounts for a small proportion of the horticulture labour force in Australia, the numbers in the SWP have grown steadily since its inception.<sup>296</sup> In the last year there has been a 37% increase in visa approvals.

This Chapter examines the main reasons for the horticulture industry's limited reliance on, and some other limitations of, the SWP. An important reason for low industry

**TABLE 11.1 SEASONAL WORKER VISA APPROVALS**

2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018
1473	2014	3177	4490	6166	8459

interest in the program, aside from employer concerns about their ability to use the SWP, is that the regulatory burden is greater for the SWP than for employing other categories of workers, most notably Working Holiday Makers (WHMs), local workers and undocumented workers. Another core problem with the SWP when

compared with the WHM program is that it does not deliver a sufficiently portable horticultural workforce.

Moreover, there are aspects of the design of the SWP, which have the potential to contribute to worker exploitation, and there is poor monitoring and oversight of SWP workers.

**TABLE 11.2 SWP – REGULATORY CHALLENGES AND SUMMARY OF FINDINGS**

Challenge #1: Addressing employer concerns		Challenge #2: Addressing concerns of worker exploitation	
<b>Finding #1</b>	The application process for becoming an Approved Employer is complicated and there is a lack of streamlined coordination between government departments involved in the SWP.	<b>Finding #9</b>	Seasonal Workers are vulnerable to exploitation arising from their limited labour market mobility and their desire to return.
<b>Finding #2</b>	Accessing workers under the SWP is far more costly than employing WHMs for horticulture work.	<b>Finding #10</b>	Seasonal Workers are vulnerable to inflated deductions from pay for accommodation and transport.
<b>Finding #3</b>	Small and medium-sized growers face additional challenges in accessing the SWP.	<b>Finding #11</b>	There is an inconsistent and ineffective approach to worker induction.
<b>Finding #4</b>	The requirement to organise accommodation is challenging for some growers.	<b>Finding #12</b>	The SWP is not administered or monitored in a transparent or publicly accountable manner.
<b>Finding #5</b>	The requirement to organise pastoral care is challenging for some growers.	<b>Finding #13</b>	The SWP is associated with poor oversight by regulators and weak enforcement of labour standards and program requirements.
<b>Finding #6</b>	The perception by some growers that Seasonal Workers are less productive or less capable in horticultural work is not supported by evidence.		
<b>Finding #7</b>	The SWP is more challenging to use for crops with short, stop-start or year-long harvests. It does not provide for workforce portability.		
<b>Finding #8</b>	The requirement to conduct labour marketing testing is ineffective.		
<b>Finding #9</b>	The perception that the population of Pacific countries cannot support the growth in the SWP is not supported by evidence.		

<sup>296</sup> The Fair Work Ombudsman estimates that there are approximately 130,000 workers employed annually in the industry: Fair Work Ombudsman, *Horticulture Industry Shared Compliance Program 2010*, above n 5.

# CHALLENGE #1: ADDRESSING EMPLOYER CONCERNS

There have been four phases of reform to the SWP since its inception. The main thrust of each phase has been to make the SWP more attractive and accessible to growers, indicated by the blue text in **Table 11.3**. These reforms have sought to reduce costs for employers, increase access to the program and simplify the application and associated regulatory processes. Some of these reforms (such as reducing airfare and transport contributions and removing requirements for a minimum period of work) have reduced the remittances of Seasonal Workers by increasing the costs borne by Seasonal Workers. In two surveys of Approved Employers in 2012 and 2015, growers identified international travel costs and domestic travel costs as key changes that would make the SWP more attractive.<sup>297</sup>

Despite these four phases of reform, the case studies revealed that growers who are *not* Approved Employers still perceived significant barriers to entering and using the program.

In contrast, growers who *are* Approved Employers reported significant benefits from being involved in the program. In this section, we examine our Findings in relation to the SWP's ability to be used by employers to access Seasonal Workers.

**TABLE 11.3 SWP REFORMS**

<b>Phase One</b> 2008-2012	<ul style="list-style-type: none"> <li>• Opening up the pilot so as to allow direct employment of Seasonal Workers, rather than through labour hire firms.</li> <li>• Removing geographical constraints so that employers in a wider range of areas could access workers under the pilot.</li> <li>• Changing employer contributions to visa holders' airfares depending on their country of origin.</li> <li>• Modifying the minimum period of work requirement.</li> <li>• Reducing employers' responsibility for domestic travel costs.</li> <li>• Reducing the tax rate for Seasonal Workers from 29% to 15% for their first \$37,000 of taxable income.</li> </ul>
<b>Phase Two</b> 2012	<ul style="list-style-type: none"> <li>• Expanding the number of source countries to nine Pacific states and Timor-Leste.</li> <li>• Increasing the SWP's reach beyond horticulture through a trial to three additional sectors (aquaculture, cotton and cane).</li> <li>• Lifting the cap on the number of workers to 12,000.</li> </ul>
<b>Phase Three</b> 2015	<ul style="list-style-type: none"> <li>• Removing annual limits on the number of visas issued.</li> <li>• Reducing employer contribution to covering Seasonal Workers' domestic and international transportation costs.</li> <li>• Removing the requirement that each visa holder be given a guaranteed minimum period of 14 weeks' work. This was replaced with a new requirement that Seasonal Workers 'will benefit financially from their participation in the program'.</li> <li>• Expanding the SWP into other occupations in the agriculture industry, including cattle, sheep, grain and mixed enterprises.</li> </ul>
<b>Phase Four</b> 2017-2018	<ul style="list-style-type: none"> <li>• Introducing multi-entry visas.</li> <li>• Streamlining the application process to become an Approved Employer through fewer forms and simpler processes.</li> <li>• Investigating ways to help employers lodge information online.</li> <li>• Piloting ways to lower upfront costs for employers.</li> <li>• Removing the requirement for employers to organise training for Seasonal Workers.</li> <li>• Piloting a 24/7 Information Line for Seasonal Workers to complement the pastoral care provided by Approved Employers.</li> <li>• Increasing promotion to employers in eligible industries and their Industry Associations.</li> <li>• Introducing a new condition allowing Seasonal Workers to change employers in limited circumstances.</li> <li>• Piloting ways to help Seasonal Workers access their superannuation once they have left Australia.</li> <li>• Reducing employer contribution to travel costs to \$300 (from \$500).</li> <li>• Increasing the period in which labour market testing is valid from 3 to 6 months.</li> <li>• Increasing the period of work for all SWP partner countries to 9 months.</li> </ul>

<sup>297</sup> Hay and Howes, above n 161; Doyle and Howes, above n 161.



## **Finding #1: The application process for becoming an Approved Employer is complicated and there is a lack of streamlined coordination between government departments involved in the SWP.**

The application process is an important integrity measure for ensuring that employers that seek to sponsor Pacific workers are likely to comply with program requirements and the law.

However, the Approved Employer process is costly, complex and time-consuming. It is also risky. For growers who have their applications rejected, or if they submit incomplete applications, these are deemed unsuccessful and thus, unsuccessful applicants may be set back several months in organising their harvest labour.

Responsibility for the program rests in the Department of Jobs and Small Business (DJSB). But the SWP is a 'whole of government program' so DJSB administers the program in collaboration with other agencies including Department of Home Affairs (DHA), Department of Foreign Affairs and Trade (DFAT), the Department of Agriculture and Water Resources, the Fair Work Ombudsman (FWO), the Australian Taxation Office (ATO) and Austrade.

DJSB, DHA, FWO and ATO are involved in the process for approving employers under the SWP. This adds complexity to the process and likely increases the time it takes to assess applications given that the assessment team is not based in the one physical location and department.

The focus groups and interviews with growers reported consistently negative feedback about the application process for the SWP and the management of the program by DJSB. Growers reported that the application process to become an Approved Employer was opaque, difficult, time-consuming and costly and that DJSB did not actively or constructively assist growers to complete the application process. Most small growers, including a number who had made attempts to become Approved Employers, reported that applying to become an Approved Employer was completely out of their reach.

Nonetheless, the introduction of 'multi-entry visas' for the SWP is likely to improve the accessibility of the scheme. This reform, announced in September 2017, will mean that once an Approved Employer is approved to bring in a group of workers, these workers can return for subsequent seasons within a three-year period without an entity needing to apply again to recruit workers.

Although multi-entry visas will reduce the administrative burden on employers, the evidence from the case studies suggests that there needs to be substantial reform to the application process for becoming an Approved Employer and for management of the SWP by the government. This reform process should occur in consultation with industry and unions and take into account the development of industry initiatives such as the Fair Farms scheme (see Chapter 3) which provides for third party auditing of growers.

## **STEPS FOR BECOMING AN APPROVED EMPLOYER**

### **STEP ONE**

Applicants submit a form to become an AE. Additionally, applicants who are operating on a Contract, Labour Hire business model or Trust must submit a "Financial Viability and Credentials" form.

### **STEP TWO**

Both DJSB and DHA assess the application. An indicative time frame is given of between 3-4 months.

### **STEP THREE**

Successful applicants are sent a "Deed of Agreement" by DJSB and a "Special Program Agreement" from DHA. This is then executed by the employer and sent back to the relevant department for execution. An entity can only apply twice within a 12 month period to become an AE.

### **STEP FOUR**

AEs submit a form to DHA for Special Program Sponsorship approval in order to sponsor workers

## **STEPS FOR ACCESSING WORKERS**

### **STEP FIVE**

AEs submit Recruitment Plan/Letters of Offer to DJSB

### **STEP SIX**

DJSB assesses and approves the Recruitment Plan

### **STEP SEVEN**

Upon arrival of Seasonal Workers, AE submits an "Arrival Form" to DJSB.

### **STEP EIGHT**

Upon departure, AE submits "Return Form" to DJSB

## **STAKEHOLDER PERSPECTIVES**

"There was probably just a lot of things that made it impossible to get through the SWP process — procedures that we don't have in place which I tried to put into place. It's just things like your dispute resolution policy. We are lacking a little bit in all of the occupational health and safety policies too ... it's just one of the things that I can't find the time to get back to. It's such a nuisance. I looked at it but it was just a fairly long-winded process to try and get up and going."

**Grower (WA)**

"So there is an acute administrative burden where it takes so long to get your application in and assessed – it's like the Department of Jobs and Small Business would drip-feed parts of the application form instead of just saying, "Here's everything we need, if you can get it back to us by this date, we'll give ourselves a month to review it all and we will come back to you if there's anything missing or we have any questions." But it's quite restrictive that if there's something missing it seems you have to apply from the start, so all over again and our small and medium businesses don't have much time on their hands to do those."

**Industry Association Official (NT)**

"The hardest thing about the SWP is loading Recruitment Plans and Letters of Offer and getting a response back, getting the approval back. There's a complexity and detail in the administration that is far too onerous."

**Labour Hire Contractor (NSW)**

"The process to becoming an approved employer under the SWP is an important integrity measure for the program and an integral component of reducing the risk of worker exploitation. There is a challenge in balancing reducing risk of exploitation with reasonable levels of administration and oversight."

**Government Official (DJSB)**

## Finding #2: Accessing workers under the SWP is more costly than employing WHMs in horticulture work.

The case studies revealed that there is a strong perception by growers and industry associations that the SWP is too expensive for many growers to use to access workers. This perception that the SWP is too expensive is framed by the relative ease by which growers can access WHMs without the similar regulatory burden or imposition of costs. Table 11.4 provides a comparison of the two programs in terms of whether they impose costs on employers according to each program's design.

### STAKEHOLDER PERSEPECTIVE

"[The SWP] is very expensive but I can't do all the work myself and I can't train backpackers every week or every second week. So if I want to stay in the industry this is the only way to go for me. ... I talk to the contractor if I ever have any issues, I am straight up with him and tell him straight and I'm pretty confident he'll fix things straightaway. If you're a small grower you tend to run out of fruit so what can you do with the people [the SWP workers]? That's why you need that middle-man and he can move them around a bit, it's a better system for small growers. The big growers, you know, they just always have a job to be done, so maybe big growers can source their labour directly [through the SWP] and it'll be a bit cheaper for them."

**Grower (Katherine, NT)**

## Finding #3: Small and medium-sized growers find it difficult to access the SWP.

The AE application form stipulates an eligibility criteria which requires the applicant to demonstrate that it:

1. Is an eligible business registered and operating in Australia in a sound financial position and has an ABN. Entities who operate on a contractor/labour hire model need to demonstrate five years of continuous operation and a record of compliance with workplace and immigration laws;

**TABLE 11.4 THE SWP VERSUS THE WHM PROGRAM – COSTS**

Costs associated with:	Seasonal Worker Program	Working Holiday Maker Program
Becoming an approved employer	✓	✗
Applying to recruit workers	✓	✗
Arranging accommodation*	✓	✗
Arranging pastoral care, including induction	✓	✗
Contributing to travel costs**	✓	✗
Subject to DJSB audits	✓	✗
Arranging medical insurance*	✓	✗
Subject to FWO monitoring	✓	✓

\*These costs can be deducted from workers' wages. \*\*This cost has been reduced from \$500 to \$300 as of 5 November 2018.

2. Is an 'organisation' as defined in the *Migration Regulations 1994* (Cth).
3. Has good immigration practices and a history of compliance with immigration legislation.
4. Has a history of compliance with Australian workplace relations law, work health and safety legislation and other relevant laws.
5. Understands and will comply with the program requirements for Approved Employers.

Small growers who are sole traders cannot access the SWP because they do not meet these criteria. In our case studies we found a strong perception that small growers are unable to access Seasonal Workers through the SWP. This is only partially true. Although the complexity of the application process to become an Approved Employer means that most small growers will not be able to directly employ Seasonal Workers, small growers (including sole traders) can access the program through a labour hire firm who is an Approved Employer.

In both Katherine and Orange, we interviewed small growers who employed between three and five Seasonal Workers each harvest. These growers reported increased productivity and workforce reliability, which offset the higher costs associated with accessing Seasonal Workers via a labour hire firm. Using the labour hire firm meant these growers could avoid the costly, complex and time-consuming application process to become an Approved Employer, and receive assistance from the labour hire firm to address other challenges associated with the SWP such as providing pastoral care, accommodation and a minimum 30 hours work per week.

## Finding #4: The requirement to organise accommodation is challenging for some growers.

Upon applying to become an Approved Employer, employers commit to organising and providing council-approved accommodation at a rate reflective of the market rental rate. When submitting the Recruitment Plan, employers need to detail the proposed accommodation placements for SWP workers. Offers of Employment are required to include information on the accommodation arrangements and associated deductions. Workers can elect to organise their own accommodation if they choose to do so.

Nonetheless, most Seasonal Workers need assistance with organising accommodation prior to their arrival to Australia because they usually do not have the resources, networks or often the requisite English-language ability to independently organise accommodation whilst still in their home countries.

However, the multiple responsibilities of Approved Employers as employer, immigration sponsor and accommodation-provider, creates opportunities for exploitation. Employers can, for example, circumvent the minimum wage for horticultural work through inflating prices for accommodation and transport and deducting this from workers' pay.

Additionally, employers reported in the case studies that the requirement to provide accommodation was difficult, costly and time-consuming.

<sup>298</sup> See, eg, Norman Hermant, 'Seasonal Farm Workers Receiving Less Than \$10 a Week after Deductions, Investigation Reveals', *ABC News* (online), 26 February 2016 <[http://www.abc.net.au/news/2016-02-25/seasonal-farm-workers-receiving-as-little-as-\\$9-a-week/7196844](http://www.abc.net.au/news/2016-02-25/seasonal-farm-workers-receiving-as-little-as-$9-a-week/7196844)>; Ben Schneiders, 'Key Farm Scheme Badly Rorted, Migrant Workers Paid \$8 an Hour', *The Sydney Morning Herald* (online), 19 May 2018 <<https://www.smh.com.au/business/workplace/key-farm-scheme-badly-exploited-migrant-workers-paid-8-an-hour-20180518-p4zq53.html>>.

## STAKEHOLDER PERSEPECTIVES

“I can’t use it [the SWP] because my accommodation isn’t 5-star and I wouldn’t get approved for it.”

**Grower (Darwin, NT)**

“We used to do accommodation in the beginning and I got out of that ugly side of the business because everyone thought, ‘here’s an idea’, let’s cram our house full of people with no concern or whatever and then it became a really dirty game of everyone stealing everyone else’s accommodation in town. I put my hands up and want I don’t want anything to do with this, I’m out.”

**Labour Hire Contractor (Gingin, WA)**

“We organise accommodation. So basically through the Department of Employment we’ve got to have an approval for the plan of having our workers here. We start from basically where the farms that they’re going to be working on, to where we’re intending to place them to live. It has to be adequate. We have to take photos, they have to agree on all of it, we have transport so that we can make sure that our workers can get to and from work, do their shopping, go to church, all of that sort of stuff as well.”

**Labour Hire Contractor (Orange)**



## STAKEHOLDER PERSEPECTIVES

“[With the SWP] you’ve got to be a lot more sensitive to their cultural, religious, all of these things, whereas getting a 417 through, you find them work, but we don’t worry about their religion or whether they’re close to a church or what they’re doing — that’s not our bag, that’s their bag.”

**Labour Hire Contractor (Gingin, WA)**

“So we provide a bus a couple of times a week for them to get to Katherine and one time for specific shopping and then if we are working, they obviously can’t go to town if they’re working but they were going to one of the local churches on a Sunday and then when the season, the picking season finished, they’re just pruning, they wanted to go to town on the Saturday because the shops are open and more shops are open and so they had their little church services on the farm on Sundays. So we just find out how they want to manage that.”

**Grower (Katherine, NT)**

### Finding #5: The requirement to provide pastoral care is challenging for some growers.

Approved Employers are required to ensure adequate arrangements for, and monitoring of, the wellbeing and welfare of workers, including providing them with a 24/7 contact number for the Approved Employer, access to numbers for emergency services, assistance in accessing medical services and accessing opportunities for recreation and religious observance. Approved Employers also help workers arrange tax file numbers and bank accounts.

Like the accommodation requirement, organising pastoral care is an additional responsibility on Approved Employers that does not exist when they employ locals, WHMs or undocumented workers.

Nonetheless, a level of pastoral care is necessary given that there is no English language requirement for workers and it is likely that Seasonal Workers will find it difficult to establish themselves in Australia

particularly in regional and remote locations and access services without assistance.

It is inefficient for Approved Employers in the same region to individually provide pastoral care arrangements for workers. Some of the aspects of these pastoral care arrangements could be coordinated between Approved Employers at an industry level, for instance via their industry associations. There is precedent for this type of coordination given that pastoral care is being centrally managed and provided through the new government-funded Pacific Labour Facility as part of the Pacific Labour Scheme.<sup>299</sup>

### Finding #6: The perception by some growers that Seasonal Workers are less productive or less capable in horticultural work is not supported by evidence.

The case studies revealed that most growers we interviewed had strong views on the relative productivity of workers from different countries and ethnicities. A number of growers in the case studies identified

a preference for workers from Asian countries or expressed a view that Seasonal Workers were on ‘island-time’, ‘unsuited to horticulture work’ or ‘slow’.

However, the overwhelming majority of growers who employed Seasonal Workers through the SWP spoke favourably of their productivity, reliability and commitment.

We also found that growers who employed Seasonal Workers as part of their business model were less likely to express insecurity or concern over their ability to meet their workforce needs. These growers were better placed to invest in business expansion in subsequent years because of the certainty in labour supply created through the SWP, and in particular through its feature of returning workers. This is consistent with two empirical studies comparing the output of Pacific workers with WHMs which found the former more productive.<sup>300</sup> It is also supported by evidence from New Zealand where 82% of employers who employed Pacific workers expanded their business and invested in new plant and equipment.<sup>301</sup>

<sup>299</sup> Department of Foreign Affairs and Trade, Australian Government, *Stepping-Up Australia’s Pacific Engagement* <<https://dfat.gov.au/geo/pacific/engagement/Pages/stepping-up-australias-pacific-engagement.aspx>>.

<sup>300</sup> Robert Leith and Alistair Davidson, ‘Measuring the Efficiency of Horticultural Labour: Case Study on Seasonal Workers and Working Holiday Makers’ (Report, Australian Bureau of Agricultural and Resource Economics and Sciences, 2013); Shiji Zhao et al, ‘What Difference Does Labour Choice Make to Farm Productivity and Profitability in the Australian Horticulture Industry? A Comparison between Seasonal Workers and Working Holiday Makers’ (Research Report, ABARES, 2018) 7.

<sup>301</sup> James Maguire and Mark Johnson, ‘Recognised Seasonal Employers Survey – 2018’ (Working Report, Research New Zealand, 2018) 35.

## STAKEHOLDER PERSPECTIVES ON THE PRODUCTIVITY AND CAPABILITIES OF SWP WORKERS

“As long as you keep them away from alcohol, they’ll turn up and they’ll work all day, every day, nonstop. But their productivity is probably about half of what you’d expect someone to be able to do. Unless they actually have learnt how to work in the past.”

**Grower (Griffith)**

“Even say for strawberry picking, Pacific Islanders aren’t really built for bending over, but they can still do the packing, they could still do the supervising and quality control and those sorts of jobs.”

**Grower (WA)**

“So one large grower, a grower with 30 years’ experience in mangoes, he took 20 [SWP workers] and he’ll have 110 this year. Overwhelmingly positive feedback you know ... and this grower, you know he had a team of Asian backpackers picking his mangoes and a team of people from Vanuatu and he compared them and they were doing — the Asians were doing 6 or 7 bins a day and the others were doing much 18 to 20. ... There is still that kind of underlying impression that yes Asian workers can be a lot more reliable than European backpackers and that’s still valid for sure ... but at the end of the day I think they struggle to do the physicality of a lot of the tasks. You know there’s not a lot, you don’t see a lot of Japanese and Koreans that come out and pick melons and pumpkins any more.”

**Labour Hire Contractor (Katherine, NT)**

“No I’d refute that [Pacific workers are unsuited to horticultural work]. We’ve got Timorese doing ground work, ground level work, you know mangoes. That doesn’t have any weight as far as I’m concerned.”

**Grower (Katherine, NT)**

“A lot of the seasonal workers are all islanders and they will struggle to bend over, even though the Tongans and those guys do and have, but we’re engaging someone who uses the East Timorese a little bit more. So we’re hoping that we can engage in that. Also it’s a whole new focus. We’re going to change. We’re not going to just do a part system, which is what we thought we might do. We’re actually going to do a complete move into them.”

**Grower (WA)**

“The fact that they’re there every day, the reliability factor is such an overwhelming — the need is filled of having reliability but they’re not fussed if they’re not super-fast workers. The fact that they know that they’re there tomorrow and they’ve got that peace of mind and they don’t have to worry about chasing down workers the next day to try and find them at the last minute to take their crop off, speedy productivity is less of an issue. The fact is that most of them are usually quite productive as well but it’s a reliability factor. It always come back to that issue of reliability. They need to know who is there the next day.”

**Labour Hire Contractor (NSW)**

“The reason we’ve gone with the Vanuatans is they’ve got strong bodies and great stamina and we can say to them, ‘Listen, this is base work-rate, if you can exceed that to this level, we’ll give you a bonus’ and we find they can respond to that and step it up ... We used some backpackers last year but I don’t know that’s sustainable...we keep on saying it every year, ‘never again!’ The Vanuatans are more productive, are more engaged, are better workers, they’re all round better workers.”

**Grower (Katherine)**

## Finding #7: The SWP is more challenging to use for crops with short, stop-start or year-long harvests. It does not provide for workforce portability.

The variable nature of horticulture means that different crops have different harvesting requirements and timelines. In the focus groups and interviews with growers, many raised concerns about the lack of portability in the SWP. From the grower’s perspective, portability relates to the ability of growers to move workers between different employers. From a worker’s perspective, portability might mean they are not tied to a single employer and have the opportunity to work on a number of farms and consistently over the whole year.

Certain aspects of the SWP’s design make it more challenging for growers with short, stop-start or year-long harvests to directly employ Seasonal Workers as Approved Employers. This is because the SWP does not allow for growers to jointly recruit workers from the Pacific other than through a labour hire company. The SWP also does not allow growers to form cooperatives and recruit Seasonal Workers for a number of farm businesses within the one region. Both the ability to jointly recruit and to use grower cooperatives are permitted within the New Zealand program for recruiting workers from the Pacific. These mechanisms are essential for providing for workforce portability.

Although there is no program restriction on growers with short or stop-start harvests from accessing the SWP, the program costs involving pastoral care, visa applications, arranging accommodation and the \$300 contribution to airfares are likely too high for growers who only require labour for short, intense seasons.

The Orange case study revealed the strong reliance of cherry growers on WHMs because the cherry harvesting season is only six to eight weeks long and this makes it difficult to directly employ Seasonal Workers. For growers with short or stop-start harvests, there is no capacity to employ SWP workers for periods that match the harvest labour requirements. The only way to engage with the SWP is to employ Seasonal Workers through labour hire firms which can increase flexibility through their ability to move SWP workers between different growers and crops.

For growers with crops with year-long labour needs, the restricted time period for Seasonal Workers can also prove problematic. Seasonal workers can work in Australia for up to nine months. In the Virginia case study we interviewed a potato grower with labour needs for 11 months a year. In his view, this made the SWP a difficult program to use because it would require two rotating teams of Seasonal Workers and thus be more expensive and time-consuming to administer.

## STAKEHOLDER PERSPECTIVES ON THE EMPLOYMENT RESTRICTIONS OF THE SWP VISA

“The requirement to be employed by a single employer for six months is difficult in horticulture. For example, the mango season in Mareeba, it goes for six weeks. They just don’t use the Pacific seasonal workers, even though they would be quite a useful labour force in that sector. There’s also the onion season; the onion season is three weeks, where you work like an absolute crazy thing. And historically, they’ve actually employed a lot of Papua New Guineans and people on holiday visas, which they’re not legally meant to do; but again these people are coming because they want to do the onion season. They can do a three-week onion season and earn piece rates and go home with more money than they’d earn in the rest of the year.”

**Industry Association Official (Queensland)**

“I would go with the SWP if it allowed workers to be employed for longer. But I understand that they come here for six or nine months and then they go. The same group then comes back, that is the aim but I would rather if they were here for a year and then went away and came back a year later, like two year groups rotating. Then I would do it. For example, with our onions, the way it works is we do have a season which goes for 10 or 11 months. If I had full time workers they would need to be there for 11 months. With the Seasonal Workers Program they come and leave after nine months and you need a new workforce for two months. It just disrupts the whole season.”

**Grower (Virginia)**

## STAKEHOLDER PERSPECTIVES ON THE GROWTH OF THE SWP

“It’s been pretty small up-to-date but as it grows bigger you’re going to see more troubles because you are going to go further out. Right now they’ve been able to choose the cream of the crop but as you get bigger you’re going to start taking some of the three-quarters and then some of the halves and the challenge is going to be get those people motivated.”

**Grower (Katherine)**

“You could write a whole PhD on the failures of the SWP and how it’s potentially unsustainable [in terms of] the labour sources. There are some serious challenges there. Forty percent of the male workforce in Tonga is in Australia as a seasonal worker. That’s a serious problem.”

**Industry association official (NSW)**

Nonetheless, in the same case study, we interviewed a tomato grower in Virginia who was using two rotating teams of Seasonal Workers to supply labour to the farm for the full 12 months of the year and finding this a highly effective labour management strategy.

Additionally, growers with crops requiring consistent labour over 10–12 months are eligible to sponsor workers under the Pacific Labour Scheme, introduced on 1 July 2018 and allowing the sponsorship of workers for three years for non-seasonal agricultural work.

### **Finding #8: The requirement to conduct labour marketing testing is ineffective.**

Approved Employers have to provide evidence of their failed efforts to recruit local workers before being able to recruit SWP workers.

Employer-conducted labour market testing in protecting local job opportunities has been rigorously critiqued as being an ineffective and resource-intensive way of ensuring that local workers have first access to job vacancies.<sup>302</sup> A more efficient and effective method is for labour market testing to be done independently of employers, which is an approach advocated by the OECD as international best practice.

Additionally, labour market testing is, on one view, unnecessary for the SWP as the

increased costs associated with the SWP sends an appropriate price signal to growers on the benefits of recruiting locally in the first instance.

Instead of labour market testing by employers, the SWP should incorporate independent labour market testing done by the government. This approach is more akin to a labour market assessment of the dynamics of the local and regional labour market. This type of approach is taken in New Zealand’s Recognised Seasonal Employer scheme discussed in Chapter 13. The federal budget announcement in May 2018 allocating funding for an annual horticultural workforce assessment is a positive initiative for developing a stronger understanding of horticulture labour needs and supply challenges.

### **Finding #9: The perception that the population of Pacific countries cannot support the growth in the SWP is not supported by evidence.**

Interviews with growers and a number of industry association officials suggested there is a perception that the Pacific countries are an unsustainable labour supply. Some asserted that the SWP and New Zealand’s Recognised Seasonal Employer scheme had “maxed out”:

<sup>302</sup> Joanna Howe, ‘Is the Net Cast Too Wide? An Assessment of Whether the Regulatory Design of the 457 Visa Meets Australia’s Skills Needs’ (2013) 41 *Federal Law Review* 443; John Azarias et al, ‘Robust New Foundations: A Streamlined, Transparent and Responsive System for the 457 Program’ (Independent Review, September 2014) <<https://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/streamlined-responsive-457-program.pdf>>; Chris F Wright and Andreea Costantin, Submission No 23 to Senate Education and Employment References Committee, *The Impact of Australia’s Temporary Work Visa Programs on the Australian Labour Market and on the Temporary Work Visa Holders*, 1 May 2015.

<sup>303</sup> Stephen Howes, *Another Bumper Year for the Seasonal Worker Program* (31 July 2018) Devpolicy <<http://www.devpolicy.org/another-bumper-year-for-the-seasonal-worker-program-20180731/>>.

<sup>304</sup> Matthew Dornan, Stephen Howes and Richard Curtain, *Is a New Visa for Agricultural Work Needed?* (13 September 2018) Devpolicy <<http://www.devpolicy.org/is-a-new-visa-for-agricultural-work-needed-20180913/>>.

## CHALLENGE #2: ADDRESSING WORKER EXPLOITATION

The SWP contains many aspects that seek to protect Seasonal Workers from exploitation. Nonetheless, our research identified a number of problems with the current operation of the program and its ability to ensure compliance with Australian labour standards and the program's regulatory framework.

### Finding #10: Seasonal Workers are vulnerable to exploitation arising from their limited labour market mobility and their desire to return in following seasons.

Many Seasonal Workers wish to obtain ongoing employer sponsorship for subsequent seasons, with their families in the Pacific relying on their income earned each year through the SWP. This produces inherent precarity for them in the labour market by creating an in-built dependence on the sponsoring worker's employer.

The *tiered* nature of the SWP can also produce worker vulnerability. Recent studies on employer sponsorship indicate that such vulnerability is especially pronounced for temporary migrant workers in low-skilled occupations with limited access to union representation.<sup>305</sup> For the SWP, workers are entirely dependent upon their employers as both the provider of remunerative work and as their immigration sponsor.

The desire of many Seasonal Workers to return for subsequent harvest seasons provides clear disincentives for Seasonal Workers to report workplace exploitation because the SWP is an employer-driven and employer-sponsored visa. A Seasonal Worker may calculate that the potential benefit of complaining is outweighed by the potential risk of not being sponsored for subsequent seasons. This desire to return means it is unlikely that the reported stories of exploitation in the SWP capture the full extent of exploitation within the SWP.<sup>306</sup>

It is also concerning that the number of deaths in the SWP has risen significantly since the pilot concluded, with 14 deaths since the inception of the program in 2008.

### THE RIGHT OF SEASONAL WORKERS TO RETURN – INTERNATIONAL PERSPECTIVES

In North Carolina, an agreement between the union and the growers' association, effectively gives temporary migrant workers in agriculture (known as H-2A visa holders) a right to return for subsequent seasons. Prior to this, the system was one based entirely on grower preferences and enabled growers to blacklist workers who had complained of exploitation.

The union and growers' association agreement introduced in 2004, produced a new system, partly based on seniority. As part of this agreement, growers must demonstrate just cause for firing and refusing to rehire workers, and give three warnings before taking disciplinary action. There is now a formal grievance procedure for violations.

First priority for subsequent seasons goes to those workers designated by growers as 'preferred', including experienced workers. Vacancies are next filled by 'active' workers in order of seniority, independent of employer preferences. This enables a worker to challenge a violation of his rights during the season with the assurance that if, as a result, he is not listed as 'preferred' by the employer for the following season, he will be hired elsewhere as an active worker in the subsequent season. This is an important protection which empowers workers to report workplace exploitation by effectively giving them a right to return for subsequent seasons.

The third tier is for preferred workers who want to take a job with a different employer; those workers get access to the remaining full-season jobs through a bid system the union has created. Finally, any worker with three years or more in the H-2A program can recommend new workers with no experience. These 'zero seniority' workers are usually hired at the end of the season when relatively little work remains, but then have the advantage of being considered 'active' workers the following year.

#### For more information, see:

Jennifer Gordon, 'Roles for Workers and Unions in Regulating Labor Recruitment in Mexico' in Joanna Howe and Rosemary Owens (eds), *Temporary Labour Migration in the Global Era* (Hart Bloomsbury 2016).

There have been 12 deaths since 2012 and seven of these in Queensland. A recent Courier-Mail and Weekly Times special investigation revealed claims that "*extreme neglect allegedly contributed to a number of deaths and serious injuries*".<sup>307</sup> Nonetheless, it is important to note that the DJSB maintains that none of the deaths has been found to have been directly related to a workplace accident or incident.<sup>308</sup>

Although the desire of many Seasonal Workers to return for subsequent harvest seasons creates significant labour market vulnerability, many growers attribute the ability to hire returning workers as a key benefit of the SWP. This is because it enables growers to reduce training costs for subsequent harvests by allowing for skills retention, therefore increasing productivity.

<sup>305</sup> Chris F Wright, Dimitria Groutsis and Diane van den Broek, 'Employer-Sponsored Temporary Labour Migration Schemes in Australia, Canada and Sweden: Enhancing Efficiency, Compromising Fairness?' (2017) 43 *Journal of Ethnic and Migration Studies* 1854.

<sup>306</sup> See Nick McKenzie, 'Slavery Claims as Seasonal Workers from Vanuatu Paid Nothing for Months' Work', *The Sydney Morning Herald* (online), 27 March 2017 <<http://www.smh.com.au/national/investigations/slavery-claims-as-seasonal-workers-from-vanuatu-paid-nothing-for-months-work-20170327-gv7k99.html>>; Hermant, above n 298; Fair Work Ombudsman, 'Pacific Islander Visa-Holders Worked 36 Consecutive Days, Short-Changed \$14,700' (Media Release, 25 August 2016) <<https://www.fairwork.gov.au/about-us/news-media-releases/2016-media-releases/august-2016/20160825-seasonal-labour-solutions-eu-presser>>. See also John Connell, 'From Blackbirds to Guestworkers in the South Pacific. Plus ça Change ...?' (2010) 20 *Economic and Labour Relations Review* 111.

<sup>307</sup> 'Seasonal Worker Program: Rogue Operators "Exploiting" Staff', *The Courier Mail* (online), 13 December 2017 <<https://www.couriermail.com.au/news/queensland/seasonal-worker-program-rogue-operators-exploiting-staff/news-story/8ef4f662b7899a8a67caafe4f384ca3e>>.

<sup>308</sup> Email correspondence with Joanna Howe, on file, Eve Wisowaty, DJSB, 14 November 2018.

## STAKEHOLDER PERSPECTIVES

“We need to give SWP workers a right to return or a right to stay — to address their fear of not being allowed back by the employer.”

**Union Official (NUW)**

“The reliability of backpackers is not as good obviously. We have control of the seasonal workers, so you know, we know they’re going to turn up 95% of the time, only if they’re sick do they not come. Backpackers come and go. . . . We had 26 returnees out of 36, that’s pretty good numbers . . . and being able to give them specific jobs and knowing exactly what they can do [with returning SWP workers], what they’re capable of, it makes a huge difference to our business.”

**Grower (Katherine, NT)**

### Finding #11: Seasonal workers are vulnerable to inflated deductions from pay for accommodation and transport.

The Deed of Agreement between Approved Employers and the DJSB stipulates that employers can make deductions from workers’ pay for certain expenses such as accommodation, transport and the cost of the return international airfare above the employer’s compulsory contribution of \$300. Clause E6 requires that deductions are “lawful and reasonable”, “have been explained to and agreed to by the Seasonal Worker in writing” and “do not exceed the cost of the expense the deduction is made for”. Additionally, after deductions are made, Seasonal Workers should not have “an inadequate amount of money remaining each week to pay for reasonable living expenses.” The Deed requires all deductions to be itemised on workers’ payslips.

Additionally, Approved Employers are subject to reporting obligations intended to keep them accountable under the program. Approved Employers need to provide evidence that workers have been employed and paid in accordance with the SWP and Australian workplace entitlements.

Nonetheless, despite these requirements, the evidence from the case studies and media reports suggests that there is a problem with some Approved Employers making deductions from workers’ pay at unreasonably inflated rates which do not represent the true cost of accommodation or transport, as **Table 11.5** indicates.

**TABLE 11.5 EXAMPLES OF INFLATED DEDUCTIONS MADE TO THE PAY OF SEASONAL WORKERS**

Inquiry	Pay received and deductions made
‘Seasonal Farm Workers Receiving as Little as \$9 a Week after Deductions, Investigation Reveals’, <i>7.30 Report</i> (online), 25 February 2016.	Reports of seasonal workers being charged \$120 each per week in rent, despite some of them staying three to a caravan. Others reported a net pay of zero following a number of deductions being made to their pay, including deductions for health insurance, daily transport, bedding, food and tax.
Norman Hermant, ‘Seasonal Farm Workers Receiving Less than \$10 a Week after Deductions, Investigation Reveals’, <i>ABC News</i> (online), 26 February 2016.	One seasonal workers’ total net pay for one week was \$9.96 after deductions, which included super, rent, health insurance, tax and transport. Another worker’s total pay for the week was \$295.80 and \$58.80 net pay — deductions were made to her pay for super, accommodation, daily transport to the farm, health insurance and tax.
Ben Schneiders, ‘Migrant Farm Workers Launch Landmark \$10m Legal Claim’, <i>The Sydney Morning Herald</i> (online), 29 July 2018.	One Seasonal Worker alleged she was underpaid \$11,000 for four months due to underpayment and unlawful deductions — after deductions for rent, food, airfares, transport and visa, the worker alleged that she was paid \$3.17 an hour.
Nick McKenzie and Nick Toscano, ‘Seasonal Workers Program Pickers Told if they Join a Union, They’ll Get no Work’, <i>The Sydney Morning Herald</i> (online), 11 March 2017.	One worker reported working five days a week, 38 hours — total pay was \$800, but after deductions was left with only \$500. Deductions were made for accommodation, transport, airfares and ‘a bond’.

For example, although DJSB requires Approved Employers to provide evidence of the ‘market rate’ for accommodation and other authorised expenses, this is not a particularly useful yardstick. The rent for a room at a backpacker’s hostel, for instance, is different from the cost of a room in a share house, with the rent for the latter contingent upon a number of variables, in particular, how many people are sharing the house. Also, there may not be a conventional rental market in many remote work locations, meaning the ‘market rate’ may simply be what employers state it to be.

### Finding #12: There is an inconsistent and ineffective approach to worker induction.

Approved Employers are required to complete an Arrival Form for each batch of Seasonal Workers. This form requires the employer to confirm that the on-arrival briefing has included a presentation by the FWO and the unions.

Despite the requirement that worker induction provides Seasonal Workers with access to unions and the FWO, the case studies found that worker inductions are presently occurring in a sporadic and inconsistent manner.<sup>309</sup> The relevant union and the FWO are notified via an automatic email from the DJSB whenever an Approved Employer has had their request to sponsor a group of SWP visa holders approved. However, there is no mandatory process to be followed that compels the Approved Employer to guarantee that unions, the FWO and other relevant parties are involved in the induction process.

## STAKEHOLDER PERSPECTIVES

“There’s a group I met, there were 12 of them in a minibus, same thing that always happens. They were in the bus, they put in everything for the bus and they live in accommodation that is owned by the contractor and they came here for six months. But after three months, they still keep on deductions of this and that and I think that was one of them was left with less than 80 dollars a week.”

**Horticulture worker (Griffith)**

“We found that with [one group of SWP workers] they actually paid their bill back in record time. Within two and a half months they had already paid for their airfare and other costs that were associated with the program, and were able to send really good money back home when they went home.”

**Labour hire contractor (Griffith)**

“We have not found a person under the SWP who has not been exploited on accommodation and transport. The deductions are built into the price model. WHM competes with SWP — WHM receives \$14 an hour cash, so the SWP is constantly under pressure by the farmer so the SWP agency has to employ people to be paternalistic and check on the house. When the SWP try and organise their own housing they get no return visa. So the challenge for us is, how do you get a lease in a small rural community so that the SWP workers can exercise a right to independent housing.”

**Union official (NUW)**



## STAKEHOLDER PERSPECTIVES ON WORKER INDUCTION

“We have a really large problem with the inductions and the way they’re being carried out. The induction gives us a chance to introduce ourselves to those workers. Now, part of our role is to go in and to introduce ourselves and to try in a five minute slot, sometime 10, 15, 20 minute slot but normally a small-slot, to introduce them to what a union can do. Now you just can’t do that in that time and a lot of the time they don’t understand – one, because of language barriers and they don’t understand unions, and also, I suppose this is an opinion it’s not, we haven’t got any proof on this. But we think that sometimes they are told not to take too much notice of unions or because, their head immediately goes down when we start to talk. They immediately switch off from what we are trying to say and we can visible [sic] see that they are switching off or putting their heads so they can’t make visual contact with us.”

**Union official (AWU)**

“... All they give you in that invite is an email of the employer and we have spoken to the Department about this and we’ve said, ‘A lot of time the employers don’t answer the email’ and they said, ‘Oh well, sorry, we don’t give you any other details’ ... some employers, very limited, probably, of all of the alerts that we get, probably 10% there is a personal, there is sometimes a personal email from the employer to us to come to the induction. I am not even quite sure why they do that other than they are probably trying to do the right thing. ... But I would honestly limit that to about 10%. The rest are simply a template email of the employer and where the area, which is sometimes a town, where those workers are going to be placed. So nothing about the address, nothing about the particular site. The onus is on you to follow that up with the employer and all you get is an email address.”

**Union official (AWU)**

“So if the unions bother to turn up, which is almost never — I’ve never had one turn up to one of my inductions in eight years ... The FWO does attend on occasions. I’ve had them attend with mine about three times. ... I’ve only heard of the union turn up when there’s a big bunch, where they can sign up a heap of workers in one hit.”

**Labour Hire Contractor (NSW)**

In the case studies, some employers reported that unions never “bothered to turn up” to worker inductions, whereas the NUW and AWU officials that we interviewed reported that invitations to inductions were highly unusual, often did not provide details or the time or location and did not give sufficient notice to enable them to attend.<sup>310</sup>

Another concern of both NUW and AWU officials was that when they were present at an induction, employers often stayed in the room and gave them insufficient time to present their role to Seasonal Workers.

### **Finding #13: The SWP is not administered in a transparent or publicly accountable manner.**

A template Deed of Agreement is provided on the DJSB website. Agreements between DJSB and an Approved Employer, Letters of Offer and Recruitment Plans are not publicly available. Approved Employers who consent to the public release of their name as a sponsor under the SWP have their business names listed on the DJSB website. The DJSB’s view is that it requires consent of employers under Australian privacy law before listing Approved Employers on the website. However this could be changed if it was a condition of participating in the program that employers agree to their business names and contact details being made available on the department’s website.

<sup>310</sup> Interviews with NUW officials and AWU officials.



Thus, there is a lack of transparency and public accountability in the SWP that is inconsistent with the information provided publicly about Australian labour agreements and the approach of New Zealand's RSE, which lists the business names, contact details and locations of approved employers under the NZ program.

Transparency and public accountability are important aspects of the governance framework for temporary migration programs that facilitate greater public confidence for the continuation of these programs through allowing greater scrutiny and oversight by a range of stakeholders and regulatory actors.

#### **Finding #14: The SWP is associated with poor oversight by regulators and weak enforcement of labour standards and program requirements.**

There are real concerns over whether the worker-protective elements of the SWP are effectively enforced on an ongoing basis once an employer has gained the right to sponsor workers from the Pacific through becoming an Approved Employer. As a Queensland industry association official observed in 2017:

*"There's too much effort [in the SWP] put into the front end of the program so there's all these hoops people have to jump through to become an approved employer which makes it very difficult for farmers themselves to do it directly ... [but then] [t]here's no enforcement down the line – what sort of process is that?"<sup>311</sup>*

The SWP includes a number of mechanisms to oversee employment practices of Approved Employers and enforce compliance with program requirements. All Approved Employers are required to report regularly to DJSB through completing forms and on occasion supplying Letters of Offer, payslips and other documentation, which can be requested and/or audited by DJSB. All Approved Employers can be subject to a site visit by a DJSB inspector, although they are notified of this visit in advance. DJSB has a Seasonal Worker hotline which provides information and can be used by Seasonal Workers to report complaints.

The current suite of mechanisms for oversight and enforcement by DJSB are insufficient to ensure Seasonal Workers are employed in compliance with Australian workplace law and program requirements. DJSB is not well-placed to inspect workplaces of Approved Employers and to detect non-compliance as enforcement is not its core business and it has a conflict of interest given that it is the primary government department responsible for administering the program and has a vested

### **STAKEHOLDER PERSPECTIVES ON THE ADMINISTRATION OF THE SWP**

"We are obliged under our Deed of Agreement to give the employer notice before we arrive. There are other agencies in the Australian Government that can do unannounced site visits. We are not one of them."

**DJSB official**

"At one time I wanted to [report a complaint]. I was talking to a friend of mine and she said, 'Why don't you go and report them to the police? Or why don't you ring ... [the hotline]?' But when I talked to the girls, they were scared, they were embarrassed. They were scared but they wouldn't say why. Maybe there are relatives or members of their families that won't have another chance to come back again, because people in Tonga won't recruit them because of these things here, they will start talking and things like that. So I never did. But I did go and get them help. I went to the priest to ask them if they get them some warm clothing for them. ... I think they were ashamed of being talked about, or maybe people would not believe what they're saying."

**Horticulture worker (Griffith)**

"The SWP, since its implementation, lacks the appropriate manpower and resources to effectively manage the program, leaving loopholes that created favourable and thriving conditions for the exploitation of workers."

**President, Pacific Australian Seasonal Workers Association**

interest in promoting its use amongst employers. The fact that growers are given advance notice of site visits by DJSB wholly undermines the capacity of these visits to provide effective oversight of the wages and working conditions of Seasonal Workers.

### **Conclusion**

Our research has found that the SWP holds significant promise for the horticulture industry in addressing its labour supply challenges. The SWP has the potential to provide growers with a productive and reliable workforce which is sustainable over time. Nonetheless, **the SWP requires substantial reform to its administration** if it is to work more effectively for growers, especially in terms of its portability, and the management of the program and the application process for becoming an Approved Employer. The SWP also requires far better enforcement of its in-built protections designed to address workers' vulnerability.

In Chapter 13 we provide an examination of New Zealand's RSE scheme, which has been far more successful in engaging a broader cross-section of growers and in addressing worker vulnerability. As this chapter notes, the RSE has also made it much more accessible for growers to share knowledge while participating in the scheme and to share workers if farm size is small or production sporadic. **The RSE's success provides cause for optimism that Australia's SWP can be reformed to become a more effective program.**

<sup>311</sup> Vanessa Marsh, 'Growing Chorus Calls for Overhaul of Worker Program', *NewsMail* (online), 14 December 2017 <<https://www.news-mail.com.au/news/growing-chorus-calls-for-overhaul-of-worker-progra/3290303/>>.

# CHAPTER TWELVE

## THE AGRICULTURE VISA CONCEPT

### Introduction

This Chapter examines the merits of introducing an agriculture visa enabling workers from South East Asian countries to perform low-skilled work in the Australian horticulture industry..

We focus on the potential regulatory framework for an agriculture visa, potential source countries for workers, and international comparisons in the circumstance that there is a labour market case for pursuing an agricultural visa.

### Findings

1. Agriculture visa schemes in the US, Canada and New Zealand focus on achieving a balance between the need for regulation to protect local and migrant workers' rights and the need for efficiency and cost effectiveness of the schemes. Each of these schemes requires labour market testing, guaranteed minimum hours of work, and contributions to transport, food and accommodation, but take different approaches to the extent costs are recoverable through wage deductions.

2. Despite agriculture visa schemes in the US, Canada and New Zealand incorporating regulation to protect workers' rights, there are reports of a high incidence of non-compliance with laws in the US and Canadian schemes because of deficiencies in oversight and enforcement. New Zealand's RSE scheme is less associated with worker exploitation but incorporates a higher degree of worker-protective regulation, industry ownership and governance, and more resources devoted to oversight and enforcement.<sup>312</sup>

3. Agriculture visa schemes in the US, Canada and New Zealand use a sponsorship model. Sponsorship places specific obligations on employers and ensures that

employers who access visas are scrutinised through an independent assessment process. Sponsorship also acts as a safeguard against workers absconding. Nonetheless, sponsorship does create opportunities for exploitation given that workers are tied to their employer and this gives employers more control over workers.

4. South East Asian countries offer a good potential source of labour with horticulture experience for an agriculture visa scheme. However, the high wage differentials and poor English language ability mean they will constitute a vulnerable workforce in Australia. The attributes of South East Asian workers mean that an agriculture visa is likely to require similar worker-protective elements to the Seasonal Worker Program (SWP), including mandatory worker induction involving unions and the Fair Work Ombudsman, a robust application process for approving employers who wish to access workers under the scheme, as well as industry support for reporting non-compliant growers and ensuring compliance with program requirements through rigorous and regular inspection of workplaces by the Fair Work Ombudsman and unions.

### Agriculture visas in other countries

In designing an agriculture visa, it is crucial to draw on best practice overseas, and also to consider carefully the advantages and disadvantages of accessing potential source countries for the visa, while bearing in mind the unique horticulture labour market in Australia.

The **H-2A agriculture visa** in the US was introduced in 1986 to provide a source of labour for the agriculture industry following a tightening of border control that reduced the number of undocumented workers entering the US. The visa is for a maximum of three years after which workers must leave the US and not return for three months. Once three months have elapsed, workers are eligible to apply for a further H-2A visa.

The H-2A scheme is uncapped. In 2013, there were just under 74,000 H-2A visa holders. The US agricultural workforce also includes a large proportion of undocumented workers. The number of undocumented workers fell from 55% to 47% from 2000 to 2014, and this fall was associated with a rise in H-2A workers.<sup>313</sup> However, H-2A workers only constitute a small proportion of the total agricultural labour force of between 2.0 and 2.5 million workers.<sup>314</sup>

The **Seasonal Agricultural Worker Program (SAWP)** in Canada was introduced as a bilateral agreement with Jamaica in 1966. The scheme was expanded to other Caribbean countries in 1970, and to Mexico in 1974. The SAWP provides short-term low-skilled labour to Canadian farmers while allowing participating workers a legal path to travel and work abroad. The migrant workers can be hired for a maximum period of eight months, between 1 January and 15 December.<sup>315</sup> In 2017, there were approximately 25,000 migrants working on Canadian farms under the scheme.<sup>316</sup> Workers can return for work in subsequent years. While the SAWP

<sup>312</sup> See further, Chapter 13 'Lessons from New Zealand'.

<sup>313</sup> Philip Martin, *Immigration and Farm Labor: From Unauthorized to H-2A for Some?* (August 2017) Migration Policy Institute <<https://www.migrationpolicy.org/research/immigration-and-farm-labor-unauthorized-h-2a-some>>.

<sup>314</sup> Farmworker Justice, *The H-2A Temporary Agricultural Guestworker Program* (2012) <<https://www.farmworkerjustice.org/sites/default/files/documents/H-2A%20fact%20sheet%20final.pdf>>.

<sup>315</sup> Government of Canada, *Hire a Temporary Worker through the Seasonal Agricultural Worker Program - Overview* (18 September 2018) <<https://www.canada.ca/en/employment-social-development/services/foreign-workers/agricultural/seasonal-agricultural.html>>.

<sup>316</sup> Marie-Hélène Budworth, Andrew Rose and Sara Mann, 'Report on the Seasonal Agricultural Worker Program' (Report, Inter-American Institute for Cooperation on Agriculture Delegation in Canada, March 2017) <<http://www.iica.int/sites/default/files/publications/files/2017/bve17038753i.pdf>>.

has proved responsive to employer demand, the restrictions placed on the ability of workers to move between employers have produced problems relating to mistreatment of migrants workers and their capacity to exercise employment rights.<sup>317</sup>

The **Recognised Seasonal Employer (RSE)** scheme was introduced in New Zealand in 2007. The scheme had the twin aims of meeting the labour needs of employers in horticulture and viticulture

and providing work opportunities to workers from Pacific Island countries, as part of New Zealand's contribution to the economic development in these countries. The visas are for a maximum of 11 months.<sup>318</sup> In 2017, the cap on migrant workers under the scheme was 11,000.<sup>319</sup>

When considering these agriculture visa schemes, it is important to acknowledge that the US and Canada do not have a seasonal worker program for Pacific Island nations,

and do not have incentives for Working Holiday Makers (WHMs) to work in the horticulture industry. Therefore the New Zealand labour market is more directly comparable with Australia, having a similar proportion of WHMs visiting annually, and the Australian SWP was modelled on the RSE.

**TABLE 12.1 AGRICULTURAL LABOUR SCHEMES IN THE US, CANADA AND NZ**

	<b>US: H-2A</b>	<b>Canada: SAWP</b>	<b>NZ: RSE</b>
<b>Date introduced</b>	1986	1966	2007
<b>Number of visa holders</b>	74,000 (2013)	25,000 (2017)	11,000 (2017)
<b>Length of visa</b>	Three years (reapply after three months), but most stay less than a year	Eight months in calendar year	Seven months in an 11 month period
<b>Sponsorship obligations</b>	Minimum 35 hours work per week; Pay more than minimum wage; Provide all necessary equipment	Employment contract; Minimum 240 hours work within six weeks; Pay at least market wage; Health and workplace safety; 14 day trial period	Market rate of pay; Minimum 240 hours work only permissible deductions, comply with all workplace law Induction program; Protective equipment; Language translation; Access to suitable accommodation; Opportunities for recreational and religious observance
<b>Sponsorship costs</b>	Half transport costs to country, and whole transport cost at completion of contract; All transport costs to place of work; Accommodation and meals	Half worker return airfare (except British Columbia in which pay whole of return airfare) Provide accommodation with good facilities; (except BC – where only access to accommodation) Laundry costs;	Half worker return airfare, to and from port of arrival and transport to and from worksites; Acceptable medical insurance;
<b>Worker country of origin</b>	83 countries in 2018. List managed by Secretary of Homeland Security. 3/4s of workers are from Mexico	Bilateral arrangements with Commonwealth Caribbean countries and Mexico	Bilateral arrangements with Pacific Island nations
<b>Worker eligibility</b>	Employers can choose workers once they are registered	Experience in farming	
<b>Labour market testing</b>	Submit job order form to State Workforce Agency 60-75 days before job commences. Job offered to locals up to 3 days prior to H-2A workers commencing. National Processing Centre conducts labour market testing	Advertise on National Job Bank for at least 14 days. Employers submit application which outlines impact of hiring migrant workers on local labour market. In making assessment, Department considers nature of job offer to migrants	Register job vacancies with Work and Income NZ – checks vacancies against records of potential labour in the region
<b>Eligibility requirements for employer</b>	No separate eligibility requirements		Financial viability, High standard of human resource policies and practices, good record of workplace practices under the law
<b>Circular migration</b>	Most workers leave within one year of the three year visa	80% Mexicans return for subsequent seasons	High rate of return
<b>Over-stay rates</b>		1.5% (Mexicans)	

<sup>317</sup> Patti Tamara Lenard and Christine Strahle, *Legislated Inequality: Temporary Labour Migration in Canada*. (McGill-Queen's University Press, 2012)

<sup>318</sup> Immigration New Zealand, *Operational Manual* (19 June 2017) WH1.15.6.

<sup>319</sup> Ibid WH1.15(a), (c).

A number of clear findings emerge from the analysis of these agriculture visa schemes:

1. A major focus of the schemes is to balance the need for regulation to protect local and migrant workers against the need for efficiency and cost effectiveness.

2. The schemes require labour market testing, guaranteed minimum hours of work, and contributions to transport, food and accommodation, but take different approaches to the extent costs are recoverable through wage deductions.

3. The schemes use a sponsorship model. Sponsorship is intended to safeguard against workers absconding and can potentially shield workers from exploitation by placing specific obligations on employers. However, research on sponsorship arrangements find they are more likely to create, rather than protect against, conditions of exploitation.<sup>320</sup>

These international comparisons identify two primary challenges for an Australian agriculture visa.

- First, what regulation and enforcement would be required for an agriculture visa to provide overseas workers with clear and defined pathways into horticulture jobs with suitable accommodation and transport, to ensure it protected workers from the risk of exploitation, and to give local workers first access to job vacancies?
- Second, which countries would be the appropriate source countries for an agriculture visa?

### Designing a regulatory framework for an agriculture visa

This section considers a range of design questions for any potential agriculture visa, to ensure that it would effectively respond to supply shortages in the horticulture industry and adequately protect migrant workers from exploitation. In raising these design questions we have drawn on the project's empirical research which included focus groups and interviews with growers, workers and key stakeholders, a review of agriculture visa programs in the US, Canada and New Zealand, and a report we commissioned from a team of experts in economics, migration and demography from Monash University, which provides an economic and demographic analysis of a number of South East Asian countries near Australia (the 'Monash report', Appendix B).

The countries selected for the analysis in the Monash Report are Indonesia, Malaysia, the Philippines, Sri Lanka and Vietnam. The report provides background data to inform an examination of whether the selected countries can supply a reliable and suitably experienced workforce to satisfy the labour force demands of the Australian horticulture industry and considers the factors relevant to engaging horticulture workers from these countries.

#### 1. Length of an agriculture visa

The research revealed a wide range of expectations for the length of an agriculture visa. Some growers considered that the training requirement meant that the visa should be up to 10 years in length (Darwin focus group). Others posited six months (Griffith), two years (Gingin) and five years (Katherine) as the appropriate visa length in terms of their particular labour supply challenges.

AUSVEG and the National Farmers Federation Horticulture Council have proposed a visa for a minimum of two years with the possibility of extending to four years.<sup>321</sup>

In our view, the length of any potential visa is dependent on a range of factors, including:

- the gap in the labour market the visa intended to fill;
- the relationship of the visa with existing visa pathways into horticultural work;
- whether the visa is for a single or multiple entry (see discussion below); and
- whether the visa is once off or there is the possibility of applying for further agriculture visas.

Furthermore, where growers in remote locations have ongoing labour needs that are incapable of being met by a local workforce, permanent visa pathways should be considered as part of the policy solution as it is ill-advised to use a temporary visa for an extended period like 10 years as posited in the Darwin focus group.

#### 2. Whether a visa should be multiple or single entry

The advantage of a multi-entry visa is that workers can leave the country when demand for labour drops, such as between harvests. A right to return also means that visa holders will be able to travel home if circumstances require them to do so without fear of losing the opportunity to return to Australia to continue working in horticulture.

A multi-entry visa raises a number of additional issues for consideration:

- Who pays for airfares?
- What obligations do employers have to provide minimum hours of employment?
- What strategies are required to prevent workers overstaying their visas and becoming undocumented workers in the industry at the end of their visa?

#### 3. A renewable visa, or a once-off labour contract?

Providing the opportunity for workers to renew their visas encourages workers to commit to farms and has the potential to reduce rates of absconding. For example, the circular migration created by renewable visas has been successful in keeping rates of visa overstay of Mexican workers in Canada and the US very low.<sup>322</sup> On the other hand, it is important that visa renewal is independently assessed and is not at the discretion of individual growers who can use their power over future migration outcomes as a lever for making unreasonable demands of workers.

Workers who return for work will have greater familiarity with Australia, its language, culture and laws, which will potentially decrease their vulnerability in the workplace and make them more productive workers. However, there is a concern that the longer the period of stay in Australia, the greater the sense of entitlement to remain permanently. In relation to temporary skilled workers, a report commissioned by the Australian government noted that it is desirable to have an absolute limit on the number of years a visa holder can remain in Australia.

*"Visa holders should not be permitted to live in Australia, in vulnerable circumstances, under a temporary visa which is repeatedly renewed. The temporary nature of the visa should be emphasised".<sup>323</sup>*

#### 4. Sponsorship

Sponsorship provides some advantage because it ensures that workers are provided with a minimum level of employment and pastoral care. However, as indicated above, sponsorship can also contribute to exploitation through tying workers to a relationship of unequal power which they cannot leave without risking their visa status and future work prospects.<sup>324</sup>

<sup>320</sup> Chris F. Wright, Dimitria Groutsis and Diane van den Broek, "Employer-Sponsored Temporary Labour Migration Schemes in Australia, Canada and Sweden: Enhancing Efficiency, Compromising Fairness?" (2017) 43 *Journal of Ethnic and Migration Studies* 1854.

<sup>321</sup> AUSVEG, *Agricultural Visa Briefing Document* (October 2018). We have argued elsewhere, a two year, single entry visa is likely to be the most appropriate form for an agricultural visa. See Joanna Howe and Alexander Reilly, 'Meeting Australia's Labour Needs: The Case for a New Low-Skill Work Visa' (2015) 43 *Federal Law Review* 259.

<sup>322</sup> Tanya Basok, *Canada's Temporary Migration Program: A Model Despite Flaws* (12 November 2007) Migration Policy Institute <<https://www.migrationpolicy.org/article/canadas-temporary-migration-program-model-despite-flaws>>; Jenna L Hennebery and Kerry Preibisch, 'A Model for Managed Migration? Re-Examining Best Practices in Canada's Seasonal Agricultural Worker Program' (2012) 50 *International Migration* 19.

<sup>323</sup> Barbara Deegan, 'Visa Subclass 457 Integrity Review' (Final Report, Department of Immigration and Citizenship, October 2018) 51.

<sup>324</sup> Wright, Groutsis and van den Broek, above n 306.

It may be that an untied visa is inappropriate for agricultural workers from poor South-East Asian countries with limited English language. Agricultural workers from these countries are likely to have far less capacity than WHMs to travel around the country, acclimatise to new places, and continue to work effectively. As is discussed in the Monash Report, they are likely to have little, if any, prior travel experience, no familiarity with the Australian labour market, and will face language and cultural barriers to finding employment and accommodation.

A potential alternative is to develop an industry sponsorship model, whereby the industry is responsible for applying for visas and organizing accommodation, transport and pastoral care across a range of growers. According to Canadian scholar Delphine Nakache, industry and regional-based sponsorship reduces the susceptibility of migrant workers to exploitative practices that can be created by employer sponsorship models that limit worker mobility.<sup>325</sup>

There are a number of factors to be considered in the design of an industry sponsorship model.

- Level of commitment, and sufficiency of resourcing and oversight of the industry body so that it can effectively monitor compliance with minimum conditions of employment.
- Sufficiency of resourcing of the industry body to apply for visas and coordinate the industry's needs in terms of accommodation, transport and pastoral care.
- The role of other stakeholders, including key government agencies and unions. A wide range of international research on codes of conduct and certification schemes indicate that unions and other stakeholders outside of industry can play a productive role in protecting workers from exploitation and ensuring compliance with labour standards.<sup>326</sup>
- The role of the industry body in administering the program, assigning workers to accredited employers, and keeping a register of workers.
- The responsibility of the industry body for the well-being of workers.
- The ability of workers to move between employers in designated regions.

## 5. Employer obligations

If an agriculture visa is offered to workers from South East Asian countries, workers will require a high level of employer/sponsor support. The analysis of the US, Canadian and New Zealand agriculture visa schemes discussed above suggests a number of sponsorship obligations are necessary, including:

- A contribution to the worker's costs of travel to Australia and to the worksite;
- A guaranteed minimum amount of work;
- Either providing accommodation as part of the work agreement, or providing access to good quality, reasonably priced accommodation;
- Particularly in remote locations, assisting workers to access local transport and good quality food options;
- Providing medical insurance to workers and providing ready access to health care facilities.

As such, consideration might be given to mirroring the employer responsibilities in the SWP. An additional reason for mirroring employer responsibilities in the SWP is to reduce any substitution effect between these visa programs<sup>327</sup>

## 6. Avoiding visa overstay

The risk of visa overstay is greater for a dedicated agriculture visa that does not include a circular migration component. Without the opportunity of returning for work, visa holders from South East Asian countries may choose to continue to work without a valid visa with work rights until they are discovered. The most severe punishment of deportation and no right to return may not be a deterrent for a worker who is determined to maximise the investment to travel for work.

There were 15,378 people required to leave Australia as a result of visa non-compliance in 2014–15. Of these 13.5% were Malaysian visa holders.<sup>328</sup> A problem of visa overstay among Malaysians was raised in focus groups and interviews in Wanneroo, Griffith and Robinvale. It was noted that there were many migrants from Malaysia working in horticulture and, since the only pathway for Malaysians to work in horticulture is through the subclass 462 Work and Holiday visa, which is currently capped at 100 per year, the vast majority must be undocumented. The most likely pathway of Malaysian nationals into unauthorised horticultural work is via a tourist visa.

Migrant workers who overstay their visas are particularly vulnerable to exploitative labour practices. As is discussed in Chapter 5, comments in focus groups and interviews suggested not only that there were many undocumented workers in the industry, but that they were routinely underpaid, distorting the labour market for compliant participants in the industry.

The incidence of visa overstay is an important consideration for the implementation of an agriculture visa. The effect of any agriculture visa on the incidence of undocumented migrant work in the industry is uncertain and requires further research. On the one hand, an agriculture visa might replace undocumented workers and thereby reduce the incidence of unauthorised work. On the other hand, an agriculture visa might provide a further avenue for migrant workers to work irregularly in the industry.

## 7. Protecting workers from exploitation

It is clear from the US, Canada and New Zealand visa schemes that workers from poorer developing countries are particularly vulnerable to exploitation due to the wage differential between origin and source countries, a heavy reliance on paid work once workers have made the investment to migrate for work, and language and cultural differences. A labour hire contractor in Griffith stated:

*“They [Indians] come in and they buy a farm but if they're looking for labour and even if it's Indian labour, they might not treat their workers to the best because they're coming from a different culture to us. I've never been to India but I can only imagine what it would be like when you've got a huge population of people that are willing to work for virtually nothing a day and those people are coming here and buying a farm. How are they going to be paying a person that they might even bring over from India \$22.00 an hour in casual rates when \$22.00 an hour is the equivalent of living like a king? So they're other issues that someone is going to need to sit down and look at.”*

Therefore it is imperative that any agriculture visa proposal in Australia address the potential for exploitation, particularly when considering countries with large wage disparities.

If there is a high level of exploitation of workers employed on an agriculture visa, this poses a risk to the reputation of the industry and will also pose a risk to the viability of the visa scheme.

<sup>325</sup> Delphine Nakache, 'The Canadian Temporary Foreign Worker Program: Regulations, Practices and Protection Gaps' in Luin Goldring and Patricia Landolt (eds), *Producing and Negotiating Non-Citizenship: Precarious Legal Status in Canada* (University of Toronto Press, 2013) 71.

<sup>326</sup> See, eg, Jimmy Donaghey et al, 'From Employment Relations to Consumption Relations: Balancing Labor Governance in Global Supply Chains' (2014) 53 *Human Resource Management* 229.

<sup>327</sup> Curtin et al, above n 24.

<sup>328</sup> Monash Report 33.

<sup>329</sup> See Chapter 5: The Presence of Undocumented Workers.

## 8. Welfare of workers: Maintaining a connection with relatives in the home country

If the target workers for an agriculture visa are men and women from South East Asian countries with experience in horticulture, they are likely to have young families. There are many studies which have highlighted the negative impact of temporary migration, particularly of women, on children in countries of origin.<sup>330</sup> The impact of extended absences on family and community life is an important factor in considering the appropriate length of a agriculture visa, and the opportunity for periodic return home within the terms of the visa.

## 9. The opportunity for workers to receive a reasonable financial return from their work over the course of the labour contract

Given there is a significant fixed travel cost, the longer a worker is entitled to remain in Australia to work, the greater proportion of the money that is returned to the worker.

## Selecting source countries for an agriculture visa

The survey and interview data revealed that among those growers in favour of an agriculture visa, there was a strong preference for making the visa available for workers in South East Asian countries.

There are good reasons for this preference.

1. Neighbouring South East Asian countries have strong agricultural industries and a workforce with experience in low skilled agricultural work.
2. Many growers in focus groups expressed a preference for Asian workers based on a perception that they have a strong work ethic, although this perception is not necessarily borne out by the evidence (see Chapter 11 on the SWP).
3. South East Asian countries have similar climates to many horticulture regions in Australia.
4. The proximity of South East Asian countries reduces travel costs.
5. The South East Asian region has particular geo-political significance for Australia, and labour migration pathways offer the opportunity to strengthen these relationships.

It is highly unlikely that an agriculture visa for workers from developed countries in North America and Europe would produce

many unskilled agricultural workers willing to travel to Australia for temporary work. Our research revealed a clear division in the WHM visa program between WHMs from Asia who spent the majority of their time on their WHM visa engaged in employment, and workers from Europe and North America who only worked to earn sufficient money to travel or to qualify for a visa extension.

These are also some clear risks associated with an agriculture visa targeting South East Asian countries. There is extensive literature indicating that employer preferences for particular groups of migrant workers are based less on a shortage of workers and more on a perception that perceptions that these workers are easier to control and cheaper. Anderson & Ruhs argue that factors such as productivity, reliability and flexibility are “attributes and characteristics that are related to employer control over the workforce”, and that employers may find “desirable because they suggest workers will be compliant, easy to discipline and cooperative”.<sup>331</sup>

Vietnamese growers in Western Australia expressed a strong preference for Vietnamese workers because of the cultural complementarity and the opportunity to provide work for extended family. They expressed a willingness to take on a high level of pastoral care for these workers if the opportunity was presented for their employment.<sup>332</sup> However, this preference is itself potentially problematic because of the risk of co-ethnic exploitation; and the non-discriminatory nature of Australian immigration policy. Employers are not and should not be able to choose where their workers come from.<sup>333</sup>

The Monash Report suggests that an agriculture visa could provide a reliable supply of highly productive workers to the horticulture industry. This view of the potential for obtaining workers through international migration was echoed in focus groups. A Griffith grower stated:

*“There’s a massive population out there and people want to come in and be able to do that. It’s huge. Let’s tap into that. Let’s not try and upskill people here in this area to get them to be able to try GPS tractors, to get them to want to be involved in an industry, to get them all skilled up and then put them in the field chipping weeds.”*

The Monash report sets out a number of factors that are relevant to determining appropriate source countries for an agriculture visa.

## a. Agricultural workforce

As is evident from **Table 12.2**, the overall populations of any one of the comparator countries is considerably greater than the combined population of countries in the Seasonal Worker Program; namely, the

**TABLE 12.2 TOTAL POPULATION 2018**

Population	millions
Indonesia	267
Philippines	106
Vietnam	95
Malaysia	32
Sri Lanka	21
Australia	25
Pacific Islands (in SWP)	2.3
Papua New Guinea	8.4
East Timor	1.3

Pacific Island nations of Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu, as well as, Papua New Guinea and Timor Leste.

All comparator countries have significant agricultural workforces. Agriculture contributed between 8 and 18% to GDP in 2017<sup>334</sup> compared with 3% in Australia. All five countries produce considerable quantities of fruit and vegetables. There is little doubt that there would be sufficient agricultural workers in any one of the comparator countries to service the needs of low skilled agricultural work in Australia. It would therefore be possible to address labour supply challenges in Australian horticulture through bilateral agreements with one or more of these nations, or other nations in the South East Asia region.

## b. Worker experience in horticultural work

One of the attractions of an agriculture visa is that it targets workers with existing experience in agricultural work. There was no consensus in the research on the importance of prior experience for low skilled horticulture work. Some growers said that prior experience was not a necessary precondition for low-skilled work, and that willingness to do the work was a more important factor, while other growers lamented the amount of unproductive time training workers.

<sup>330</sup> Maruja M B Asis, ‘Living with Migration: Experiences of Left-Behind Children in the Philippines’ (2006) 2 *Asian Population Studies* 45; Swarnalatha Ukwatta, *Economic and Social Impacts of the Migration of Sri Lankan Transnational Domestic Workers on Families and Children left Behind* (PhD Thesis, the University of Adelaide, 2010).

<sup>331</sup> Martin Ruhs and Bridget Anderson (eds), *Who Needs Migrant Workers? Labour Shortages, Immigration, and Public Policy* (Oxford University Press, 2010).

<sup>332</sup> Growers focus group (Wanneroo).

<sup>333</sup> Preibisch, above n 179.

<sup>334</sup> Monash Report 13.

In focus groups, it was often stated that horticulture work is physically demanding, and a common complaint was that workers, local and migrant, did not have adequate capabilities and experience with this type of work. This lack of experience affected workers' productivity and their willingness to remain in the job. Many growers emphasised the importance of workers having experience of physical work in the past, regardless of whether that work involved the precise skills required in their farm operation.<sup>335</sup>

The Monash report outlines some of the major crops produced in the comparator countries.<sup>336</sup> It also uses data on the value added per worker to the national economy as an indirect indicator of the experience of agricultural workers. Data from the *Oxford Martin Programme on Global Development* indicate the contribution of farm workers in Australia to be \$55,934, Malaysia to be \$19,231 and Indonesia, the Philippines, Sri Lanka and Vietnam to range from \$813 to \$2,716.<sup>337</sup> It is important to note that there are a range of country specific factors that may influence these figures, such as GDP per capita and levels of technology utilisation.

### c. Health and Well-Being and relative GDP

All five selected countries also have considerably lower health and GDP indices than Australia.<sup>338</sup> It is important to note that these figures are for the population as a whole and do not distinguish between urban and rural populations. In all five countries, agricultural workers are likely to sit well below the average results on all indices.

Of the five source countries, Malaysia stands out as having indices closest to Australia. In relation to GDP per capita, in 2016, Indonesia, the Philippines, Sri Lanka and Vietnam sat between \$5,000 and \$12,000, compared with Malaysia on \$25,000 and Australia with just under \$45,000.

Indices of health and well-being and GDP are relevant to the suitability of workers for an agriculture visa. For example, the Monash report suggests that workers from countries with higher health and well-being are likely to be more resilient to the challenges of labour migration, such as living and working in a foreign country with different cultures and physical demands.



### d. Comparative wage rates

Differential wage rates between origin and receiving countries create the incentive for workers to migrate for work and may assist in creating a reliable supply of migrant workers. With very high minimum wage levels by international standards,<sup>339</sup> Australia is clearly in a strong position to attract migrant workers for this reason.

However, a *significant* differential in wages between sending and receiving countries means workers are more at risk of working for wages and conditions below legal minimums.<sup>340</sup> Furthermore, as indicated above, workers from poorer countries are likely to have a greater risk of absconding and working undocumented at the end of the term of their visa.

As would be expected comparative wage rates conform closely to GDP per capita.<sup>341</sup>

**TABLE 12.3 INTERNATIONAL LABOUR ORGANIZATION DATA FROM 2018**

Country	Monthly wage levels in US Dollars
Malaysia	\$594 in 2016
Phillipines	\$257 in 2016
Vietnam	\$250 in 2016
Indonesia	\$136 in 2015
Sri Lanka	\$123 in 2010

In relation to worker exploitation and visa overstaying, the data presented here suggests that workers from Malaysia are likely to have fewer risk factors than workers from the other comparator countries. However, it should be noted that data on visa overstay rates of Malaysians discussed above, and

<sup>335</sup> Grower (Griffith)

<sup>336</sup> Monash Report 16–17.

<sup>337</sup> Ibid 27. Note, these figures are likely distorted by currency exchange rates, differential labour/production costs and other cost differentials that need to be controlled for.

<sup>338</sup> Monash Report.

<sup>339</sup> Organisation for Economic Cooperation and Development, *Real Minimum Wages* <<https://stats.oecd.org/Index.aspx?DataSetCode=RMW>>.

<sup>340</sup> Piore, above n 190. Roger Waldinger and Michael I Lichter, *How the Other Half Works: Immigration and the Social Organization of Labor* (University of California Press, 2003).

<sup>341</sup> Ibid 26.

comments in focus groups and interviews on the role played by Malaysian workers in Australian horticulture at present suggest that they remain highly vulnerable workers in the industry.

#### ***e. English language proficiency and education***

English language proficiency is important, among other things, for the safety of workers, for their capacity to raise issues with their employers, and for their ability to live effectively in Australia.

The Monash report indicates that education levels of the five comparator countries are considerably lower than Australia, and this is particularly so for people in rural areas and engaged in horticulture work. Malaysia and Sri Lanka have the highest level of education attainment nationally of the comparator countries. In relation to English language proficiency, an English Proficiency Index, published by *Education First*, rated Malaysia and the Philippines as ‘high’, Vietnam and Indonesia as ‘moderate’ and Sri Lanka as ‘low’. Breaking down this national level data, English language proficiency among those working in the ‘food, beverages and tobacco industry’ were rated as low.

The Monash Report concludes, “Overall, the prospect of recruiting persons with functional workplace English from Asia, particularly from horticultural contexts which are often regional and less developed, does not appear promising.”<sup>342</sup>

#### ***f. Labour export***

All of the comparator countries have experience with temporary emigration of their nationals for the purpose of work. Since 2004 Indonesia has only permitted the temporary migration of workers under bilateral agreements that place obligations on recruiters and overseas employers. Sri Lanka has similar practices in place.<sup>343</sup>

Of all the comparator countries, the Philippines have the most experience in the export of labour.<sup>344</sup> As the Monash report states, “Since the 1970s, labour export has been a deliberate Philippines’ government strategy aimed at lowering unemployment and increasing remittances. The country now has an intricate system of government organisations that recruit, train, market, protect and manage Filipino labour export.”

There are well developed systems for assisting Filipino workers to prepare for work overseas and to provide assistance to workers while they are abroad.<sup>345</sup> This experience

developed over nearly 50 years may make the Philippines a particularly apt partner to enter a bilateral arrangement for the temporary migration of agricultural workers. The Monash report includes an Appendix of international labour agreements between the Philippines and other countries.

#### ***g. Climate***

A high proportion of horticulture labour occurs outdoors with direct exposure to sometimes extreme weather patterns. In interviews, growers attested to the importance of workers having previous experience of the weather conditions they would face in horticulture work in Australia.

South East Asian countries all have humid, hot equatorial climates.<sup>346</sup> This makes them more ideally suited to agricultural work in Northern Australia. The climate in South Australia, Victoria, Western Australia and Tasmania during winter months may be challenging for workers from these countries.

## **Conclusion**

The Monash Report suggests that South East Asian countries have an abundant pool of labour with horticulture experience for an agriculture visa scheme. However, the high wage differentials and poor English language ability means they will constitute a vulnerable workforce, subject to exploitation, in Australia. The attributes of South East Asian workers mean that an agriculture visa is likely to require a high level of worker-protective elements including mandatory worker induction involving unions and the Fair Work Ombudsman and a rigorous application process for approving employers who wish to access workers under the scheme, as well as industry support for reporting non-compliant growers and ensuring compliance with the program requirements.

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<sup>342</sup> Ibid 19.

<sup>343</sup> Ibid 32.

<sup>344</sup> Ibid 30–2.

<sup>345</sup> Ibid 31.

<sup>346</sup> Monash Report, Table 13.2.



# **PART 4: DEVELOPING SUSTAINABLE SOLUTIONS**

# CHAPTER THIRTEEN

## THE NEW ZEALAND APPROACH

This Chapter considers the approach of New Zealand to addressing labour supply challenges in the horticulture industry through temporary labour migration.

As identified in Chapter 12, NZ's Recognised Seasonal Employer scheme (RSE) is generally regarded as an example of international best practice. It is also an appropriate comparison for Australia given that both countries are similarly geographically located and both have incentives to encourage WHMs into horticulture operating alongside dedicated seasonal visas.

NZ introduced its RSE in April 2007. There are a number of key attributes in the design and implementation of the RSE that have made it more successful than the SWP, both in terms of its responsiveness to employer needs and its ability to ensure compliance with labour standards and RSE program requirements.

NZ growers have overwhelmingly supported the RSE as a source of labour supply, when compared to grower support of SWP in Australia. The ratio of Seasonal Workers to Working Holiday Makers (WHMs) is 1:2 in NZ, compared with 1:10 in Australia.<sup>347</sup>

NZ's RSE is also viewed very positively by growers with RSE status. In a 2018 survey of RSE employers, 98% believed that the benefits of participating in the scheme outweighed the costs, with 90% 'strongly agreeing' that this was the case.<sup>348</sup> In this same survey, 92% of RSE employers expanded their area of cultivation in the past 12 months, with 86% reporting that participation in the RSE was a contributing factor in the expansion because of the scheme's ability to improve labour supply as well as present and future productivity.<sup>349</sup>

This Chapter seeks to identify key reasons for the success of the RSE. It draws on media reports, scholarly literature, NZ government and industry reports, and interviews with key actors involved in the establishment and implementation of the RSE.

### Findings

**TABLE 13.1 RSE – SUMMARY OF FINDINGS**

<b>Finding #1</b>	The RSE has clear objectives, which communicate that the purpose of the scheme is to meet employer needs, rather than as a development program for the Pacific.
<b>Finding #2</b>	There is a stronger emphasis on coordinating efforts at both national and regional levels to improve NZ's horticulture labour supply involving key partnerships between government, industry and unions.
<b>Finding #3</b>	The NZ horticulture industry has a strong, united voice on key aspects of labour supply policy.
<b>Finding #4</b>	NZ industry associations have provided strong leadership on the need for all growers to comply with labour standards and have engaged constructively with unions and other stakeholders.
<b>Finding #5</b>	In NZ there has been, and continues to be, a greater collective emphasis on eliminating unregulated forms of horticulture labour.
<b>Finding #6</b>	In NZ there is a greater emphasis on supplying export markets and being accredited according to an auditable standard which requires compliance with labour standards.
<b>Finding #7</b>	NZ farms are far less reliant on WHMs as a source of horticulture labour.
<b>Finding #8</b>	In NZ the RSE provides for greater flexibility which allows better engagement by small growers or growers with crops with short or stop-start seasons.
<b>Finding #9</b>	In NZ the government takes a proactive role in managing the RSE scheme in a more responsive, transparent and streamlined way as compared to Australia's SWP.
<b>Finding #10</b>	In NZ the government effectively gathers horticulture workforce data to set RSE caps and develop policy settings around horticulture labour supply.
<b>Finding #11</b>	In NZ the RSE sits within a broader national strategy to address horticulture labour supply challenges, a key component of which is to develop a local horticulture workforce.
<b>Finding #12</b>	In NZ the design of the labour market testing requirement in the RSE is more effective in assessing labour market gaps, than the SWP in Australia.

<sup>347</sup> Curtain et al, above n 24.

<sup>348</sup> Maguire and Johnson, above n 301, 9.

<sup>349</sup> Ibid 39.



**Finding #1: The RSE has clear objectives, which communicate that the purpose of the scheme is to meet employer needs, rather than as a development program for the Pacific.**

The objectives of the RSE are to enable growers to address labour shortages and to improve the sustainability and productivity of labour supply for the horticulture industry. The primary objectives of the RSE are to:

*“Allow horticulture and viticulture businesses to supplement their New Zealand workforce with non-New Zealand citizen or resident workers when labour demand exceeds the available New Zealand workforce and employers have made reasonable attempts to train and recruit New Zealand citizens and residents.”*

*“Promote best practice in the horticulture and viticulture industries to support economic growth and productivity of the industry as a whole, while ensuring that the employment*

*conditions of both New Zealand and non-New Zealand citizen or resident workers are protected and supported.”*

The SWP also has two objectives. The implementation arrangements for the SWP which took effect on 1 July 2012 clarify that the SWP aims to

*contribute to economic development in partner countries by providing employment opportunities, remittances and opportunities for up-skilling and in doing so the SWP will also provide benefits to the Australian economy and to Australian employers who can demonstrate that they cannot source suitable Australian labour.<sup>350</sup>*

The drafting of the Seasonal Worker Program’s (SWP) objectives makes it clear that meeting labour supply challenges is subsidiary to the SWP’s primary objective of contributing to the economic development of partner countries.

The drafting of these two different objectives has a bearing on the design and implementation of the RSE and SWP in both countries.

**STAKEHOLDER PERSPECTIVES**

“One of the key things about RSE is that it was industry-led from day one. They came to government to say we need help, we’ve got fruit rotting on the trees, we’ve got a major problem with illegal workers. The industry were really keen to see RSE succeed and they knew from the start that if something bad happens or an RSE employer isn’t up to standard, then the viability of the whole scheme is put at risk. They’re very keen on helping those employers get up to standard because they don’t want to put anything at risk to jeopardise the scheme. It’s an employer-driven scheme.”

**Government official**

“RSE is employer-driven, it’s not an aid program. It has an aid component and as growers we’re extremely proud of what we’ve been able to do with our staff in the Pacific. We feel like we’ve changed lives. And we talk about that a lot. Our program is market-driven so employers will fund accommodation development, particularly larger employers. We’re quite resourceful as employers so we’ll find solutions. The scheme is so successful for us as an industry, that we’ll do whatever we have to do to make the scheme succeed and survive.”

**Industry association official**

<sup>350</sup> Joint Standing Committee on Migration, above n 25, Appendix D, 1.

## STAKEHOLDER PERSPECTIVES

“Collaboration was part of the design of the RSE system, 11 years ago. It is one of the fundamental differences between SWP and RSE. One, we [government] have a close relationship with the employers. Two, employers have a strong relationship with the Pacific. The whole scheme is based on relationships. NZ has a strong Pacific orientation. We also have, and I don’t think this can be underestimated, there are quite a few people in the NZ scheme who have been here since the beginning. It takes time to build up the relationships but that’s what we’ve done.... We’ve had no middle man in NZ in between growers and government.”

**Government official**

“A National Steering Group looks at policy and works out how things may change. The other key part of the RSE governance is that there’s 12 horticulture/viticulture regions and each of them has its own governance group and a chair. And this group works with MSD to have labour modelling done by region to give an idea of supply and demand by region, so we look at unemployed numbers, worker demand by employers, housing supply and social housing. This is managed regionally and then pushed up to the national level. It all works very well.”

**Industry Association official**

“Processing of applications can take up to six months the first time as a new RSE, you then get accreditation for 2 years, and then every 3 years you get a renewal. It’s book work, but it’s a lot of copy and paste. We’re doing a big review now on the Steering Group as to make the process work even better. We as industry recognise it’s a complicated process but it is, what it is. I hear grumbings it is taking too long but we as industry value this program so much that we’ll put up with it. And just lately they’ve put a new manager in, they’ve got new staff, so the process is working even better. So you won’t hear much about the slowness of the process. Of course employers would like to put in an application in today and get workers tomorrow, it will never work like that. And we explain that to growers.”

**Industry association official**

### **Finding #2: There is a stronger emphasis on coordinating efforts to improve horticulture labour supply at both national and regional levels, involving key partnerships between government, industry and unions.**

Prior to the RSE’s inception, New Zealand established a National Horticulture and Viticulture Steering Group (NHVSG), which includes representatives from government, industry and unions.

Employer members of this group include: Horticulture New Zealand, Wine New Zealand, Apples and Pears New Zealand and New Zealand Kiwifruit Growers. From government, both the Ministry of Social Development (MSD) and Ministry of Business, Innovation and Employment (MBIE) are on the national Steering Group.

This national Steering Group is supported by 12 regional Labour Governance Groups in each of the key horticulture growing regions which help to address regional variation. On each regional Labour Governance Group, there are industry and union representatives from the local region and an MBIE Relationship Manager and MSD representative. The regional groups provide a recommendation to the national Steering Group as to the cap for the RSE taking into account regional labour supply data and input about the management of the RSE in that regions.

In the early 2000s, the NHVSG was pivotal to establishing a Medium-Long-Term Horticulture and Viticulture Seasonal Labour Strategy which was then adopted by the New Zealand Department of

Labour and Horticulture NZ. The RSE was one component of this Strategy, which included plans to address the problem of undocumented workers, unregulated labour contractors and the need to encourage more local workers into the industry.<sup>351</sup>

### **Finding #3: The NZ horticulture industry has a strong, united voice on key aspects of labour supply policy.**

Horticulture NZ was established in the early 2000s as a peak body providing a national and coordinated voice for product, sector, regional and district groups. It has had a key role in promoting the RSE.

Horticulture NZ employs a full-time staff member with primary responsibility for promoting the RSE amongst employers and for assisting them to access the scheme. Horticulture NZ also coordinates a national RSE Conference, which in 2018 attracted over 200 attendees, including key representatives from government, other stakeholders and growers. Horticulture NZ’s leadership in promoting discussion and dialogue between all stakeholders within the RSE has been critical to the scheme’s success.

As indicated in the quotes above, the incentive to implement and ensure the success of the RSE emerged from a collective desire to eradicate undocumented workers and unscrupulous growers. The industry knew it had to change direction, and the RSE became the vehicle by which that change could happen.

By contrast, the Australian horticulture industry has been fragmented and its support of the SWP has been less unified and vocal. Although the National Farmers

Federation (NFF) is the national peak body, it represents the entire agriculture industry, whose interests are not necessarily the same as that of horticulture. Up until 2018, the national vegetable lobby, AusVeg, had not contributed to national policy on the issue of horticulture labour supply, although this has since changed with the appointment of a new National Policy Officer. A third national industry group, Voice of Horticulture, has also only had a limited presence in representing the horticulture industry.

More recently, however, this fragmentation has been addressed through the coordination of State and Territory horticulture industry groups as part of a new NFF Horticulture Council launched in February 2018 which has met regularly and been developing a united industry voice on the issue of horticulture labour supply.

Thus far, the NFF Horticulture Council has been predominantly focused on lobbying for visa reform, and in particular, for a new Agriculture Visa. To date, the Australian horticulture industry has been less active than its NZ counterpart in developing a strong, national policy framework for addressing the problems of undocumented workers, unregulated labour contractors and a declining local workforce to complement its agenda for visa reform.

The development of the Fair Farms certification scheme, developed at the State level by Queensland industry association, Growcom, represents a positive step toward industry-led improvements and is a welcome development in fostering cultural change within the industry in terms of a greater emphasis upon compliance with labour standards.

<sup>351</sup> For more on this, see Curtain, above n 51.

## STAKEHOLDER PERSPECTIVES

“There’s a lot of pressure from other employers, no one wants to bring the scheme ruined or brought into dispute. Industry leadership has been very important in making RSE employers the most compliant of any group of employers in any industry in New Zealand. They have to do pastoral care, they have to do accommodation...there’s a lot of responsibility that comes with the rights [to access Pacific workers under the RSE] and industry’s been very supportive of those extra responsibilities.”

**Government official**

“RSE’s a great scheme. It’s win-win-win. If you look at an apple, and realise that in a kilo of fruit there’s 50c of labour which has been paid to a Pacific worker. There’s huge brand value there. And it’s a very good scheme in the way it benefits people.”

**Industry association official**

“In NZ we have 1800 Asian workers as part of the RSE. One of the negotiation points with the RSE was that growers had already invested in requiring from Asia, so they were allowed a limited pathway to Asia. The Asian workers are very good in the packhouses. In the fields for the heavy lifting areas, we find Pacific Islanders very good. We’ve got no issues with Pacific Islanders. It makes sense – look at our place in the world – our backyard is the Pacific, so we said to growers let’s just shut up and get on with it. **The leadership of the industry supported that and led the way.** There’s no issue with productivity. The Pacific Islanders are a delight to have. There’s been a strong association with the Pacific in New Zealand for a very long term.”

**Industry association official**

“Often we try to help [dodgy employers] but if they don’t listen, we’ll get the labour inspectorate in and they’ll throw the book at them.”

**Industry association official**

“The policy driver was all about changing the behaviour of our industry. And the carrot was RSE. We estimated that before we started RSE, out of 50,000 seasonal positions, we had an estimated 17,000 illegal workers, they were just getting exploited all the time. So we had to change our industry because government was going to throw the book at our industry. So we had to change our industry as we would have been unviable without those illegal workers. **So we understood we needed to change our industry so we all came together.**”

**Industry association official**

“In the early years when the Labor government developed the scheme, we had the Council of Trade Unions at the table when we developed the scheme so they input into how we designed the policy. Since then they’ve always been at the National Steering Group and that’s very important because if the regional groups have problems they kick them up to the national group. The union at the time felt that they were comfortable with what we were doing as government and industry. We now have a new government who is more union-focused, so the unions are thinking we can do better, so they are now trying to get representation amongst our RSE workers. That’s not a problem. We’ll be seeing the union a bit more. There’s always cases when RSE workers don’t speak up when they should. So they could benefit from a union. This will help growers not to take it for granted that they’re doing it right. So the unions will help with that. Another set of eyes will help us work out that things are not a 100%. We’re not scared of anyone coming to see what we’re doing.”

**Industry association official**

“Industry and unions have never been bedfellows. But I believe in the RSE we are doing the right thing by our workers. And if we’re not doing the right thing about our workers, we can’t afford to have us as an industry ruin this scheme because it is too valuable, it’s too good. Employers will say Jonny So-So is an RSE, he shouldn’t be an RSE because he’s so dodgy, so we should chuck them out. We work with the unions on that.”

**Industry association official**

### **Finding #4: NZ industry associations have provided strong leadership on the need for all growers to comply with labour standards and have engaged constructively with unions.**

Horticulture NZ has also shown leadership on a number of key issues related to horticulture labour supply, including the industry’s need to eliminate non-compliant employment practices. The CEO of Horticulture NZ was quoted in 2018 as stating:<sup>352</sup>

*“We have a lot of employers in horticulture that are not playing the game as they should. They will pull us all down. They could put the Recognised Seasonal Employer Scheme down. We have to unite to deal with them.”*

Horticulture NZ, therefore, encourages growers to report other growers they feel would benefit from a visit by Horticulture NZ’s Seasonal Labour Coordinator for education on good employment practice.<sup>353</sup> Interviews with Horticulture NZ officials suggested that they were prepared to report growers with consistently non-compliant labour practices to the regulator and to work with unions to address non-compliance in the industry. Horticulture NZ officials reported to the research team that non-compliance by some growers threatened the industry’s social licence and its ability to sponsor Pacific workers through the RSE.

### **Finding #5: In NZ there is greater emphasis on eliminating unregulated forms of horticulture labour.**

Alongside the introduction of the RSE, and with strong support from within the industry, the government established a national contractor registration scheme in 2008 for new and existing contractors for seasonal labour.<sup>354</sup> Prior to the introduction of the RSE, the NZ government increased its efforts to detect and deport undocumented workers employed in the horticulture industry. This meant that NZ growers did not have access to a cheaper, unregulated labour source.

<sup>352</sup> Heather Chalmers, *Horticulture Employers Must Clean Up Their Act to Address its Worker Shortage* (26 July 2018) <<https://www.stuff.co.nz/business/farming/105745454/horticulture-employers-must-clean-up-their-act-to-address-its-worker-shortage>>.

<sup>353</sup> Ibid.

<sup>354</sup> Charlotte Elisabeth Bedford, *Picking Winners? New Zealand’s Recognised Seasonal Employer (RSE) Policy and its Impact on Employers, Pacific Workers and Their Island – Based Communities* (PhD Thesis, University of Waikato, 2013).

## STAKEHOLDER PERSPECTIVES

“Reports of exploitation are not unheard of, but it is very rare. If we do get reports it’s at the lowest end of the scale. And that’s because RSE status is extremely valuable. RSE workers are very productive and highly valuable to business. So you have to be a real idiot to bugger around that.”

**Government official**

“RSE employers never have illegal workers in their workforce. MBIE’s Immigration Compliance team monitors RSE employers very closely. RSE employers are asked to set up a system of pre-employment checks and demonstrate that they are using Visa View. Because employers know we have compliance officers and they are regularly monitored, they don’t want to do anything jeopardise their RSE status. Just the thought of having their RSE status rescinded means they don’t want to go near illegal workers.”

**Immigration Compliance officer**

“Most of the illegals come through the blacked out white vans with a cell phone and no address. The labour inspectorate has been trying really hard to flush them out. It’s not easy. But as an industry body we’ve been working really hard to work with our members to make sure they know the warning signs that these are illegal. And it’s education to show why members why it is wrong to use illegal people. And it’s about giving them a tool, the RSE to make sure they don’t have to use illegal workers because they have a legal source of workers.”

**Industry official**

“Before the RSE came in 90% of the contractors were crooks, with the RSE coming in, it has improved, but there’s still a certain amount of things going on, such as excessive deductions for rent, linen, and petrol but it is much better than it was. Most of ours here are getting at least the minimum wage which is \$16.50 and going up another dollar in April to \$17.50 and Labour’s promised to put it up to \$20 by the end of their first time. Maybe some of the contractors outside of the RSE are paying them bugger all, but within the RSE, I don’t think so, at least the minimum wage is paid.”

**Union official**

The NZ government’s Ministry of Social Development (MSD) has also funded and developed a Contractor ID Scheme which developed a worker ID card that proves a worker is eligible for work in NZ and has a tax file number. Growers can ask to see worker’s ID cards as proof of eligibility to work on site. This scheme has given growers the power to verify that their workers are legally entitled to work in NZ and thus also increases their obligation to do so.

Crucially, growers can lose their RSE status if they engage labour contractors who are non-compliant with labour standards or are unregistered. Growers and contractors who are expelled from the RSE are subsequently ‘blacklisted’ for a period of months or years, and their names are published on a government website. As the quotes below indicate, while the system is not foolproof, greater regulation has reduced the prevalence of labour exploitation and grower undercutting.

### **Finding #6: In NZ there is emphasis on supplying export markets and being accredited according to an auditable standard which requires compliance with labour standards.**

NZ exports 61% of its horticulture production to 124 countries.<sup>355</sup> This has created pressure on all NZ growers to cease engaging undocumented workers in the industry and to improve compliance with labour standards.

Also, the European Code of Practice for growers who export to Europe, called ‘GLOBALG.A.P’ and discussed briefly in

Chapter 2, also provides another layer of regulation around the industry with 1,516 accredited providers in NZ, compared with 153 in Australia.<sup>356</sup>

Horticulture NZ actively encourages growers to become accredited with GLOBALG.A.P, noting in its annual report that there was a 6% increase in the number of growers with NZGAP certificates between 2017 and 2018.<sup>357</sup>

As part of GLOBALG.A.P there is a ‘Good Risk-based Agricultural Social Practices’ (GRASP) tool which requires growers to participate in a third party audit of its workforce.

This audit is underpinned by GRASP’s 11-point checklist which involves verification of employer records such as timesheets and payslips, a site visit by an independent auditor, questions to the Company Manager, questions to the person responsible for implementing GRASP and questions to the employees’ representative. This last aspect of the auditing process is important for ensuring that workers are encouraged to have a representative and the representative is consulted to verify that employer claims are correct.

GRASP covers all workers on the farm, including those supplied by a labour contractor. Growers that use labour contractors are required to provide evidence that the contractor’s employment practices comply with GRASP.

The emphasis on an independent accreditation scheme such as this for growers in NZ, which involves a comprehensive third party audit including unions, has been a strong incentive to raise compliance with labour standards across the NZ horticulture industry.

## STAKEHOLDER PERSPECTIVES

“We’re making it compulsory for a GlobalGAP certified business to make sure they adhere to all the controls on contractors throughout their business. If that commercial reality means that contractor fails and he is working for a number of GlobalGAP businesses that will be catastrophic for their businesses. This makes it compelling for them to behave differently. This goes far deeper than the regulatory scheme.”

**Industry association official**

### **Finding #7: In NZ there is far less reliance on WHMs as a source of horticulture labour.**

WHMs in NZ can only extend their visa for three months (rather than another 24 months as is the case in Australia) if they complete a three-month period of work in horticulture or viticulture. This has meant that there are far fewer WHMs working in the NZ horticulture industry than there are in Australia. Thus, NZ’s RSE *does not* compete as strongly with a less regulated source of available labour.

It is important to note that Horticulture NZ played a central role in encouraging growers to move away from their dependence of WHMs. Unlike in Australia, horticulture industry associations in NZ have not lobbied for further incentives for WHMs to work in horticulture and have instead concentrated

<sup>355</sup> Horticulture New Zealand, *Annual Report 2017* (2017) 1.

<sup>356</sup> Curtain et al, above n 24, 472.

<sup>357</sup> Horticulture New Zealand, *Annual Report 2018* (2018) 16.

## STAKEHOLDER PERSPECTIVES

“In Australia, employers are so protective of being able to access backpackers. In NZ if you go to heartland RSE employers they say we don’t want to see a backpacker ever again. Because you train them and that training is lost after 3 months. These Pacific Islanders are the Michael Jordan’s of horticulture, they’re that productive because they can come back 7–8 years in a row, and they are the leading lights of our industry. The RSE worker has the choice to come back and the RSE employer has the choice to ask them to come back. And they have outstanding productivity. RSE status is so valuable now.”

**Industry association official**

their advocacy efforts on encouraging greater use of the RSE and facilitating reform of the scheme in the medium and long term interests of growers and workers in the industry.

Curtain et al estimate the composition of the horticulture workforce in NZ to be far more reliant on local workers (55%) and RSE workers (16%) rather than WHMs and other temporary migrants (29%). In contrast, they estimate that in Australia, the composition of the horticulture workforce is WHMs and other temporary migrants (60%), local workers (32%) and SWP workers (8%).<sup>358</sup>

### **Finding #8: In NZ there is greater flexibility in the design of the RSE which allows greater engagement by small growers and growers of crops with short seasons.**

A key aspect of the RSE scheme is that it allows multiple growers to share Seasonal Workers through two mechanisms.

The first way this occurs is through the facility known as a ‘Joint Agreement to Recruit’ (ATR). Many smaller and medium-sized growers have successfully used ATRs to access RSE workers. Growers apply at the same time for an ATR and they can share the costs associated with the scheme such as the contribution to up-front costs like airfares. It also means that they can provide RSE workers with a longer and more consistent term of employment.

The second facility that assists small and medium-sized growers to access the RSE

## STAKEHOLDER PERSPECTIVES

“Growers, intending on ATR, will do commercial screening of each other to make sure they’re not joining up with a dodgy employer. Because the RSE cap is tight, there’s more pressure on growers to collaborate to share RSE workers. This is because RSE workers can only stay for 7 months, and some growers only need RSE workers for 3 months so it makes sense to share RSE workers amongst a few growers rather than one grower bearing all the costs. There always has to be a tension there so there’s pressure on growers to use New Zealanders.”

**Industry association official**

“A joint ATR is when 2 or more employers will share the workers. Instead of an RSE worker working for one employer for 3 months; they’ll work for employer A in Hawkes Bay for 3 months and then go to Marlborough and work for employer B for another 3 months. The worker can then maximise their time out of the 7 months. It’s a way of maximising their time in New Zealand. For employers it’s a way of sharing costs – they can share the cost of half of the return airfare. Both employers have to put in an ATR application at the same time; they are assessed and approved at the same time.”

**Government official**

“We’ve got a tool called the joint ATR. And when the cap came under pressure, we used the ATR so that the RSE workers could move between employers. It’s all pre-approved beforehand, very complicated but we do make it work. So one worker serves the cherry industry, the apple industry and the wine industry. We became quite clever about this through developing sharing of workers. And workers are quite keen to do this as they can earn more. We went from 8000 workers to 16000 workers through sharing. It gave employers who only have short seasons access to the scheme and it works extremely well.”

**Industry association official**

is the Grower Cooperatives. There are two cooperatives that exist, one in the North and one in the South Island. One of these cooperatives has 56 grower members. These Cooperatives facilitate labour and cost sharing amongst growers operating within the same region and provide an important mechanism to respond to regional labour demands while not requiring growers in the cooperative to go through the process of applying for RSE status. Instead, the Cooperative takes on the responsibility of policing the growers within it to make sure they comply with NZ labour standards and RSE program requirements. In addition to the regular audits by Immigration Compliance officers and the Labour Inspectorate, the Cooperatives also do audits of members.

### **Finding #9: The RSE scheme is managed in a more proactive, responsive, transparent and streamlined way by government than Australia’s SWP.**

Curtain et al argue that the government agencies involved in the establishment and implementation of the RSE have been “better coordinated” than those involved in the SWP in Australia.<sup>359</sup>

The RSE is administered by the MBIE, which has responsibility for immigration matters and approving and issuing visas. According to Curtain et al, this location of the program administrator for the RSE within MBIE “means there is a strong focus on the needs of employers” rather than in Australia where DJSB acts as a “gatekeeper” to the labour market, ensuring preferential access to local workers and according to Curtain et al has done little to promote industry and grower engagement with the SWP.<sup>360</sup>

Evidence from the interviews suggests that MBIE works effectively and collaboratively with industry and unions.

MBIE has sole responsibility for assessing and approving applications. MBIE’s website provides clear information on the application process and lists its ‘RSE Relationship Managers’ who are responsible for guiding growers through the process and for assisting growers once they earn RSE-status.

Further, there is an annual Recognised Seasonal Employers Survey commissioned by MBIE and prepared by ResearchNZ. This is an important component of the RSE’s ability to be responsive to the needs and feedback of growers and the program overall. The 2018 survey was the tenth iteration of

<sup>358</sup> Curtain et al, above n 24, 466.

<sup>359</sup> Ibid 475.

<sup>360</sup> Ibid.

## STAKEHOLDER PERSPECTIVES

“We act as a go-between and growers and growers, government and growers, and we work closely with other government departments (including MSD to ensure compliance with New Zealanders first); provide advice on pastoral care, work with labour inspectors, show Pacific government officials around the region and introduce them to employers, help growers to join up and form cooperatives, to start ATARs. Collaboration was part of the system, 11 years ago. It is one of the fundamental differences between SWP and RSE, one, government has a close relationship with the employers, two, employers have a strong relationship with the Pacific. The whole scheme is based on relationships – relationship between government and industry, relationship between us and the Pacific.”

### Government official

“Some of the RSE contractors are on final warnings, we work in close proximity with the Department of Labour and now Immigration are working really closely with our union as well. It’s working really well — they’re working in with us now.”

### Union official

the survey, which is conducted online and in 2018 had a sample size of 220 horticulture and viticulture employers.

The RSE Survey asks growers to detail their experience of the RSE, what could be improved and how it has affected their business practice. Importantly, and as indicated in the textbox below, the survey also asks growers to assess the performance of MBIE’s RSE Relationship Managers. The role of this position is to effectively manage and support the horticulture and viticulture sectors in the regions, whilst protecting the integrity of the policy and ensuring New Zealanders get first access to jobs.<sup>361</sup>

### Finding #10: In NZ there is a greater emphasis on gathering horticulture workforce data as a basis for setting RSE caps and developing policy settings around horticulture labour supply.

The NHVSG recognised the need for projecting evidence-based assessments of the horticulture and viticulture industry’s labour supply needs. It commissioned an

## RESULTS FROM THE 2018 MBIE SURVEY OF RSE EMPLOYERS

91% of RSEs agreed or strongly agreed with the statement that their RSE Relationship Manager has a good understanding of the employer’s business.

94% of RSEs agreed or strongly agreed with the statement that their RSE Relationship Manager responds to their enquiries in an acceptable timeframe.

85% of RSEs agreed or strongly agreed with the statement that their RSE Relationship Manager provides them with consistent information and advice.

These results indicate that MBIE’s role in administering the RSE is largely viewed positively by growers.

### Source:

James Maguire and Mark Johnson, *Recognised Seasonal Employers Survey – 2018* (Working Report, Research New Zealand, June 2018)

independent research project to develop a horticulture industry labour demand and supply model and a report with the objective of quantifying the known labour shortage within the horticulture and viticulture industry, with a view to informing the RSE cap.

This report was finalised in 2018 and involved a comprehensive breakdown of the industry’s labour supply in terms of different sources of horticulture labour, as well as the industry’s labour demand related to crop, time of year and region. The report provided a six-year forecast of the industry’s labour needs and found that there would be an increasing shortfall of horticulture workers, beginning with a shortfall of 2,663 workers in the 2018–19 year, which was predicted to grow to a shortfall of 6,428 workers in 2023–24. The report also developed its assessment by analysing support services including the provision of accommodation, transport, education and training, and technology in the horticulture and viticulture industry.

### Finding #11: In NZ the RSE sits within a broader strategy to address horticulture labour supply challenges, a key component of which is to develop a local horticulture workforce.

In NZ the NHVSG has partnered with the University of Massey College of Science to develop education pathways into the horticulture and viticulture industry. A new Massey Agritech Partnership between industry and the university was developed to initiate a set of new education offerings for NZ students wishing to pursue a career in horticulture, with an emphasis on precision horticulture using best practices in robotics and other technology. This has resulted in the development of new horticulture degrees, which have both a traditional or industry-embedded option, including a new BHortSci launching in 2019.

The NHVSG has also contributed to the development of a Seasonal Workers program aimed at engaging local New Zealanders. It placed 300 local New Zealanders in the horticulture and viticulture industry in 2017–18. The program provides transport and accommodation assistance, training and other benefits to local workers who move from being unemployed and into the horticulture and viticulture industry.

### Finding #12: In NZ the design of the labour market testing requirement in the RSE is more effective than the Australian approach in assessing labour market gaps and working with growers to develop innovative strategies to engage local workers.

In the RSE, employers are required to register all vacancies with the government agency, Work and Income but they do not have to provide evidence of labour market testing. In NZ, Work and Income assess whether any suitable, local workers are available and work with its tripartite NHVSG to forecast the local labour supply that is available for horticulture work. This is shared with the peak NZ industry association, Horticulture NZ, who negotiates with both MBIE and Work and Income to establish the level of the annual cap for the RSE. Because this is executed at the macro level, it does not impose additional costs on individual growers seeking to sponsor Seasonal Workers through the RSE and it is a more effective way of mapping out the horticulture industry’s labour market needs.

Although labour market testing is undertaken in conjunction with Work and Income, NZ growers do have to demonstrate innovative practices in engaging a local workforce in order to earn RSE status.

<sup>361</sup> Maguire and Johnson, above n 301, 46–7.

<sup>362</sup> Email correspondence between Nathan Grennell and Joanna Howe (on file with authors).



## STAKEHOLDER PERSPECTIVES

“Labour market testing is the MSD’s job. They look at the employer and they report on how that employer is operating within that region. MSD confirms that the employer is doing XYZ and still can’t get enough workers and therefore can get RSE workers. Every RSE employer will have to be doing innovative things to employ New Zealanders. We have strong relationships with prisons on day release, we have young mothers working in pack-houses from 9-3, so it’s been a bit of a boom for MSD to twist the arm of employers. This was a bit tough for growers at first and it got a bit tense for awhile but in the end, the relationship’s grown to the point whereby growers are doing a number of different programs to train, invest and pastoral care of New Zealand workers. So RSE growers are required to apply their pastoral care facility to at-risk New Zealanders when the RSE workers aren’t there.”

**Industry Association official**

“MSD requires growers to advertise but they also have to be doing a whole lot of meaningful things – if there’s unemployed, what are you doing to engage the unemployed? If that guy didn’t turn up the next day, what did you do? Did you visit him etc? There was a frustration because the old way of employing people, advertising, interviewing and giving a person a job, didn’t cut the mustard. This created that tension that you had to demonstrate New Zealanders first. And this created a different cultural mindset — we’ve changed significantly in that space. It’s changed the fabric of the employment environment in the hort space and how we engage with the community. Those demands from MSD Work and Income require demonstrative innovative techniques. We’ve got well-past those traditions, and moved into something more community-focused. It’s an integrated approach which requires employers to be involved. They’re the end of the chain once you’ve brought into health services and social services, you need someone to give them a job. There’s hundreds of at risk New Zealanders who have now been given a job in horticulture because of RSE. It’s been transformative.”

**Industry Association official**

Horticulture NZ also shows leadership on the responsibility of the industry to engage with government efforts to facilitate the employment of the unemployed. In 2018, the CEO of Horticulture NZ stated:

*“Part of the solution to our worker shortage is Kiwis. There are 100,000 jobless in New Zealand and we have to get these people off the couch. If we are going to get an extra 6000 workers, we are going to have to get out there, source them and put them into work.”<sup>363</sup>*

## Conclusion

The RSE scheme introduced in New Zealand in 2007 has been successful on a number of levels. First, the scheme has been successful in terms of its responsiveness to employer needs and secondly it has contributed to grower compliance with labour standards within the horticulture industry. Growers themselves report high levels of support for the program to deliver them a reliable and consistent source of labour supply.

While this program cannot be fully transposed across the Tasman due to differences in the nature and scope of the industries in each country, there are some important lessons that can be learnt in the Australian context.

This Chapter identifies key reasons for the success of the RSE which can support changes in Australia. In particular, the development of a national steering group supported by regional steering groups is an interesting feature of the NZ system which takes into account the importance of local labour markets in policy development. Arguably, this is even more important in Australia than New Zealand given Australia’s size and relatively greater geographical diversity.

<sup>363</sup> Ibid.

# CHAPTER FOURTEEN

# CONCLUSION

## A 'high road' approach

This report has examined the operation of the horticulture labour market in Australia. It has found significant variation in labour practices in the industry and that the industry faces challenges relating to considerable non-compliance with labour standards and a fragile, unsustainable labour supply. This is despite the admirable efforts of many growers who take seriously their legal responsibilities as employers.

The research for this report has been inhibited by a lack of reliable statistical information on the size and nature of the horticulture workforce. It is known with certainty how many SWP workers are in the industry. The numbers of WHMs applying for a visa extension for a second year provides a rough estimate of the number of WHMs in the industry. However, the extent of the local workforce and of undocumented workers remains a matter for speculation. This in itself points to a lack of oversight and coordination of the horticulture labour force.

The research revealed two main deficiencies with current labour supply arrangements. The first is the absence of a level playing field for growers in terms of their employment of pickers, packers and graders. This has produced a degradation of labour standards and made it difficult for compliant growers to remain competitive.

The second is the absence of a framework for multi-stakeholder collaboration to address the industry's labour challenges at both national and regional levels. This has produced policy incoherence and poor engagement between government, industry and unions.

This Chapter examines ways to address issues of non-compliance through labour market regulation and visa reform. This reform is necessary to ensure the industry's workforce strategy adopts the 'high road' of compliance and high productivity business strategies, which are important for the industry's future prosperity.

## Addressing the drivers of non-compliance

### Segmentation

The first driver of non-compliance is policies enabling a segmented horticulture labour market. There are too many visa programs administered by different Australian government departments with different, and often overlapping, levels of regulation and costs. These enable growers and labour hire contractors to choose between workers based on characteristics created by the regulatory environment, such as flexibility and motivation, rather than the inherent capabilities and competencies of workers to low skilled picking and packing work in the industry. There has also been a failure of labour market, social and training policies in encouraging long-term Australian residents into the industry.

There is a clear substitution effect between these different groups of workers, notably between Pacific workers employed via the Seasonal Worker Program (SWP) and Pacific Labour Scheme (PLS), and the Working Holiday Maker (WHM) program, and also between workers with a right to work in the industry and undocumented workers.

This segmented horticulture labour market makes oversight and enforcement of labour standards difficult to achieve. Indeed the only visa programs that track the presence of temporary migrants in the horticulture industry are the under-utilised programs for Pacific workers.

It is vital that oversight is increased within the industry and that this segmentation is addressed in order to foster greater compliance with labour standards.

### Labour hire licensing

Although not all labour hire contractors are non-compliant, the second driver of non-compliance is the industry's reliance on non-compliant labour hire contractors. With the exception of State jurisdictions which are developing labour hire licensing schemes, labour hire contractors currently operate in the horticulture industry with minimal regulation, monitoring or oversight of their activities. In this report we found that the evidence from the regional case studies suggested that the majority of labour hire contractors in the horticulture industry

exploit workers and provide labour to growers in non-compliance with labour standards.

This report found there were two types of growers who engage labour hire contractors. There are growers who genuinely seek to comply with labour standards but use contractors to supplement their workforce because of challenges recruiting workers or because of the administrative simplicity associated with outsourcing labour recruitment and management to a third party. There are other growers who use labour hire contractors to illegally cut labour costs but to do so at arm's length.

The development of a labour hire licensing scheme should be introduced to penalise growers who use non-compliant, unlicensed labour hire contractors and to develop a more quality and consistent labour hire service for growers and workers. It should also ensure that such a scheme does not significantly increase costs for compliant labour hire contractors as these will ultimately be passed onto growers.

A labour hire licensing scheme should operate at the national level and involve robust mechanisms for oversight and enforcement. It should be efficient for growers and workers to identify which contractors hold a licence.

### Status resolution for undocumented workers

The third driver of non-compliance is the industry's reliance on undocumented workers. This reliance is not uniform across the industry but this report has presented evidence to suggest that in some regions the horticulture industry is heavily reliant on undocumented workers. This produces risks for the industry, in terms of the fragility of reputation, its labour supply and the susceptibility of this workforce to exploitation, thus contributing to the lack of a level playing field.

The industry's reliance on undocumented workers can be dealt with in two ways. The first is to encourage undocumented workers to come forward and regularise their migration status or voluntarily leave Australia. This could be done through offering undocumented workers an opportunity to resolve their status through a total or partial amnesty. Although the Department of Home Affairs offers status

resolution, evidence from the regional case studies is that it appears to be ad hoc and under-resourced, and to offer inadequate incentives to workers to regularise their status.

The second way is to increase enforcement efforts to detect the presence of undocumented workers and compel their departure from Australia. This would require a complete overhaul of the current detection and enforcement strategy which is not working. The danger of this strategy is that it could potentially exacerbate labour supply challenges in regions with a heavy reliance on undocumented workers.

There are many issues to consider in developing a status resolution approach. In particular, undocumented workers need to be provided an adequate incentive to make themselves known to the authorities, but not too great an incentive to become an undocumented worker in the first place.

One approach would be to provide workers with an offer of a six or 12-month bridging visa with full work rights. This gives undocumented workers the opportunity for a further period of work while making arrangements to return to their country of citizenship. For this to work, this arrangement would need to protect growers who have employed undocumented workers, providing freedom from fines and prosecution in relation to breaches of the *Migration Act 1958* (Cth) during the period of the status resolution offer. It would also need to be implemented for a minimum of three months and need to be widely publicised during this time. At the end of the period of the status resolution offer, penalties for employing undocumented workers need to be strictly enforced and authorities need to intensify efforts to uncover the employment of undocumented workers to ensure the ongoing integrity of the labour market.

There are several issues to be addressed in offering this status resolution option. Most fundamentally, there is no visa in Australia that could be offered for undocumented workers to continue work in horticulture. Such a visa would need to be specific to this class of worker. While there is no universal registration system for migrant workers, there is a genuine risk that any such initiative will encourage future workers to engage in unlawful work. As indicated above, at present, the only migrant workers whose presence in the horticulture industry is sufficiently monitored are SWP/PLS workers. Therefore, it is crucial that any initiative to regularise the status of undocumented workers is part of a package that includes changes to visa programs channelling temporary migrants into horticulture work so that all visas include a registration requirement for temporary migrant workers engaged in the industry.

## Review of the supply chain

The fourth driver of non-compliance is the supply chain. We found that supply chain pressures can create challenges for the ability of growers to plan their current and future workforce needs and comply with labour standards.

However, these pressures are, paradoxically, a potential source for improving labour standards in horticulture. In reviewing different mechanisms of supply chain regulation for maintaining compliance, the report found that industry-led initiatives such as Fair Farms are a positive step for addressing non-compliance and improving supply chain transparency. However, international evidence indicates that multi-stakeholder governed forms of supply chain regulation tend to be more effective at improving labour standards and minimising business risks, indicating that there may be further scope to incorporate unions and NGOs into the governance of Fair Farms.

The report has also found that attempts to regulate supply chain pressures may be undermined without changes to competition policy and a Productivity Commission review of the horticulture industry to identify ways that growers and lead firms in the supply chain can be encouraged to shift their competitive focus from cost-minimisation towards quality, innovation and productivity. As far back as 1993, the Industry Commission cautioned against the horticulture industry becoming “*a low wage enclave within a high wage economy*” and identified the urgent need to find ways to improve the operation of the supply chain so that “*impediments to the efficient availability, use and pricing of labour in horticulture activities...[are] addressed*”.<sup>364</sup>

## Visa programs overhaul

There needs to be a complete overhaul of the design and management of temporary visa pathways into the horticulture industry. Both this report and the wider literature in Australia and internationally, establish the connected vulnerabilities of the horticulture industry and the temporary migrant workers employed in it.

Thus, it is entirely inappropriate to have a visa program which channels temporary migrants into horticulture with no monitoring of the terms of their employment. The extension of the Working Holiday Maker program into a three year visa, which has effectively created a de-facto or ‘side-door’ agriculture visa, is likely to be at risk if there is no evidence of improvement in labour standards in the industry. It will also reduce incentives for growers to use the more regulated visa programs for Pacific workers.

Within the horticulture industry, growers’ labour needs can be seasonal or long-term. Many growers typically require both types of labour. Visa programs need to be sufficiently flexible to enable growers to meet both their seasonal and ongoing labour needs. At the same time, visa programs need a robust regulatory framework and mechanism for oversight and enforcement to ensure their integrity and to foster compliance. Neither the WHM program nor the SWP and PLS, in their present design and management, are capable of addressing both of these needs.

## Pathways to permanent work in horticulture

Where growers in remote locations have ongoing labour needs that are incapable of being met by a local workforce, permanent visa pathways should be considered as part of the policy solution.

The occupations of pickers, packers and graders are classified as ‘low skill’. Skill is an important analytical category that lies at the intersection of labour and migration that both creates and limits opportunities for the mobility of labour.

Permanent skilled visa pathways are limited to those who satisfy skill thresholds identified in skilled occupation lists. As picking, packing and grading are deemed low-skilled work, horticulture workers have not traditionally had a pathway to permanent work. Where there is an ongoing labour market need, a pathway to permanency could encourage growers to develop a trained, sustainable workforce and also reduce the vulnerability of workers on temporary visas.

## Pathways to better quality and higher skilled employment

The local workforce must be a part of any solution to the current labour supply and regulation challenges facing Australian horticulture. Currently, there is an absence of effective strategies to attract and retain long-term Australian residents to the industry. The proportion of long-term Australian residents working in horticulture has declined in recent years, particularly for low-skilled work. This is despite high levels of unemployment, particularly youth unemployment, in many horticulture regions. However, it is likely that increased investment, automation of labour-intensive tasks and the expansion of export markets will open opportunities for higher-skilled work in the industry.

To encourage school leavers and younger workers into these jobs, there should be greater focus by growers on workforce training, developing career pathways between lower skilled and higher skilled work, collaborating with local education providers, and developing management strategies to

<sup>364</sup> Industry Commission, above n 37, 22.

improve worker commitment and retention. Resolving the current challenges relating to non-compliance with labour standards will also likely make the industry a more attractive source of employment for local workers.

### Developing a framework for multi-stakeholder collaboration

Although this report identifies important initiatives involving multi-stakeholder collaboration at the regional level, we generally found a high degree of fragmentation amongst stakeholders involved in managing labour supply and compliance challenges in the horticulture industry.

### Fragmentation of visa programs

Within the Australian government there are several departments involved in managing different initiatives seeking to address horticulture labour supply. The absence of a central point of coordination for all these initiatives means that they pull in different directions with the resulting effect being a degradation of labour standards and an insecure and fragile labour supply. **Table 14.1** identifies the different initiatives, their purpose and the key government department or agency responsible.

From Table 14.1, two observations stand out. First, there are three main visa programs aimed at channelling temporary migrants into the horticulture industry and each one is led by a different government department. Second, of all four initiatives aimed at addressing horticulture labour supply, the WHM program dwarfs the other schemes in terms of its contribution to horticulture labour supply.

There clearly is a need for much greater coordination within government of initiatives designed to address horticulture labour supply so as to prevent these initiatives from operating at cross-purposes and to ensure that visa programs have a commensurate regulatory burden and costs base.

### Fragmentation among industry stakeholders

The second fragmentation is between industry, government and unions. Unlike in New Zealand where there is a national steering group which brings together these three important stakeholders, there is no such formal architecture in Australia. As such, the relationship between industry, government and unions has been distant and at times, fractious.

**TABLE 14.1 FRAGMENTATION OF VISA PROGRAMS**

Government department or agency	Initiative	Purpose of the initiative	Numbers of workers in horticulture in 2017–18
Department of Home Affairs	Working Holiday Maker Program	To channel WHMs into horticulture through a 2nd and 3rd year visa extension	Approx. 33,000 <sup>365</sup>
Department of Jobs and Small Business	Seasonal Worker Program	To channel Pacific workers into horticulture to meet growers' seasonal labour needs	8,459
Department of Foreign Affairs and Trade	Pacific Labour Scheme	To channel Pacific workers into horticulture to meet growers' ongoing labour needs	0
Department of Jobs and Small Business	Seasonal Workers Incentive Trial	To channel long-term unemployed Australian workers into horticulture	277

For addressing challenges of compliance with labour standards and labour supply, it is essential that a multi-stakeholder framework is developed at the national level which seeks to find issues of common ground that can be dealt with sensibly through policy reform and provides a forum for constructive dialogue in areas of disagreement between stakeholders. Such cooperative frameworks between the representatives of business, the workforce and government have been established features underpinning successful industries in other countries, particularly in Northern Europe, and in resolving labour challenges in Australia in the past.<sup>366</sup> As such, more attention could focus on bringing the industry together more formally.

### Absence of regional coordination

Although in this report we identify a number of positive regional initiatives which have emerged in various regions to address labour supply and compliance challenges, these have tended to be ad hoc and the result of a few key individuals driving new approaches. We propose the development of regional steering groups to supplement a new national horticulture labour steering group. This would drive evidence and policy ideas to the national group from the regions and also provide a framework for each region to develop its own multi-stakeholder strategy.

### Conclusion

The research for this report revealed both the *depth* of labour supply and compliance challenges facing the horticulture industry and the *fragility* of current labour supply options currently provided within the Australian regulatory framework.

The evidence suggests a need to *redesign* labour pathways, particularly to ensure that temporary migrant workers are channelled via visa categories that will enable growers to meet their seasonal and ongoing labour needs more efficiently and sustainably.

In essence, our reform agenda articulates a new vision for labour supply for the Australian horticulture industry — one that seeks to stimulate the involvement of local workers but underpins this core approach through reliance on dedicated horticulture workers entering Australia on regulated visas working for legally compliant employers. It is anticipated that this will produce a more even playing field by reducing unfair competition between growers created through non-compliance with labour standards.

<sup>365</sup> In 2017–18 36,617 WHMs earned a second year extension on their visa, with a likely 90% of these earning this extension through working for 88 days in the horticulture industry.

<sup>366</sup> See, eg, Greg Bamber et al, *International and Comparative Employment Relations: National Regulation, Global Changes* (Sage, 2016).

## FOR FURTHER ENQUIRIES

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